



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

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# PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

## *STATE REPORT: ALABAMA*

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

## **State Report: Alabama**

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This report is part of a larger *Prison Release: Degrees of Indeterminacy Project* funded by Arnold Ventures. For other publications from the project, including additional state-specific reports, go to the Robina Institute of Criminal Law and Criminal Justice's website at <https://robinainstitute.umn.edu>.

### Definitions and Concepts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Prison-Release Discretion and Prison Population Size

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

#### *Executive Summary*

Alabama is a candidate for having the most complicated prison-release rules in the nation. An overall assessment of the degree of indeterminacy in Alabama's prison-sentencing system requires consideration of several different sentence classes, each with its own general rules of prison-release discretion. Overall, we estimate that the great majority of prisoners in Alabama are serving sentences that carry an *extremely high degree of indeterminacy* within the scale developed for this project (see pp. iv-v).

In Alabama, sentences with judicial maximum terms of less than 15 years are *extremely high in indeterminacy*, with different formulas for those up to five years and those longer than five years. As a general rule, sentences with judicial maximum terms of more than 15 years carry a *high degree of indeterminacy*, although sentences for especially serious crimes carry limited or no parole eligibility.

For sentences up to 15 years, primary release discretion is shared between the parole board and the department of corrections. Of the two agencies, the DOC is by far the most powerful through its administration of incentive time credits and the credit forfeiture process. Most of the parole board's release discretion depends on the accrual of credits (without forfeiture). In addition, via full credit awards, the DOC has the power to cancel most of the parolee board's release-*denial* discretion. For most sentences, the DOC has authority to cut off 60 to 70 percent of judicial maximum sentences simply by awarding full credits to advance prisoners' mandatory release dates (MRDs). This is currently one of the nation's most aggressive system of "movable MRDs."

For sentences of longer than 15 years, the allocation of back-end release discretion in Alabama changes dramatically. The general rules of prison release give the parole board a great deal of release discretion, but the DOC's formal power to influence time served is completely absent. Prisoners cannot earn incentive time credits and there is no mechanism by which their MRDs may be advanced to earlier dates. And for the most serious crimes, the parole board's authority to release is limited or removed, as well.

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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 Alabama, see Alexis Lee Watts, Steven Graziano, Eric Arch, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Alabama* (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).

*Terminology note*

This report will refer to the Alabama Bureau of Pardons and Parole as the “parole board.” The Alabama Department of Corrections will be referred to as the “department of corrections” or “DOC.”

