



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: GEORGIA

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Prison-Release Discretion and Prison Population Size

State Report: Georgia

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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 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 greatly across U.S. jurisdictions. One goal is to inform state governments how they may deliberately adjust their laws and practices of prison-release authority to achieve desired policy goals, such as reductions of prison populations in a manner consistent with public safety

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. Our five tiers are based on the variations we observe in current American sentencing systems, not any absolute or theoretical conceptions of degrees of indeterminacy that could be imagined in hypothetical systems.

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 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 the 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” (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 of prisoners who have received those different classes of sentence.

Prison-Release Discretion and Prison Population Size

State Report: Georgia¹

Executive Summary

We classify the prison-sentencing system in Georgia as *highly indeterminate* overall. Most prison sentences carry parole release eligibility at the 33-percent mark of judicial maximum sentences. Some short sentences carry lower degrees of indeterminacy and some extremely long sentences have higher degrees of indeterminacy.

Georgia has an especially powerful parole board. The state’s department of corrections has no release authority independent of the parole board’s. Although prisoners may earn “Performance Incentive Credits” under the aegis of the department of corrections, these credits have no legally-binding effect on time served by prisoners. At most they translate into recommendations by the department of corrections that the parole board release prisoners earlier than they might otherwise have done.

Adding to the parole board’s powers, it has exclusive jurisdiction to exercise the clemency power. Unlike the vast majority of other states, Georgia’s governor does not possess ultimate clemency authority.

Terminology note

This report will refer to the Georgia State Board of Pardons and Paroles as the “parole board.” The Georgia Department of Corrections will be referred to as the “department of corrections.”

Interestingly, discretionary parole release is legally classified as a form of clemency under Georgia’s constitution.² For the most part, this formal designation does not affect the analysis of this report.

¹ 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. We thank Steve Hayes for his review of an earlier draft. For a broad overview of the law of parole release and supervision in Georgia, see Alexis Lee Watts, Kevin R. Reitz, Edward E. Rhine, & Mariel E. Alper, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Georgia* (Robina Institute of Criminal Law and Criminal Justice, 2016) (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).

² The Georgia state Constitution grants the Board of Pardons and Paroles (Board) the power of executive clemency, “including the powers to grant reprieves, pardons, and paroles; to commute penalties, to remove disabilities imposed by law; and to remit any part of a sentence” Ga. Const. art. 4, § 2, ¶ II(a).

Introduction

Georgia’s prison-rate history, 1972 to 2020

At yearend 2020, Georgia’s prison rate was 433 per 100,000 general population, with a prison population of 46,574.³ Georgia’s prison rate was 7th highest among all states.

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

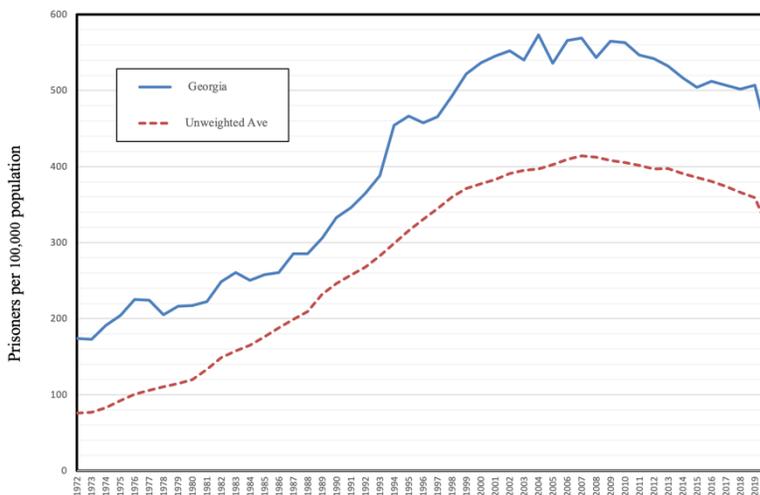
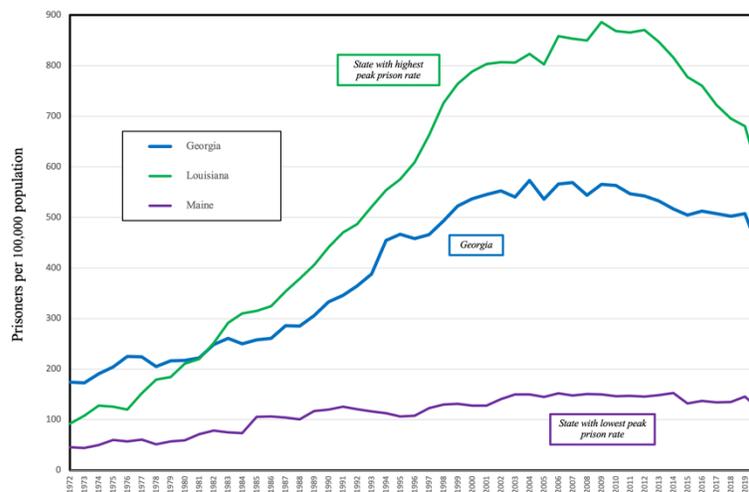


