



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

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# **PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE**

## ***STATE REPORT: MISSOURI***

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## **State Report: Missouri**

### **Table of Contents**

#### *Executive Summary*

#### *Introduction*

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

#### *2. Life sentences in Missouri*

##### *a. Adults*

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

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

##### *a. Compassionate release*

##### *b. Clemency*

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

#### *4. Overall assessment of indeterminacy in Missouri's prison-sentencing system*

### Definitions and Concepts

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

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

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

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

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

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

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

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

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

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

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

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

## Prison-Release Discretion and Prison Population Size

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

#### *Executive Summary*

We classify Missouri’s prison-sentencing system as operating with a *high degree of indeterminacy* overall. This judgment reflects a composite assessment of several different classes of general-rules sentences in the state.

All sentences covered by the general rules of prison release in Missouri give substantial release and release-denial discretion to the parole board. Missouri also makes use of movable mandatory release dates (MRDs) for general-rules prisoners, which can yield release dates substantially earlier than the expiration of prisoners’ maximum terms. Initial MRDs are set in place by statute. The statutory dates may be delayed for disciplinary infractions, but such penalties can only be assessed by the parole board following a petition by the department of corrections. The department of corrections has no independent power to levy “bad time” sanctions.

For most general-rules prisoners, the department does have discretion to move MRDs earlier than their initial statutory positions through the award of good conduct credits. The earning rates for such credits are low, however.

In sum, the parole board is currently a much more powerful player at the back end of Missouri’s prison-sentencing system than the department of corrections.

#### *Terminology note*

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

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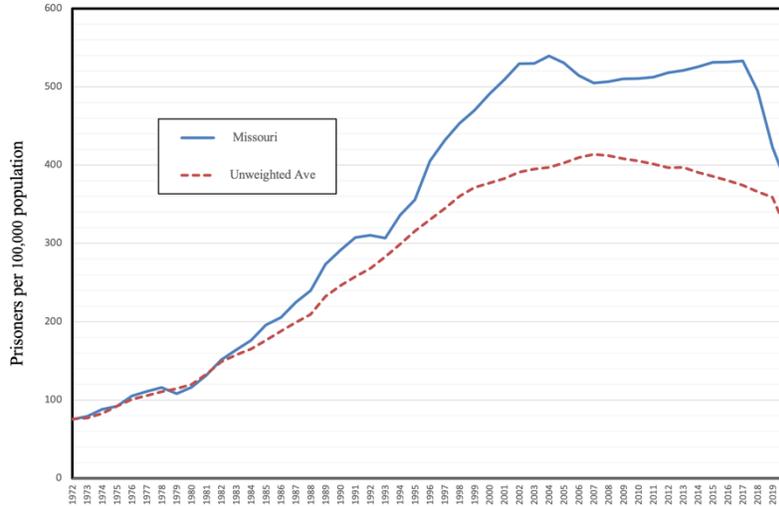
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures. For a broad overview of the law of parole release and supervision in Missouri, see Alexis Lee Watts, Kevin R. Reitz, and Julie Matucheski, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Missouri* (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**

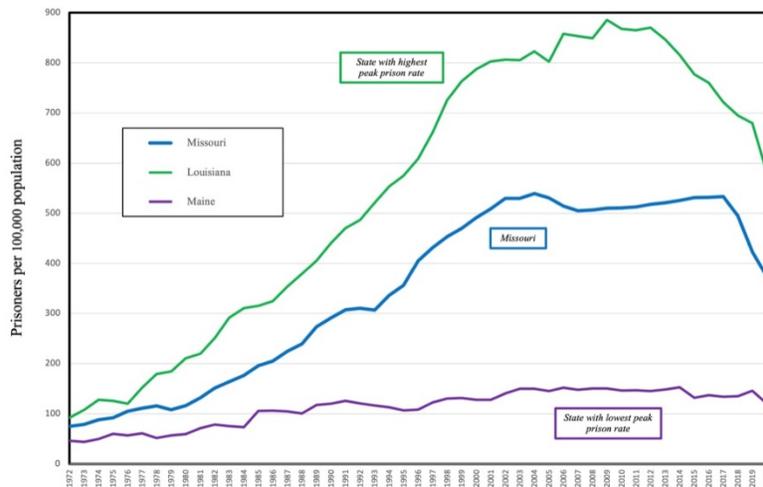
*Missouri’s prison-rate history, 1972 to 2020*

At yearend 2020, Missouri’s prison rate was 374 per 100,000 general population, with a prison population of 23,059.<sup>2</sup> Missouri’s prison rate was 12<sup>th</sup> highest among all states.

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



**Figure 2. Prison Rate Change in Missouri, 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

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

sentenced prisoners under jurisdiction of State and Federal correctional authorities on 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).

Missouri reached its peak prison rate in 2004 at 539 per 100,000, which dropped to 374 per 100,000 in 2019. This is a net difference of -165 per 100,000, which was the 15<sup>th</sup> largest prison-rate drop of all states from their peak rates (in various years) through 2020.

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

### *The COVID period*

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

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

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

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

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

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year, 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 have already been assembled.

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

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

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

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

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

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

### *The COVID period in Missouri*

Missouri made no special uses of prison-release processes in the early COVID period.

In calendar year 2020, Missouri's prison rate fell from 423 to 374 per 100,000—a one-year decline of -49 per 100,000. This was the 26<sup>th</sup> largest one-year drop reported among all 50 states for that year (tied with Indiana and North Dakota),<sup>9</sup> Measured in percentage terms, it was a 11.6 percent reduction in the state's prison rate. The state's total prison population fell by 2,979 people, from 26,038 to 23,059.<sup>10</sup>

COVID releases did not contribute to this drop. In a separate study, the Robina Institute found no (zero) COVID-influenced releases in Missouri from March 2020 through December

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

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

<sup>9</sup> 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 15 table 7.