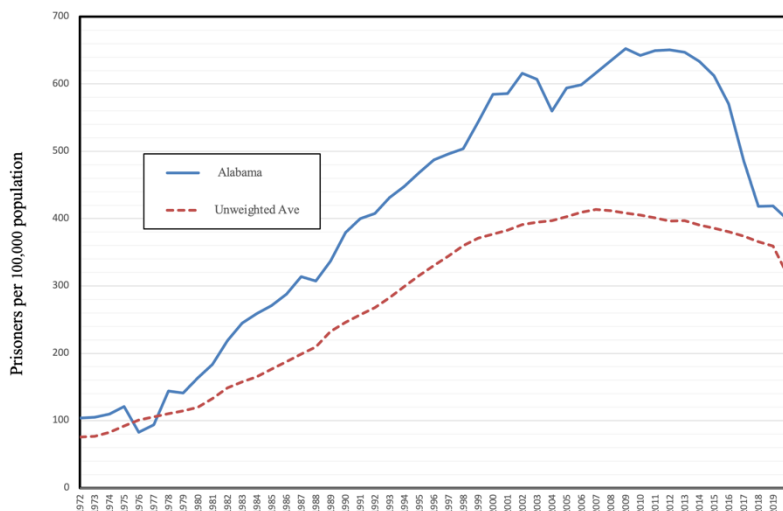


## Introduction

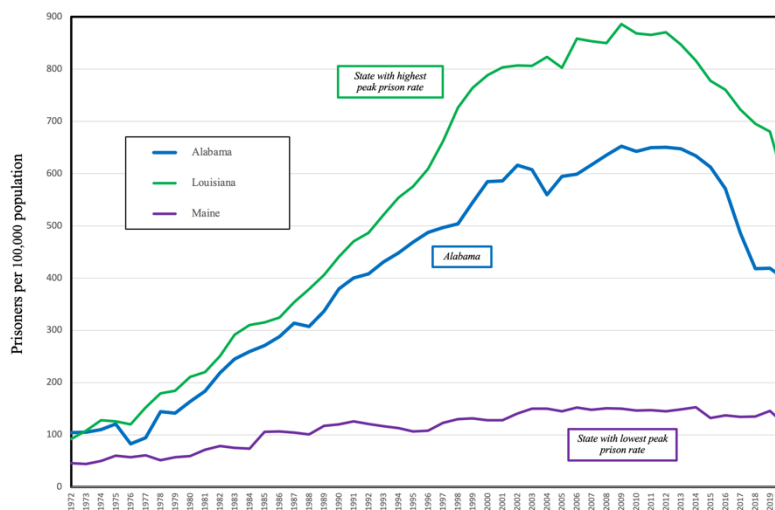
### *Alabama's prison-rate history, 1972 to 2020*

In 2020, Alabama's prison rate was 398 per 100,000 general population, with a yearend prison population of 19,608.<sup>2</sup> Alabama's prison rate was 9<sup>th</sup> highest among all states.

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



**Figure 2. Prison Rate Change in Alabama, 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 Alabama's imprisonment rates after 2020 is presented below in the section on "The COVID period in Alabama."

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).

Alabama reached its peak prison rate in 2009 at 652 per 100,000, which dropped to 398 per 100,000 in 2019. This is a net difference of -254 per 100,000, which was the third largest prison-rate drop of all states.

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>

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

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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).

<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, 2022) (finding that 24 states released 0 to 150 prisoners in response to the pandemic from March 2020 through December 2021, while only five states and the federal system released more than 3,000 prisoners). The effects on annual imprisonment rates were even less than the absolute numbers of releases would suggest. Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions was “short time left on sentence.” Thus, some of the accelerated COVID releases in 2020 and 2021 were of prisoners who would have been released in the same year anyway, albeit somewhat later.

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 Alabama*

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

In calendar year 2020, Alabama's prison rate fell from 419 to 398 per 100,000—a one-year decline of -21 per 100,000. This was the 47<sup>th</sup> largest (fourth lowest) one-year drop reported among all 50 states for that year.<sup>9</sup> Measured in percentage terms, it was a five-percent reduction in the state's prison rate. The state's total prison population fell by 987 people, from 20,595 to 19,608.<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 Alabama from March 2020 through December 2021. Alabama was one of 14 states that made no special effort to expedite prison releases in response to COVID.<sup>11</sup>

Falling admissions appear to have been the overwhelming factor in Alabama's reduction of prison population in 2020. The number of prison admissions in the state dropped by 40 percent

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<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.

<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, 2022), Appendix A.

in 2020 compared with the previous year (from 13,267 to 7,963).<sup>12</sup> Total numbers of releases did not increase in COVID's first year, but fell by 8.8 percent (from 12,251 in 2019 to 11,178 in 2020).<sup>13</sup>

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

Alabama has adopted judicial sentencing guidelines that are advisory and non-binding for violent offenses and burglary. As of 2013, the guidelines became “presumptive” for most property and drug offenses (meaning that they are legally binding unless the sentencing court can cite an adequate reason for departure from the guidelines).<sup>14</sup>

Alabama graded felonies into four classes. The statutory maximum terms of imprisonment for each class are as follows: Between 10 years and 99 years or life for Class A; between 2 years and 20 years for Class B; between 1 year and 1 day and 10 years for Class C; and between 1 year and 1 day and 5 years for Class D.<sup>15</sup>

Alabama's prison-release formulas are quite complicated compared with most other states. The general rules vary depending on sentence length, and some of the necessary mathematical calculations are tricky and turn on a number of moving parts.