Figure 2. Prison Rate Change in Georgia, Louisiana, and Maine, 1972 to 2020



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

³ 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 Georgia’s imprisonment rates after 2020 is presented below in the section on “The COVID period in Georgia.”

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).

Georgia reached its peak prison rate in 2004 at 573 per 100,000, which dropped to 433 per 100,000 in 2020. This is a net difference of -140 per 100,000, which was the 21st 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

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.⁴

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

⁴ 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 100,000.⁵ We believe this was the largest one-year decline in state prison rates in American history.⁶

In calendar year 2021, U.S. prison rates did not continue downward 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, with considerable variation across the states. Prison populations actually rose in 19 states.⁷

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.⁸

⁵ 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.

⁶ 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).

⁷ 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.

⁸ 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

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 2020.⁹

The COVID period in Georgia

Georgia increased the use of its parole-release process in the early months of the COVID pandemic, but with limited long-term effects on the state's prison population size.

In calendar year 2020, Georgia's prison rate fell from 507 to 433 per 100,000—a one-year decline of -74 per 100,000. This was the 5th largest one-year drop reported among all 50 states for that year.¹⁰ Measured in percentage terms, it was a 14.6 percent reduction in the state's prison rate. The state's total prison population fell by 7,539 people, from 54,113 to 46,574.¹¹

COVID releases made up only a fraction of this drop. In a separate study, the Robina Institute found 918 releases in Georgia from March 2020 through December 2021 that were accelerated in response to the pandemic; all of these releases occurred in April and May 2020. This number is the equivalent of about two percent of Georgia's pre-COVID prison population (at yearend

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.

⁹ 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.

¹⁰ The largest single-state 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 16 table 7.

¹¹ *Id.*, at 12 table 4.

2019). All prisoners with accelerated releases were within 180 days of their mandatory release dates.¹² Thus, the impact of the releases on the state’s prison rate was short lived.

Falling admissions appear to have been the dominant factor in Georgia’s decreasing prison population in 2020. The number of prison admissions in the state dropped by 46 percent in 2020 compared with the previous year (from 18,277 to 9,861). Total releases grew by 3.7 percent in 2020 over 2019 (from 15,876 to 16,460).¹³

The velocity of Georgia’s prison-rate drop slowed markedly after calendar year 2020. From yearend 2020 to December 2021, the Vera Institute reported that Georgia saw a small decrease in its prison population, from 47,709 to 47,020—or 1.4 percent.¹⁴ As of June 1, 2022, the Georgia Department of Corrections reported a total prison population of 47,291.¹⁵

1. General rules of prison release in Georgia

Statutory formulas for minimum terms

By statute, most prisoners in Georgia become eligible for discretionary parole release after serving one-third of their judicial maximum sentences, with some exceptions.¹⁶ Georgia is one of only four states that have no system of good-time or earned-time credits that can alter the lengths of prisoners’ minimum or maximum terms.¹⁷

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, Appendix E.