<sup>10</sup> *Id.*, at 11 table 4.

2021. Missouri was one of 14 states that made no special effort to expedite prison releases in response to COVID.<sup>11</sup>

Falling admissions was the most salient factor in Missouri's reduction of prison population in 2020. The number of prison admissions in the state dropped by 18.5 percent in 2020 compared with the previous year (from 14,385 to 11,722).<sup>12</sup> Total numbers of releases did not increase in COVID's first year, but fell by 21.3 percent (from 18,617 in 2019 to 14,643 in 2020).<sup>13</sup>

From yearend 2020 to December 2021, the Vera Institute reported that Missouri saw an increase in its prison population, from 23,106 to 23,454—or 1.5 percent.<sup>14</sup>

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

Missouri has multiple formulas for the “general rules” of prison release that are applied to the state's major felony classes.

Parole release eligibility formulas vary with the grade of felony offense and nature of offense of conviction (see Table 1 below). Formulas for mandatory release dates (MRDs), which are movable in Missouri, are defined in relation to the judicial maximum prison terms selected by sentencing courts in individual cases (see Table 2 below). Good time credit earnings are set at different levels depending on the felony grade of the offense of conviction (See Table 3 below).

It is helpful to know the following: The authorized range of maximum prison sentences of imprisonment for Class A felonies is 10 to 30 years or life imprisonment; for Class B felonies it is 5 to 15 years; for Class C felonies it is 3 to 10 years; for Class D felonies it is 0 to 7 years; and for Class E felonies it is 0 to 4 years.<sup>15</sup> When sentencing courts impose prison sentences in ordinary cases, they have discretion to choose a judicial maximum term within these authorized ranges.

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<sup>11</sup> Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022), Appendix A.

<sup>12</sup> E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8.

<sup>13</sup> *Id.*, at 19 table 9.

<sup>14</sup> Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 4 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.

<sup>15</sup> Mo. Rev. Stat. § 558.011.1(1)-(5).

### *Minimum terms to parole release eligibility*

Minimum terms to parole release eligibility for general-rules prisoners are not fixed by statute in Missouri but are established by regulations promulgated by the parole board.<sup>16</sup> (For some special classes of sentences, statutory formulas do exist.<sup>17</sup>) This is a noteworthy feature of Missouri’s system. In most states, parole eligibility formulas are set by the legislature and are not left for back-end decisionmakers to decide for themselves. For purposes of the analyses presented in this report, it is important to recognize that the degrees of indeterminacy associated with the major classes of sentences in Missouri are changeable at the discretion of the parole board.<sup>18</sup>

The parole board’s current release eligibility formulas for general-rules cases are displayed by felony grade and offense type in Table 1.<sup>19</sup>

**Table 1. Parole release eligibility formulas by felony grade and nature of offense**

<i>Felony grade and nature of offense</i>	<i>Parole eligibility as percentage of MAX term</i>
Class A (violent and sex offenses, child abuse)	33 percent
Class A (nonviolent and drug offenses, DWI)	25 percent
Class B (violent and sex offenses, child abuse)	33 percent
Class B (nonviolent and drug offenses, DWI)	25 percent
Class C (violent and sex offenses, child abuse)	33 percent
Class C (nonviolent and drug offenses, DWI)	20 percent
Class D (violent and sex offenses, child abuse)	33 percent

<sup>16</sup> Mo. Rev. Stat. § 217.690.4 (“The parole board shall adopt rules not inconsistent with law ... with respect to the eligibility of offenders for parole . . . .”); State of Missouri Department of Corrections, Missouri Parole Board, *Procedures Governing The Granting of Paroles and Conditional Releases* (March 17, 2022), at 13 (“Minimum [parole] eligibility requirements may be established by [Parole] Board policy in the absence of statutory minimums.”).

<sup>17</sup> See the sections below concerning defendants convicted of offenses classified as “dangerous felonies” and certain repeat offenders who are subject to mandatory minimum prison terms.

<sup>18</sup> If we view the parole board’s power to set release eligibility formulas as itself a form of time-served discretion, then the current Missouri system produces sentences in general-rules cases that are 100 percent indeterminate.

<sup>19</sup> The table summarizes 14 Mo. Code St. Regs. § 80-2.010(1)(A)-(D).

<i>Felony grade and nature of offense</i>	<i>Parole eligibility as percentage of MAX term</i>
Class D (nonviolent and drug offenses, DWI)	15 percent
Class E (violent and sex offenses, child abuse)	33 percent
Class E (nonviolent and drug offenses, DWI)	15 percent

### *Movable mandatory release dates*

In the terminology of this project, Missouri uses a system of “movable mandatory release dates” (MRDs) for all general-rules sentences. That is, if no disqualifying event occurs, most prisoners will reach dates upon which they must be released that occur before expiration of the judicial maximum sentence. These MRDs are not fixed in any one location, but can move forward or backward depending on prisoners’ conduct and the actions of back-end decisionmakers during the lifespan of a prison term.<sup>20</sup>

Most prison sentences in Missouri include a “prison term” plus a “conditional release term.” The combined duration of the two add up to the statutory maximum sentence.<sup>21</sup> In Missouri’s terminology, there is a “conditional release date” at the expiration of the “prison term” and the beginning of the “conditional release term.” In the terminology of this project, the “conditional release date” operates as a mandatory release date.<sup>22</sup> In Missouri, a prisoner must be released on this date unless: (1) the department of corrections petitions the parole board to extend the date of conditional release due to a rules violation by a prisoner; and (2) the parole board holds a hearing on the petition and decides to postpone the MRD. The board has

<sup>20</sup> See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”).