For most prisoners, accumulated “incentive time credits” are deducted from their judicial maximum sentences to establish mandatory release dates (MRDs).<sup>16</sup> Credits are given to prisoners “whose record of conduct shows that he or she has faithfully observed the rules for a period of time.”<sup>17</sup> Prisoners' credit-based MRDs are “movable” depending on the number of credits earned; they move forward as increasing numbers of credits are awarded but can move

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<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> Alabama Sentencing Commission, *Presumptive & Voluntary Sentencing Standards Manual* (2019), at 13-15.

<sup>15</sup> Ala. Code § 13A-5-6(a)(1)-(4).

<sup>16</sup> Some prisoners are ineligible to receive incentive time credits. *See* Ala. Code § 14-9-41(e)(1) (“No prisoner may receive correctional incentive time [if he or she] ... has been convicted of a Class A felony, ... has been convicted of any crime that caused the death of another person by means of a deadly weapon, ... has been sentenced to life, sentenced to death, or has received a sentence for more than 15 years, ... [or] has been convicted of a sex offense involving a child as defined in Section 15-20A-426.”).

<sup>17</sup> Ala. Code § 14-9-41(a).

backward if credits are forfeited.<sup>18</sup> (Forfeiture is authorized for prisoners who commit a new offense or who violate DOC rules.)<sup>19</sup>

Prisoners are classified into four separate earning levels: Class I prisoners may earn 75 days credit for each 30 days actually served.<sup>20</sup> Class II prisoners earn 40 days for each 30 days actually served.<sup>21</sup> Class III prisoners earn 20 days for each 30 actually served.<sup>22</sup> Class IV prisoners include those who are not yet classified, are able to work and refuse, or commit disciplinary infractions.<sup>23</sup> Class IV prisoners earn no incentive time credits.<sup>24</sup>

All prisoners begin their terms in Class IV and must work their way up. By statute, it takes at least 10 months to rise from Class IV to Class I (a minimum of one month at Class IV, three months at Class III, and six months at Class II).<sup>25</sup> This multi-layered system of credit earnings makes the calculation of MRDs in individual cases quite complicated. However, it appears that the DOC routinely calculates projected MRDs early in prisoners' terms, which are made known to prisoners along with the risk of losing their projected release dates through forfeiture.<sup>26</sup>

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<sup>18</sup> Alabama's DOC refers to a prisoner's MRD as their "Minimum Release Date" and refers to the expiration of their judicial maximum term as their "Long Date." See Alabama Department of Corrections, *Male Inmate Handbook* (2017), at 42-43, <http://www.doc.state.al.us/docs/PublicMaleInmateHandbook.pdf>. For a comparative discussion of the use of movable MRDs across the states, 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>19</sup> Ala. Code § 14-9-41(f)(1). The Commissioner of the Department of Corrections has authority to restore good conduct time to a prisoner upon recommendation and evidence submitted by the warden in charge. Ala. Code § 14-9-41(f)(2).

<sup>20</sup> Ala. Code § 14-9-41(a)(1). Class I prisoners are defined as those who are "considered to be trustworthy in every respect and who, by virtue of their work habits, conduct, and attitude of cooperation have proven their trustworthiness." Ala. Code § 14-9-41(c)(1). Offenders convicted of an assault resulting in the victim suffering permanent loss or use of any bodily organ or appendage, as well as offenders convicted of sexual abuse perpetrated upon a child under the age of 17 are not eligible for Class I status. Ala. Code § 14-9-41(e)(2)(a).

<sup>21</sup> Ala. Code § 14-9-41(a)(2). Class II prisoners are defined as those "whose jobs must be under the supervision of a correctional employee at all times." Ala. Code § 14-9-41(c)(2).

<sup>22</sup> Ala. Code § 14-9-41(a)(3). Class III prisoners are defined as those with "special assignments" who do not receive any of the privileges of Class I and Class II inmates. Ala. Code § 14-9-41(c)(3).

<sup>23</sup> Ala. Code § 14-9-41(c)(4).

<sup>24</sup> Ala. Code § 14-9-41(a)(4).