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

¹⁴ See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2. 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 Georgia Department of Corrections, *Inmate Statistical Profile* (June 1, 2022), at http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_all_inmates_2022_05.pdf.

¹⁶ Prisoners serving life sentences and prisoners serving mandatory minimum terms of imprisonment become eligible for parole consideration as provided by statute and constitution and are ineligible for parole until that time. Ga. Const. art. 4, § 2, ¶ II; Ga. Code § 42-9-39; Ga. Comp. R. & Regs. 475-3-.06; Op. Ga. Att’y. Gen. No. 95-4 (Feb. 14, 1995).

¹⁷ 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 66-74 table 8, 75.

The basic statutory rules for minimum terms to parole release eligibility are as follows: “[A]n inmate serving a felony sentence or felony sentences shall only be eligible for consideration for parole after the expiration of nine months of his or her sentence or one-third of the time of the sentences, whichever is greater.”¹⁸ Thus, prisoners with maximum terms shorter than 27 months must serve minimum terms longer than one-third of their maximum terms. Otherwise, the one-third rule applies until judicial maximum sentences reach the extended duration of 21 years. By statute, prisoners “serving sentences aggregating 21 years or more shall become eligible for consideration for parole upon completion of the service of seven years.”¹⁹ For some maximum terms greater than 21 years, therefore, minimum terms can be substantially less than one-third of the maximum sentence.²⁰

Within this statutory framework, the parole board has promulgated detailed Parole Decision Guidelines.²¹ The guidelines include a grid that recommends a date of automatic eligibility for parole consideration,²² or “Tentative Parole Month” (TPM), by measuring a number of weighted factors concerning “the severity of the crime and the inmate’s risk to re-offend.”²³ The parole board is not legally bound to follow or give weight to guidelines recommendations.²⁴ The board retains discretion to change TPMs and actual release dates throughout prisoners’ terms.²⁵

¹⁸ Ga. Code § 42-9-45(b)(2). “The following categories of inmates are not eligible for parole: ... Inmates serving non-life sentences for a serious violent felony (rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, armed robbery, or kidnapping), with a crime commit date on/after January 1, 1995 (ineligible for parole consideration due to SB 441). ... Inmates convicted of a fourth or more felony, and sentenced as a recidivist, ... [and] Inmates sentenced to life without parole.” Georgia State Board of Pardons and Paroles, *The Parole Process in Georgia* (2021), at <https://pap.georgia.gov/parole-consideration/parole-process-georgia>.

¹⁹ Ga. Code § 42-9-45(b)(2).

²⁰ Prisoners with misdemeanor sentences become “eligible for consideration for parole after the expiration of six months of his or her sentence or sentences or one-third of the time of his or her sentence or sentences, whichever is greater.” Ga. Code § 42-9-45(b)(1).

²¹ See Ga. Code § 42-9-45; Ga. Comp. R. & Regs. 475-3-.05.1 et seq.

²² See Ga. Comp. R. & Regs. 475-3-.05(1) for a list of those inmates who must apply to be considered (prisoners serving consecutive sentences for misdemeanors exceeding 12 months, prisoners convicted of purchase, possession, manufacture, distribution or sale of a Schedule I or II controlled substance, and recidivists who have met eligibility requirements).