<sup>21</sup> Mo. Rev. Stat. § 558.011.4(1) (“Except as otherwise provided, a sentence of imprisonment for a term of years for felonies ... shall consist of a prison term and a conditional release term.”)

<sup>22</sup> More closely in line with the terminology adopted by this project, the Missouri Parole Board defines “Conditional Release” to mean, “[s]tatutorily mandated release (not discretionary parole), with required period of supervision.” See State of Missouri Department of Corrections, Missouri Parole Board, *Procedures Governing The Granting of Paroles and Conditional Releases* (March 17, 2022), at 3.

authority to delay the MRD for any amount of time up to the remaining portion of the judicial maximum term.<sup>23</sup>

This is essentially a “bad time” system, in which credits are awarded to prisoners at the outset of their terms but may be lost through forfeiture. Missouri’s version of the bad time framework has a notable institutional feature: Two agencies must act in order to delay prisoners’ MRDs for rules violations: the DOC must first petition the parole board and the board must then make an independent decision to change the MRD.<sup>24</sup> In most states, the power to prosecute disciplinary violations and impose sanctions is held exclusively by the DOC. We do not know the reasons for Missouri’s unusual approach, nor do we know of any studies of the system in action. All else being equal, we posit that consequences that require the discretionary action of two decisionmakers are less likely to occur than those within the jurisdiction of a single entity.

All general-rules prison sentences in Missouri come with an initial “conditional release date” that is set earlier than the expiration of the judicial maximum sentence. By statute, the initial placement of this MRD depends on the length of the judicial maximum selected by the judge in each case. Initial MRDs fall at two-thirds of judicial maximum terms of nine years or less, three years short of judicial maximum terms between nine and 15 years, and five years short of judicial maximum terms greater than 15 years.<sup>25</sup> Table 2 below works out the math for sentences with maximum terms of one to 30 years, and shows the classes of felony offenses that support such sentences.

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<sup>23</sup> Mo. Rev. Stat. § 558.011(5) (“The date of conditional release from the prison term may be extended up to a maximum of the entire sentence of imprisonment by the parole board. The director of any division of the department of corrections except the division of probation and parole may file with the parole board a petition to extend the conditional release date when an offender fails to follow the rules and regulations of the division or commits an act in violation of such rules.”).

<sup>24</sup> Most states allow prison officials to make findings of disciplinary violations and assess penalties without the involvement of any other agency. Generally in this project, we take note of instances in which an action requires ratification by two decisionmakers. All else being equal, a requirement of two decisionmakers means that the action will be taken less often than if only one decisionmaker were involved. Why is this in a footnote? It seems that it would fit correctly in the text itself in the following format: This is highly unusual, as most states allow prison officials to make findings of disciplinary violations and assess penalties without the involvement of any other agency. For the purposes of our greater project, we take note of such unusual instances where an action requires two decisionmakers, as this requirement indicates that, all else being equal, the action will be taken less often than if only one decisionmaker were involved.

<sup>25</sup> The way this is expressed in the statute is to define the required length of the “conditional release term” within the full span of the judicial maximum sentence. The “conditional release term” is one-third the maximum for terms of nine years or less, three years for terms between nine and 15 years, and five years for terms greater than 15 years. See Mo. Rev. Stat. § 558.011.4(1).

**Table 2. Initial Mandatory Release Dates by Lengths of Judicial Maximum Sentences; Felony Classes that Allow for Those Maximum Sentences**

<i>Length of Judicial MAX</i>	<i>Time to Initial Mandatory Release Date</i>	<i>Initial Mandatory Release Date as Percentage of MAX</i>	<i>Felony Classes that Allow for this MAX</i>
1 year	8 months	67 percent	Classes D and E
2 years	1 year 4 months	67 percent	Classes D and E
3 years	2 years	67 percent	Classes C, D, and E
4 years	2 years 4 months	67 percent	Classes C, D, and E
5 years	3 years 4 months	67 percent	Classes B, C and D
6 years	4 years	67 percent	Classes B, C and D
7 years	4 years 8 months	67 percent	Classes B, C and D
8 years	5 years 4 months	67 percent	Classes B and C
9 years	6 years	67 percent	Classes B and C
10 years	7 years	70 percent	Classes A, B, and C
11 years	8 years	73 percent	Classes A and B
12 years	9 years	75 percent	Classes A and B
13 years	10 years	77 percent	Classes A and B
14 years	11 years	79 percent	Classes A and B
15 years	12 years	80 percent	Classes A and B
16 years	11 years	69 percent	Class A
17 years	12 years	71 percent	Class A
18 years	13 years	72 percent	Class A
19 years	14 years	74 percent	Class A

<i>Length of Judicial MAX</i>	<i>Time to Initial Mandatory Release Date</i>	<i>Initial Mandatory Release Date as Percentage of MAX</i>	<i>Felony Classes that Allow for this MAX</i>
20 years	15 years	75 percent	Class A
21 years	16 years	76 percent	Class A
22 years	17 years	77 percent	Class A
23 years	18 years	78 percent	Class A
24 years	19 years	79 percent	Class A
25 years	20 years	80 percent	Class A
26 years	21 years	81 percent	Class A
27 years	22 years	81 percent	Class A
28 years	23 years	82 percent	Class A
29 years	24 years	83 percent	Class A
30 years	25 years	83 percent	Class A

### *Credits for good behavior*

A prisoner who has “served his or her sentence in an orderly and peaceable manner and has taken advantage of the rehabilitation programs available to him or her” is eligible to earn credits. The applicable statute gives power to the department of corrections to “issue a policy for awarding credit” without any fixed limitations in the statute itself.<sup>26</sup> This delegation of discretion to the department of corrections differs from most other states; usually, the formulas for credit awards are set out in statute.

This is another instance in which unusual discretion is given to back-end decisionmakers in Missouri to create the generally-applicable rules of prison release. The department of correction’s current good-time regulations will be treated in this report as part of the structural design of Missouri’s prison-sentencing system even though they are changeable at the department’s discretion.

<sup>26</sup> Mo. Rev. Stat. § 558.041.3.

The regulations provide that “time credits” are to be subtracted from prisoners’ “conditional release dates” to create a “projected time credit release date.”<sup>27</sup> In the terminology of this project, this sets up “movable MRDs” that may be advanced to earlier dates than their initial positions on the prison-release timeline.

As summarized in Table 3 below, Class A and B offenders may earn one month of credit for each year of their sentences (a potential eight percent reduction in the timing of their MRDs), while Class C and D offenders may earn two months per year (a potential 14-percent reduction). There is no earning formula for Class E offenders in the department’s current regulations.<sup>28</sup>

**Table 3. Good Time Earning Formulas by Felony Grade**

<i>Felony Grade</i>	<i>Credit Earning Rate</i>	<i>Greatest Possible Reduction from Initial Mandatory Release Date</i>
Class A and B	One month per year	8 percent
Class C and D	Two months per year	14 percent
Class E	None	None

The regulations also provide that prisoners with certain types of convictions are ineligible to receive good time credits for all or defined portions of their prison terms.<sup>29</sup>

<sup>27</sup> 14 Mo. Code St. Regs. § 10-5.010(2)(C).

<sup>28</sup> 14 Mo. Code St. Regs. § 10-5.010(2)(A)(1),(2).

<sup>29</sup> Ineligible prisoners include those with sentence enhancements as persistent or dangerous (convicted of three or more felonies) offenders, who are serving life sentences, whose conditional release date has been extended to the judicial maximum because of a disciplinary action, whose convictions are for drug sales or possession by a prior drug offender, or who are convicted of tampering with a victim or witness. Mo. Rev. Stat. § 558.041.1; 14 Mo. Code St. Regs. § 10-5.010(2)(B)(1)-(6). Other prisoners do not become eligible for time credits until they have served their minimum terms as required for prior, persistent or class-x offenders and offenders convicted of armed criminal action or pharmacy robbery. 14 Mo. Code St. Regs. § 10-5.010(2)(B)(7).

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.

### *Organizing Missouri sentences into discrete classes*

As a result of the various formulas collected in Tables 1, 2, and 3, which do not overlap in any consistent pattern, it is difficult to identify a small number of major “sentence classes” in Missouri. Our approach below defines important sentence classes with reference to their formulas for parole release eligibility.

#### *First general-rules sentence class: All felony grades (violent and sex offenses, or child abuse)*

All general-rules sentences for violent and sex offenses or child abuse carry earliest parole release eligibility at the 33-percent mark of the judicial maximum sentence. This is true regardless of the offense’s felony grade. Such sentences are 67 percent indeterminate, that is, only 33 percent of potential time served is “determined” by the judicial sentence. In this project’s ranking system, this sentence class has a *high degree of indeterminacy*. The PMP is 3:1.

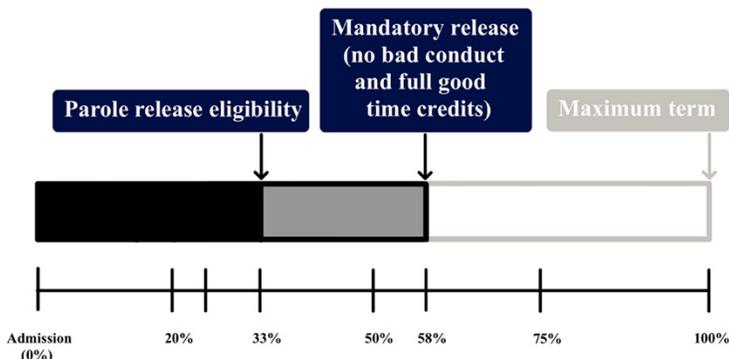
Within this “33-percent group,” depending on the features of individual cases, initial MRDs could be found at any position between the 67- and 83-percent marks of judicial maximum terms, depending on the grade of the offense of conviction and the judge’s selection of a maximum term within the allowable range for that grade.

In addition, the good time credit regulations would allow 8-percent reductions from initial MRDs for some prisoners, 14-percent reductions for others, and zero reductions for those convicted of Class E felonies. Depending on the particular characteristics of each case, in other words, any combination of the possibilities shown on Tables 2 and 3 is conceivable.

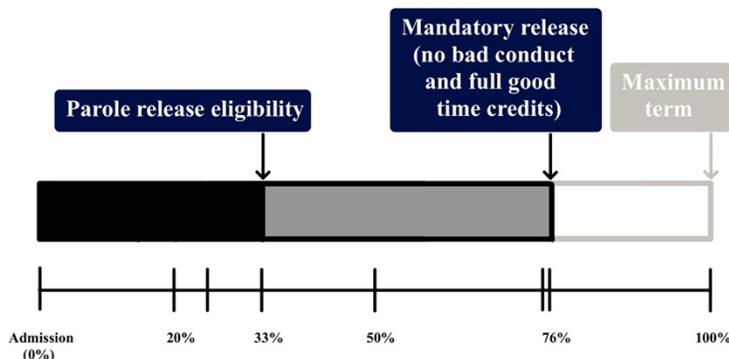
To illustrate the range of possibility, Missouri Figure 3 shows the timeline for prisoners with 33-percent sentences who have sentences with the earliest possible initial MRD (67 percent); and who have earned credit-based deductions from their MRDs at the rate of 14-percent. This would move the MRD to the 58-percent mark on the timeline. Figure 4 then illustrates sentences with the latest possible initial MRD (83 percent) reduced by credit reductions of only eight percent. These yield a final MRD at the 76-percent mark of the timeline.