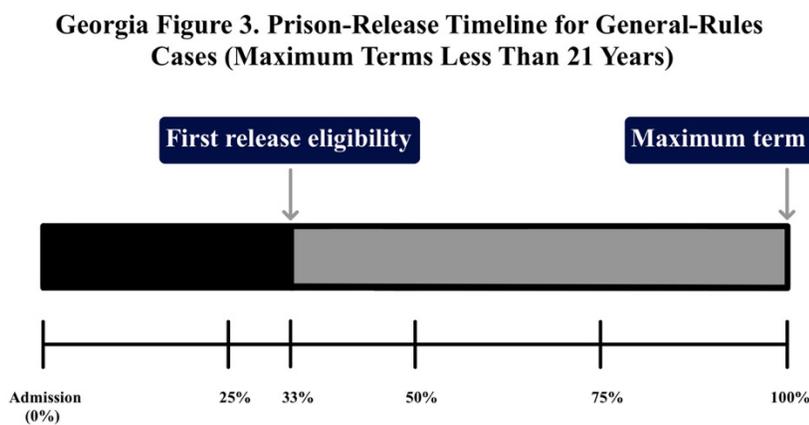
²³ Ga. Comp. R. & Regs. 475-3-.05. The risk factors used in the guidelines are periodically updated based on new research. See Georgia State Board of Pardons and Paroles, *Parole Consideration, Eligibility & Guidelines* (2021), at <https://pap.georgia.gov/parole-consideration/parole-consideration-eligibility-guidelines>.

²⁴ See Georgia State Board of Pardons and Paroles, *Parole Consideration, Eligibility & Guidelines* (2021), at <https://pap.georgia.gov/parole-consideration/parole-consideration-eligibility-guidelines> (“The Board specifically reserves the right to exercise its discretion under Georgia law to disagree with the recommendation resulting from application of the Parole Decision Guidelines.”).

²⁵ Ga. Comp. R. & Regs. 475-3-.05. See Georgia State Board of Pardons and Paroles, *The Parole Process in Georgia* (2021), at <https://pap.georgia.gov/parole-consideration/parole-process-georgia> (“The Board may reconsider and

For purposes of our analysis, the contents of Georgia’s Parole Decision Guidelines are categorized as an expression of the back-end release discretion vested in the parole board. That is, the guidelines are an exercise of the board’s discretionary authority within the latitude created by maximum and minimum terms established by the legislature and sentencing courts. They are created and may be amended by the board; they do not represent rulemaking authority imposed on the board by any outside entity. No less than its discretionary choices in individual cases, guidelines promulgation by the board is therefore a full-fledged example of back-end sentencing authority. To the extent the guidelines shape or constrain the board’s decisions, those limitations are self-imposed and do not subtract from the sum total of time-served discretion reposed in the parole board by Georgia law.²⁶

Georgia Figure 3 illustrates the prison-release timeline for general-rules prisoners with judicial maximum sentences of greater than 27 months and less than 21 years. Parole release eligibility for this broad class of offenders occurs at the one-third mark of the timeline. Such sentences are 33 percent determinate and 67 percent indeterminate.



The class of sentences represented in Georgia Figure 3 carries a PMP of 3:1. That is, the subpopulation size of prisoners with this type of sentence would be three times as large under

change a prior decision in a case, for any reason, at any time, up to the date of release. ... A TPM is not a final release decision. At the TPM, the Board will complete a final review of the offender’s case file and determine whether to set a parole release date.”).

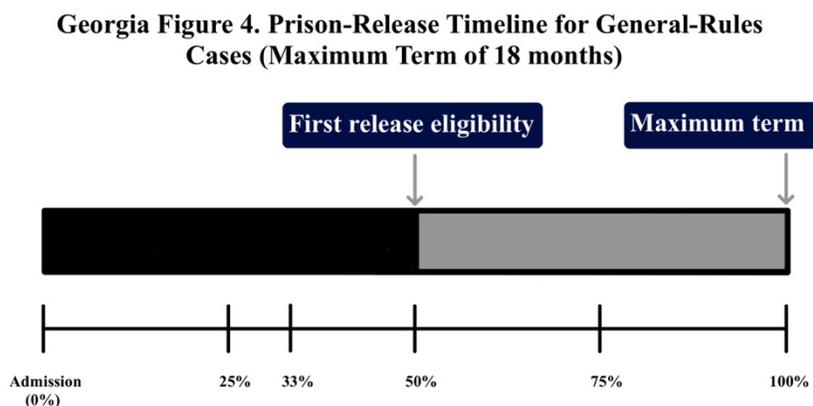
²⁶ This project treats the substantive provisions of parole-release guidelines as themselves the product of back-end release discretion unless those provisions are mandated by legislation, court order, or some other command external to the board. Not so differently, customs or conventions to which parole boards adhere across identifiable periods of time may also be viewed as self-imposed norms that shape the use of their discretionary power. Customs and conventions may sometimes appear to be engrained by long practice but, as a matter of law, successive boards are free to remake them.