All sentence timelines for the 33-percent group would fall within the outer boundaries drawn in Figures 3 and 4. While dates of parole release eligibility remain fixed, a continuum of different movable MRD ranges are possible.

**Missouri Figure 3. Prison-Release Timeline: General-Rules Sentences for All Felony Grades (Violent and Sex Offenses, or Child Abuse) with Earliest Possible Initial Mandatory Release Dates**



**Missouri Figure 4. Prison-Release Timeline: General-Rules Sentences for All Felony Grades (Violent and Sex Offenses, or Child Abuse) with Latest Possible Initial Mandatory Release Dates**



On our movable MRD ranking scale, most of the total discounts against MAX sentences are in the “average” range. For MAX sentences of 9 years or less, the total deduction is 42 percent—just barely in our “generous” range.<sup>30</sup>

<sup>30</sup> See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 88.

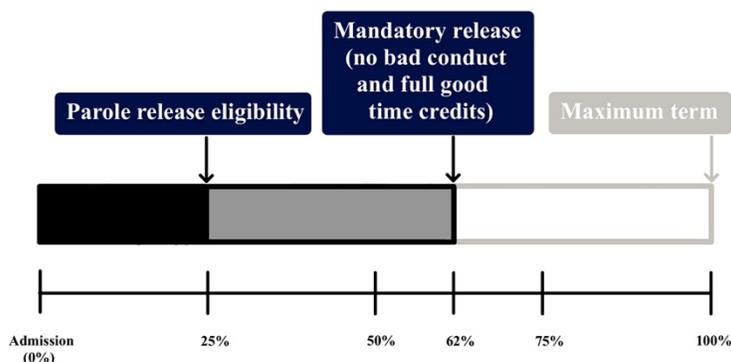
*Second general-rules sentence class: Class A or B felonies  
(nonviolent and drug offenses, or DWI)*

The “25-percent group” includes prisoners convicted of Class A or B felonies (nonviolent and drug offenses, or DWI). All such sentences are 75 percent indeterminate with a PMP of 4:1. In our ranking system, they have a *high degree of indeterminacy*.

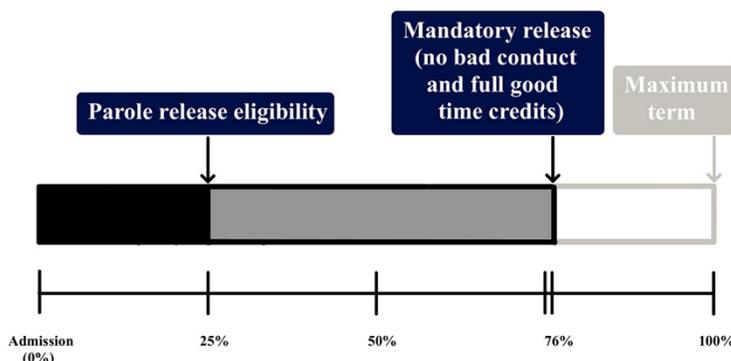
A number of possible formulas for initial MRDs are conceivable. Per Table 2, initial MRDs could be placed anywhere between the 69- and 83-percent marks for Class A felonies. For Class B felonies, initial MRDs could be anywhere between the 67- and 80-percent marks. For all 25-percent sentences, the credit-earning rate of 8-percent is the uniform standard.

Figure 5 below shows a “25-percent sentence” with a starting MRD at the 67-percent mark. The starting MRD is potentially reducible by 8 percent through time credits, which would move the MRD ahead to the 62-percent mark. Figure 6 is the same as Figure 5 but posits a starting MRD at the 83-percent mark of the maximum term. With time credits adding up to an eight percent reduction, the MRD could be advanced to as early as the 76-percent mark. Figures 5 and 6 are bookends within which all 25-percent sentences would fall.

**Missouri Figure 5. Prison-Release Timeline: General-Rules Sentences for Class A or B Felonies (Nonviolent and Drug Offenses, or DWI) with Earliest Possible Initial Mandatory Release Dates**



**Missouri Figure 6. Prison-Release Timeline: General-Rules Sentences for Class A or B Felonies (Nonviolent and Drug Offenses, or DWI) with Latest Possible Initial Mandatory Release Dates**

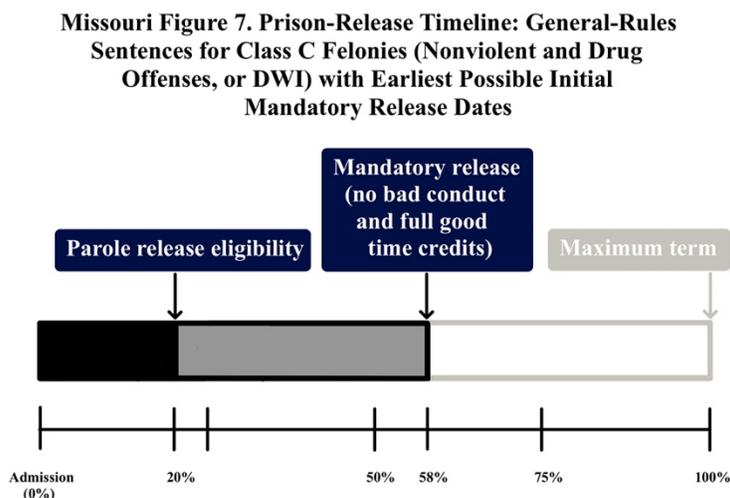


*Third general-rules sentence class: Class C felonies (nonviolent and drug offenses, or DWI)*

The “20-percent group” is entirely composed of Class C felonies (limited to nonviolent and drug offenses, or DWI). These sentences are all 80 percent indeterminate with a PMP of 5:1. In our ranking system, they have an *extremely high degree of indeterminacy*—but they fall right on the borderline between *high* and *extremely high* indeterminacy (see pp. iii-iv).