a sustained *longest-time-served* scenario than under a sustained *shortest-time-served* scenario. The range of possibility reflected in this PMP is subject to the discretionary decisions of a single agency: the parole board. The power to alter prison population size by a ratio of 3:1 is especially concentrated in Georgia's parole board because, unlike most other states, there is no system of credit-based deductions against prisoners' minimum or maximum terms. The department of corrections has no formal release or release-denial discretion that coexists with the powers of the parole board.

A minority of prisoners in Georgia's system at any given time are serving sentences that are not strictly governed by the one-third rule shown in Georgia Figure 3.

Georgia Figure 4 provides one illustration of the statutory rule that minimum terms for felonies cannot be shorter than nine months. For all sentences with judicial maximum terms of less than 27 months, this results in lower degrees of indeterminacy than the one-third rule would otherwise produce. Georgia Figure 4 uses the example of an 18-month judicial maximum term matched with a nine-month minimum term. For this particular example, the sentence is 50 percent determinate and 50 percent indeterminate.

The full class of sentences with maximum terms shorter than 27 months is not represented in Georgia Figure 4. There is no fixed PMP for sentences in this class because the degree of indeterminacy across the whole class could in theory vary from (almost) 66.66 percent to zero percent. (That is, a felony prison sentence with a judicial maximum of nine months would carry a minimum term of nine months.)

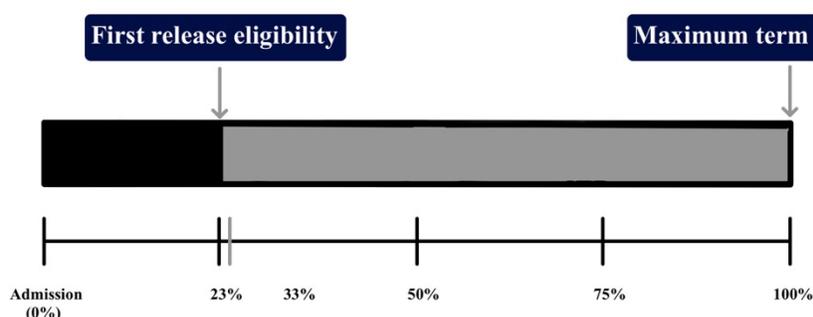


Sentences with extremely long judicial maximum terms also diverge from the one-third rule. Georgia Figure 5 is one illustration. By statute, sentences with judicial maximum terms of 21 years or more generally carry fixed minimum terms of seven years. The seven-year duration does not increase in relation to longer maximum terms for sentences of more than 21 years. The particular example shown in Georgia Figure 5 is a sentence with a 30-year maximum term.

With this precise maximum term, a minimum term of seven years yields parole release eligibility at the 23-percent mark of the timeline.

The full class of sentences with maximum terms of 21 years or longer is not represented in Georgia Figure 5. There is no fixed PMP for sentences in this class because the degree of indeterminacy across the whole class could in theory vary from (almost) 66.66 percent to 100 percent. For example, consecutive sentences with an aggregated judicial maximum of 100 years would be 93 percent indeterminate.

Georgia Figure 5. Prison-Release Timeline for General-Rules Cases (Maximum Term of 30 years)



Performance Incentive Credits (PICs)

Conduct-based credits in Georgia (called Performance Incentive Credits or “PICs”)²⁷ can be used by the department of corrections to recommend that the parole board release a prisoner earlier than they might otherwise have done.²⁸ The parole board is free to accept or ignore the recommendations. Credits have no formalized effect on the lengths of minimum or maximum terms, as they do in most other states.

²⁷ Ga. Code § 42-5-101(a)-(c) (“The Department of Corrections is authorized to devise and to provide by agency rule a system of work incentive credits which may be awarded by the department to persons committed to its custody for any felony prison term other than life imprisonment. ... Work incentive credits may be awarded by the department to recognize inmates’ institutional attainments in academic or vocational education, satisfactory performance of work assignments made by the penal institution, and compliance with satisfactory behavior standards established by the department. ... The department may award up to one day of work incentive credits for each day during which the subject inmate has participated in approved educational or other counseling programs, has satisfactorily performed work tasks assigned by the penal institution, and has complied with satisfactory behavior standards established by the department.”).

²⁸ Ga. Code § 42-5-101. *See id.*, § 42-5-101(d) (“Any work incentive credits awarded an inmate by the department shall be reported by the department to the State Board of Pardons and Paroles which shall consider such credits when making a final parole release decision regarding the subject inmate. The department is authorized to recommend the board apply the work incentive credits to advance any tentative parole release date already established for the subject inmate.”).

While PICs may well influence actual dates of release in many individual cases, this occurs through the parole board’s exercise of its discretion rather than any inherent legal force of the credits themselves. Thus PICs do not act as a “check” on the parole board’s power to deny release—a role played by conduct-based credits in many other states.²⁹

Waiting period after release denials

When the parole board hears the case of an individual prisoner and denies release, it decides whether to set a new Tentative Parole Month (TPM), a reconsideration date, or neither. There is no statutory timeline within which the board must reconsider a prisoner for release. It is even within the board’s power to deny future reconsideration entirely, for the remainder of a prisoner’s term.³⁰ While decisions on reconsideration for parole are not mandated by statute, the parole board has placed some limitations on its own accord.³¹

2. Life sentences in Georgia

a. Adults

Any offender sentenced to death or life imprisonment without parole (LWOP) is ineligible for parole and any other programs which would reduce time served.³² Offenders whose crimes are

²⁹ We do not count Georgia as a state that has instituted a “checks-and-balances” approach to release decisions through the creation of competing releasing powers held by the parole board and the department of corrections. 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 78-95.

³⁰ Ga. Bd. Of Pardons & Paroles, *Frequently Asked Questions*, <https://pap.georgia.gov/parole-consideration/frequently-asked-questions> (last visited July 5, 2022) (“The Board may reconsider and change a prior decision in a case, for any reason, at any time, up to the time of release.”); see also Ga. Comp. R. & Regs. 475-3-.05 (“Any decision rendered under the Parole Decision Guidelines may be changed at the discretion of the Board at any time.”); Ga. Comp. R. & Regs. 475-3-.06 (“After investigations are complete, the Board applies the Parole Decision Guidelines . . . and notifies that inmate that he or she is denied parole throughout his or her confinement or notifies the inmate of a tentative parole month for some future time.”). The Board clarifies in a number of places that Georgia parole statutes and its own regulations do not create a liberty interest in parole. E.g., Ga. Comp. R. & Regs. 475-3-.05. See also Law Offices of Southern Center for Human Rights, *Parole Handbook: A Guide to the Parole Consideration Process for People in Georgia Prisons and Their Families* (3d ed. 2012) at 29.

³¹ Inmates who are denied parole will, by policy, be reconsidered for parole at least every 5 years for non-life sentences and 8 years for life sentences. Ga. Bd. Of Pardons & Paroles, *Frequently Asked Questions*, <https://pap.georgia.gov/parole-consideration/frequently-asked-questions> (last visited July 5, 2022); Ga. Comp. R. & Regs. 475-3-.05(2); Ga. Comp. R. & Regs. 475-3-.05(6). See also Ga. Comp. R. & Regs. 475-3-.06(3) (“If, upon the initial application of the Parole Decision Guidelines System, it is recommended that an inmate be denied parole throughout his or her confinement, the inmate will be considered for parole at the expiration of one-third of the sentence or sentences.”).