For this sentence class, initial MRD dates fall at 67 percent at their earliest and 70 percent at their latest. The highest credit earning rate to advance the initial MRD is always 14 percent for this group. This moves the range of possible MRDs (with full credits) to 58 percent and 60 percent.

Figure 7 depicts sentences with initial MRDs at the 67-percent mark. With full credits, the MRD can be moved back to the 58-percent mark. We do not include a second figure to show sentences with initial MRDs at the 70 percent mark, with movable MRDs back to the 60-percent mark. Visually, the range of possibility for MRDs attached to 25-percent sentences is quite narrow.

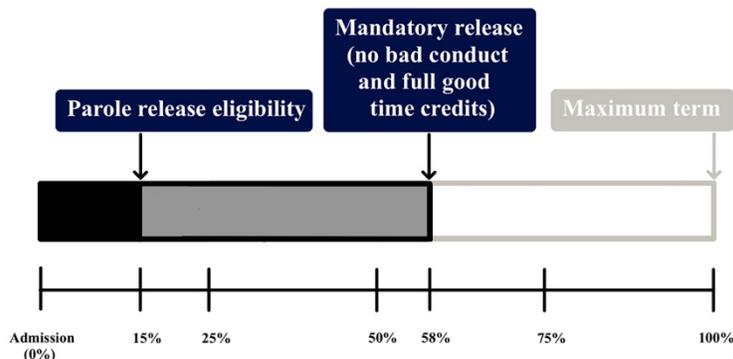


*Fourth general-rules sentence class: Classes D and E felonies (nonviolent and drug offenses, or DWI)*

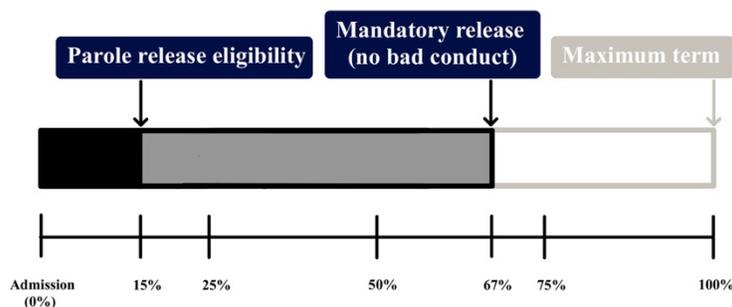
The “15-percent group” includes sentences for Classes D and E felonies (for nonviolent and drug offenses, or DWI). These sentences are 85 percent indeterminate with a PMP of 6.7:1. They rank as *extremely high in indeterminacy* on this project’s ranking scale.

All initial MRDs for the 15-percent group are at the 67-percent mark of the maximum term. However, prisoners convicted of Class D felonies may win a 14-percent reduction, moving their MRDs to the 58-percent mark. Figure 8 illustrates such a case. Strangely, the less serious Class E felonies carry no credit-based reductions. As shown in Figure 9, current regulations allow for no credit-based reductions from the initial MRD at the 67-percent mark. The initial MRD can be moved to a later position for bad behavior but cannot be advanced through the earning of credits.

**Missouri Figure 8. Prison-Release Timeline: General-Rules Sentences for Class D Felonies (Nonviolent and Drug Offenses, or DWI) with Earliest Possible Initial Mandatory Release Dates**



**Missouri Figure 9. Prison-Release Timeline: General-Rules Sentences for Class E Felonies (Nonviolent and Drug Offenses, or DWI) with Earliest Possible Initial Mandatory Release Dates**



*Special sentence class: Delayed parole release eligibility for “dangerous felonies”*

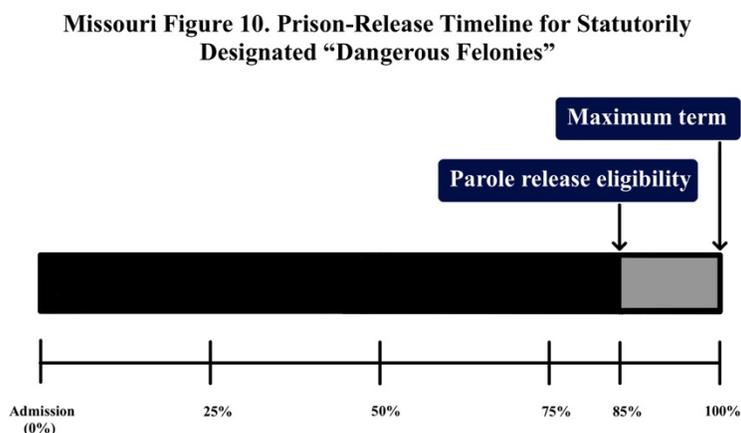
Outside the general rules of prison release explored above, certain serious offenses carry higher percentages of judicial maximum sentences to parole release eligibility as a matter of statutory law. Because they are set in legislation, these minimum-term requirements may not be altered by parole board regulation.

For those convicted of “dangerous felonies,” as defined in Missouri law, parole release eligibility occurs after 85 percent of the judicial maximum sentence has been served. Eligibility comes earlier for prisoners aged 70 or older who have served at least 40 percent of their maximum terms.<sup>31</sup> The offenses governed by this 85-percent rule are defined in the statutory language below:

<sup>31</sup> Mo. Rev. Stat. § 558.019.3.

“Dangerous felony”, the felonies of arson in the first degree, assault in the first degree, attempted rape in the first degree if physical injury results, attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical injury results, attempted forcible sodomy if physical injury results, rape in the first degree, forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the victim of such assault is a special victim as defined in subdivision (14) of section 565.002, kidnapping in the first degree, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, armed criminal action, conspiracy to commit an offense when the offense is a dangerous felony, vehicle hijacking when punished as a class A felony, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, child molestation in the first or second degree, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section 568.060, child kidnapping, parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153, and an “intoxication-related traffic offense” or “intoxication-related boating offense” if the person is found to be a “habitual offender” or “habitual boating offender” as such terms are defined in section 577.001.<sup>32</sup>

Figure 10 contains the timeline diagram for sentences for “dangerous felonies” as defined above. Such sentences are 15 percent indeterminate and have an *extremely low degree of indeterminacy* on the five-level scale created for this project. They carry a PMP of 1.18:1.



<sup>32</sup> Mo. Rev. Stat. § 556.061(19).

*Special sentence class: Mandatory minimum terms to parole  
release eligibility for many repeat felony offenders*

Also, outside of Missouri's general rules of prison release, many repeat felony offenders are subject to delayed parole release eligibility until the 40-, 50-, or 70-percent marks of their judicial maximum terms as a matter of statutory law. These statutory extended minimum terms may not be overruled by the parole board.

Mandatory minimum prison terms apply to people convicted of one of a long list of felony offenses (designated in statute) if they have one, two, three, or more prior convictions of offenses from the same list.<sup>33</sup> Offenders with one previous conviction of a designated offense sentenced for a second designated offense must serve 40 percent of their judicial maximum or until the offender turns 70 years old and has served at least 30 percent of their maximum to become parole eligible, whichever occurs first. Offenders with two previous convictions of a designated offense sentenced for a third designated felony offense must serve 50 percent of their judicial maximum or until the offender turns 70 years old and has served 40 percent of their maximum to become parole eligible, whichever occurs first. Offenders with three or more previous convictions of a designated offense sentenced to a subsequent designated felony offense must serve 80 percent of the judicial maximum or until the offender turns 70 years old and has served at least 40 percent of their maximum to become parole eligible, whichever occurs first.<sup>34</sup>

The designated offenses that trigger repeat-offender mandatory minimum terms are as follows:

First degree drug trafficking, second degree drug trafficking, when punished as a class A or B felony, second degree murder, voluntary manslaughter, first degree involuntary manslaughter, second degree involuntary manslaughter, first degree assault, second degree assault, third degree assault, first degree domestic assault, second degree domestic assault, third degree domestic assault, first degree harassment, first degree kidnaping, child kidnaping, second degree kidnaping, parental kidnaping, child abduction, first degree stalking, infanticide, first degree rape, second degree rape, first degree statutory rape; attempt, second degree statutory rape, first degree sodomy, second degree sodomy, first degree statutory sodomy; attempt, second degree statutory sodomy, first degree child molestation, second degree child molestation,

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<sup>33</sup> For a list of the operative felonies, see Mo. Rev. Stat. § 558.019.2 (offenses listed by statutory section number); Families Against Mandatory Minimums, *New Law Summary: 2019 Missouri Minimum Prison Term Reform* (2019), <https://fammm.org/wp-content/uploads/MO-HB-192-Enacted-Bill-Summary.pdf> (offenses listed by name of offense). Missouri's mandatory minimum sentencing scheme was revised in 2019 to apply only to a designated list of felony offenses and applies retroactively to offenders sentenced before August 28, 2019. Offenders sentenced prior to that date for a crime that no longer triggers the mandatory minimum sentence, and that are not serving a sentence for a dangerous felony listed in Mo. Rev. Stat. § 556.061, may now become parole eligible at an earlier date. *Id.*

<sup>34</sup> Mo. Rev. Stat. § 558.019.2 (1)-(3).

third degree child molestation, fourth degree child molestation, sexual misconduct involving a child, sexual contact with a student, first degree sexual abuse, second degree sexual abuse, promoting online sexual solicitation, sex with an animal, sexual conduct with a nursing facility resident or vulnerable person, sexual conduct with a prisoner or offender, enticement of a child, age misrepresentation with intent to solicit a minor, abusing an individual through forced labor, human trafficking for the purpose of slavery, involuntary servitude, human trafficking for the purpose of sexual exploitation, first degree sexual trafficking of a child, second degree sexual trafficking of a child, contributing to human trafficking through the misuse of documentation, first degree abandonment of child, first degree endangering the welfare of a child, abuse or neglect of child, genital mutilation of a female child, trafficking in children, first degree arson, first degree burglary, first degree robbery, second degree robbery, stealing, when punished as a class A, B, or C felony, financial exploitation of an elderly person, when punished as a class A or B felony, identity theft, when punished as a class B or C felony, possession of weapons, unlawful use of weapons, possession of a firearm unlawful for certain persons, sexual exploitation of a minor, first degree promoting child pornography, second degree promoting child pornography, possession of child pornography, child used in sexual performance, promoting sexual performance by a child, first degree promoting civil disorder, causing catastrophe, first degree making a terrorist threat, hindering prosecution, resisting or interfering with arrest, disarming a peace officer or correctional officer, endangering a corrections employee, endangering a mental health employee, visitor, or another offender, escape or attempted escape from custody, when punished as a class A felony, escape or attempted escape from confinement, aiding escape of a prisoner, when punished as a class B felony, permitting escape, when punished as a class B felony, treason, supporting terrorism, driving while intoxicated, boating while intoxicated, water contamination, bus hijacking), and planting a bomb or explosive in or near a bus or terminal.<sup>35</sup>

We do not include separate timeline diagrams for sentences imposed on repeat offenders with mandatory minimum prison terms. However, we note that the parole release eligibility formulas for such cases include three levels of indeterminacy within the scale created for this project: We classify sentences with 40- and 50-percent parole eligibility formulas as having a *moderate degree of indeterminacy*. Sentences with parole eligibility at the 80-percent mark of maximum terms are classified as *extremely low in indeterminacy*.