³² Ga. Code § 17-10-16.

punishable by the death penalty may also be sentenced to life imprisonment with or without parole for crimes committed after May, 1, 1993.³³

Offenders sentenced to life imprisonment for any “serious violent felony” are eligible for parole consideration upon serving 30 years.³⁴ This is also true of first-time “serious violent felony” offenders who are sentenced to death but whose sentence the parole board commutes to life imprisonment.³⁵

The board’s Parole Decision Guidelines extend to parolable life sentences.³⁶

b. Juvenile life sentences

Georgia is among 27 states that still authorize life sentences without parole for juvenile offenders (JLWOP) when constitutionally permissible.³⁷ The U.S. Supreme Court has allowed such sentences to be imposed in homicide cases provided the sentencing court has considered mitigating circumstances appropriate to the defendant’s age.³⁸

³³ Ga. Code § 17-10-16. See Ga. Code § 17-10-30 (containing a complete list of offenses authorizing the death penalty).

³⁴ Ga. Code § 17-10-6.1(c). This applies to prisoners serving sentences for crimes committed on or after July 1, 2006. Prisoners whose crimes took place on or after January 1, 1995 and before July 1, 2006 are eligible for parole consideration upon serving 14 years. *Id.*; Ga. Dep’t of Corr., *Orientation Handbook for Offenders*, http://www.dcor.state.ga.us/sites/all/files/pdf/GDC_Inmate_Handbook.pdf at 52. Prisoners whose crimes took place before January 1, 1995 are eligible for parole upon serving seven years. Ga Bd. Of Pardons and Paroles, *The Parole Process in Georgia*, <https://pap.georgia.gov/parole-process-georgia-0> (last visited June 29, 2020). See also Ga. Code § 17-10-6.1(a) (defining “serious violent felony” to mean the following: murder or felony murder; armed robbery; kidnapping; rape; aggravated child molestation; aggravated sodomy; or aggravated sexual battery).

³⁵ Ga. Code § 17-10-6.1(c). This applies to prisoners serving sentences for crimes committed on or after July 1, 2006. Prisoners whose crimes took place between January 1, 1977 and before July 1, 2006 whose death sentence was commuted to life imprisonment attain eligibility upon serving 25 years. *Id.*; Ga. Dep’t of Corr., *Orientation Handbook for Offenders*, http://www.dcor.state.ga.us/sites/all/files/pdf/GDC_Inmate_Handbook.pdf at 52.

³⁶ Ga. Code § 42-9-40; Ga Bd. Of Pardons and Paroles, *The Parole Process in Georgia*, <https://pap.georgia.gov/parole-process-georgia-0>. Georgia statutes refer to life sentences with the possibility of parole simply as “life imprisonment.” Ga. Code § 17-10-31.

³⁷ Twenty-three states and the District of Columbia have abolished such sentences. Josh Rovner, *Juvenile Life Without Parole: An Overview* (The Sentencing Project, 2020).

³⁸ See *Miller v. Alabama*, 567 U.S. 460, 480 (2012) (holding mandatory sentences of life without parole 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

3. Infrequently used forms of prison release in Georgia

a. Compassionate release

The parole board may issue a medical reprieve to an “entirely incapacitated person suffering a progressively debilitating terminal illness,³⁹ as well as any person 62 or older.⁴⁰

b. Clemency

The governor has no power to grant pardons or commutations in Georgia.⁴¹ The parole board holds the power of executive clemency.⁴² This is an unusual arrangement.⁴³

c. Release during overcrowding emergencies

The governor may declare a state of emergency if the prison system has exceeded maximum capacity for 30 consecutive days,⁴⁴ in which case the parole board will release a sufficient number of non-dangerous offenders to reduce the prison population size to 100 percent capacity.⁴⁵ The parole board under such circumstances must give preference to prisoners who “have participated in educational programs and who have achieved a fifth-grade level or higher on standardized reading tests.” Selection for this type of parole release is not limited by mandatory minimum sentences elaborated in Ga. Code Ann. § 42-9-45.⁴⁶

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 court has considered the defendant’s youth before imposing the LWOP sentence).