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<sup>35</sup> This list is borrowed from Families Against Mandatory Minimums, *New Law Summary: 2019 Missouri Minimum Prison Term Reform* (2019), <https://famm.org/wp-content/uploads/MO-HB-192-Enacted-Bill-Summary.pdf>.

## **2. Life sentences in Missouri**

### **a. Adults**

Adult offenders convicted of first degree murder must be sentenced to life without parole (LWOP) if they have not received the death penalty.<sup>36</sup> Adults found to be “persistent sex offenders” must also receive LWOP sentences.<sup>37</sup>

Offenders serving parolable life sentences generally become eligible for parole after serving 15 years. This minimum term is set by parole board regulation rather than statute.<sup>38</sup>

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

Persons under 18 found guilty of murder in the first degree may be sentenced to life without parole, life imprisonment with eligibility for parole, or 30 to 40 years imprisonment.<sup>39</sup> Juveniles sentenced to LWOP may petition the parole board after serving 25 years.<sup>40</sup>

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

### **a. Compassionate release**

Medical parole cannot be granted until the offender has reached his minimum parole eligibility as defined by state statute.<sup>41</sup> The Board will consider a medical parole if two conditions are satisfied: 1) a correctional physician has made a specific recommendation to the board and; 2) the Board has determined that the offender will be able to obtain and receive proper care and attention outside the institution.<sup>42</sup> Medical parole is appropriate if an offender is afflicted with a terminal disease (with death anticipated within 6 months), requires long-term nursing care, or when confinement will necessarily endanger or shorten the offender’s life.<sup>43</sup> An offender may

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<sup>36</sup> Mo. Rev. Stat. § 565.020.2.

<sup>37</sup> Mo. Rev. Stat. § 566.125.3.

<sup>38</sup> 14 Mo. Code St. Regs. § 80-2.010(1)(E).

<sup>39</sup> The sentencing judge or jury must take into consideration a multitude of factors in determining sentencing, including the nature and circumstances of the offense, the defendant’s degree of culpability, the defendant’s age, maturity, and intellectual capacity, the defendant’s background, and the defendant’s likelihood for rehabilitation. See Mo. Rev. Stat. § 565.033.

<sup>40</sup> State of Missouri Department of Corrections, *Procedures Governing the Granting of Paroles and Conditional Releases* (March 17, 2022), at 15.

<sup>41</sup> 14 Mo. Code St. Regs. § 80-2.010(2)(A).

<sup>42</sup> 14 Mo. Code St. Regs. § 80-2.010(2)(B).

<sup>43</sup> Mo. Rev. Stat. § 217.250.

be granted a medical parole for special care or treatment, and upon recovery may be subject to return to the Missouri Department of Corrections.<sup>44</sup>

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

The governor of Missouri has the power to grant reprieves, commutations and pardons for all offenses except treason and impeachment, with such conditions and under such restrictions as he may think proper.<sup>45</sup> All applications for pardon, commutation of sentence, or reprieve must be referred to the Missouri Parole Board for investigation.<sup>46</sup> The Board submits a letter of recommendation to the governor, after which the governor renders the final decision.<sup>47</sup>

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

There is no statutory emergency release mechanism for prison overcrowding in Missouri.

## ***4. Overall assessment of indeterminacy in Missouri’s prison-sentencing system***

We classify Missouri’s prison-sentencing system as operating with a *high degree of indeterminacy* overall. There are several different parole-release formulas for general-rules prisoners depending on felony grade and nature of offense, which range from high to extremely high indeterminacy. For crimes designated as “dangerous felonies,” sentences are extremely low in indeterminacy. Any description of the system as a whole must reflect a composite judgment of these several classes of sentences.

All sentences covered by the general rules of prison release in Missouri give substantial release and release-denial discretion to the parole board. In contrast with most other paroling states, release eligibility formulas for most prisoners are not a matter of statutory law. Their formulation is delegated to the parole board through its rulemaking powers. (This delegation of authority could be seen as a form of extreme indeterminacy all by itself.)

Missouri also makes use of movable mandatory release dates (MRDs) for general-rules prisoners, which can yield release dates substantially earlier than the expiration of prisoners’ maximum terms. Compared with most other states, the Missouri department of corrections has relatively little control over the location of movable MRDs. Initial MRDs are set in place by statute. The statutory dates may be delayed for disciplinary infractions, but such penalties can

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<sup>44</sup> State of Missouri Department of Corrections, *Procedures Governing the Granting of Paroles and Conditional Releases* (March 17, 2022), at 18.

<sup>45</sup> The power to pardon does not include the power to parole. Mo. Const., art. IV, § 7.

<sup>46</sup> Mo. Rev. Stat. § 217.800.2.

<sup>47</sup> Missouri Department of Corrections, Division of Probation and Parole, Executive Clemency, at “Review and Decisions” accessed July 17, 2022, at <https://doc.mo.gov/divisions/probation-parole/executive-clemency>.

only be assessed by the parole board following a petition by the department of corrections. The department of corrections has no independent power to levy “bad time” sanctions.

For most general-rules prisoners, the department does have discretion to move MRDs earlier than their initial statutory positions through the award of good conduct credits. The earning rates for such credits are low, however. The operation of MRDs in Missouri is driven more by legislation than by administration of the good conduct credit system. Notably, however, credit formulas are not a matter of statute but are delegated to the rulemaking authority of the department of corrections. In theory, the department is free to revise those formulas and increase its own power.

In sum, the parole board is currently a much more powerful player at the back end of Missouri’s prison-sentencing system than the department of corrections. Delegations of rulemaking power to both the parole board and the department of corrections create wild cards in the basic structure of the overall system, however. Without the necessity of any change in legislation, back-end decisionmakers could materially reorganize the state’s prison-release framework.