³⁹ Ga. Code § 42-9-43.

⁴⁰ Ga. Const. art. 4, § 2, ¶ II.

⁴¹ Ga. Code § 42-9-56.

⁴² Ga. Code § 42-9-42(a); Ga. Const. Art. 4, §2, ¶ II; Ga. Code § 42-9-39.

⁴³ Only Georgia, Connecticut, Idaho, and Utah have similar setups. 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 115-20 table 11.

⁴⁴ Ga. Code § 42-9-60(b).

⁴⁵ Ga. Code § 42-9-60(c). The prisoners convicted of the following offenses are ineligible for parole for prison population reduction purposes: murder, second-degree murder, voluntary manslaughter, kidnapping, armed robbery, rape, aircraft hijacking, aggravated battery, aggravated sexual battery, aggravated assault, incest, child molestation, aggravated child molestation, child abuse, enticing a child for indecent purposes, and any marijuana, cocaine, or illegal drug-related felony under § 16-13-31. Similarly ineligible for prison reduction purposes is any prisoner convicted of a second or subsequent offense for which life imprisonment was an available sentence. This list is compiled from Ga. Code §§ 42-9-60 and 42-9-45(f)–(g).

⁴⁶ Ga. Code § 42-9-60(c).

4. Overall assessment of Georgia's prison-sentencing system

We classify the prison-sentencing system in Georgia as *highly indeterminate* overall. As shown in Georgia Figure 3, most prison sentences carry parole release eligibility at the 33-percent mark of judicial maximum sentences. We believe this describes the great majority of all general-rules prison sentences in the state.

While sentences below 27 months carry lower indeterminacy values, we assume that prisoners in this subgroup make up a relatively small share of the total prison population (in part because they move in and out of the system faster than prisoners with longer terms).

In addition, sentences of 21 years and above *increase* the degree of indeterminacy within the system, which pulls in the opposite direction from short sentences. Our rankings of entire state systems are always to some degree subjective, requiring us to analyze and collate multiple sentence classes that may themselves be ambiguous. We are confident that Georgia's placement as a highly indeterminate system is a good reflection of its comparative position vis-à-vis other states.

Georgia has an especially powerful parole board. Although prisoners may earn "Performance Incentive Credits" under the aegis of the department of corrections, these credits have no legally-binding effect on time served by prisoners. Instead, they translate into recommendations by the department of corrections that the parole board release prisoners earlier than they might otherwise have done. Unlike in most other states, the accrual of conduct-based credits in Georgia does not limit the parole board's release-denial discretion during any segment of the prison-sentence timeline. There is no configuration of "checks and balances" between the parole board and department of corrections.⁴⁷

Not insignificantly, Georgia's parole board has unconstrained authority to determine the length of waiting periods between a release denial and subsequent consideration of a prisoner for release, including the power to decide that a prisoner will simply serve out their full judicial maximum term. This is a minority position among all paroling states.⁴⁸

Adding to the parole board's powers, it has exclusive jurisdiction to exercise the pardon power. Unlike the vast majority of other states, Georgia's governor does not hold ultimate clemency authority.⁴⁹ Because few prisoners are released via clemency decisions, for our purposes this is not an important factor in the operation of Georgia's prison-sentencing system as a whole.

⁴⁷ For a discussion of the checks-and-balances approach, 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 78-95.

⁴⁸ *Id.* at 35.

⁴⁹ See *id.* at 125-35, Appendix Table A-1.