<sup>25</sup> Ala. Code § 14-9-41(c)(2)-(5).

<sup>26</sup> Alabama's handbook for prisoners informs them that:

A time sheet will be issued to you by the [DOC] Central Records Division. If you are eligible to earn good time, a "Minimum Release Date" is shown. This release date is shown to project a date of release if you follow all rules and don't do anything to lose good time. The "Long Date" shows what you would serve if you were not earning good time. Unless you lose good time for disciplinary actions or you are

For some categories of prisoners, the lengths of their minimum terms to first parole-release eligibility are set with reference to their MRDs. The general rules of prison release vary with the lengths of prisoners' judicial maximum sentences. There are four different parole-release-eligibility formulas: for general-rules prisoners with maximum terms of five years or less, over five years and up to 10 years, over 10 and up to 15 years, and over 15 years. These are explained in turn below. In addition, there is a specialized category for prisoners convicted of especially serious violent offenses as designated by statute.

*General-rules prisoners with maximum terms of five  
years or less*

For general-rules prisoners with judicial maximum sentences of five years or less, there is no minimum term to parole-release eligibility. Immediately upon their admission, the parole board may schedule prisoners in this category for "initial parole consideration on the current docket."<sup>27</sup> Alabama Figure 3 displays the prison-release timeline for sentences in this class, which are 100 percent indeterminate.

If the parole board fails to order release of prisoners in this group, they will be released when they reach their MRDs, depending on how many credits they have accrued. With no credits at all, as shown in Alabama Figure 3, prisoners' MRDs occur at the expiration of their full judicial maximum sentences.

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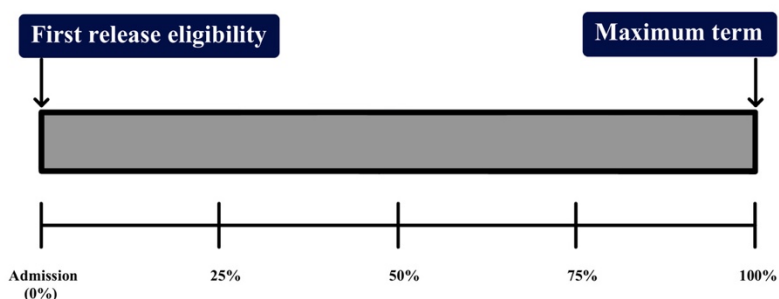
sentenced on additional cases, your minimum release date will not change from the one shown on your original time sheet.

Alabama Department of Corrections, *Male Inmate Handbook* (2017), at 42-43.

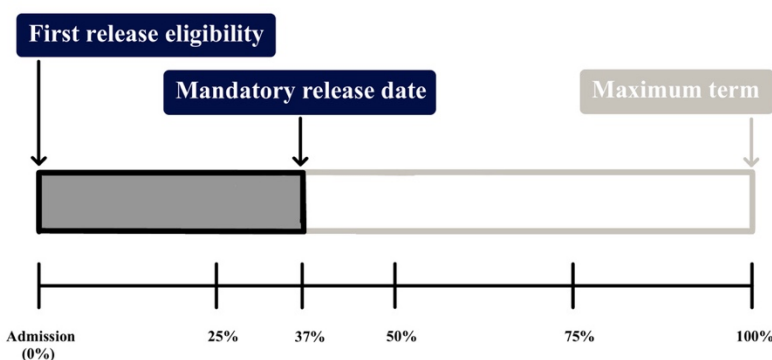
<sup>27</sup> Ala. Code § 15-22-28(e)(1)(a).



**Alabama Figure 3. Prison-Release Timeline for General-Rules Sentences of 5 Years or Less with No Good-Time Credits**



**Alabama Figure 4. Prison-Release Timeline for General-Rules Sentences with 5-Year Maximum and Most Possible Good-Time Credits**



Alabama Figure 4 shows the timeline for prisoners with five-year maximum terms who achieve the highest possible credit earnings in the shortest possible amount of time. That is, the figure represents cases in which prisoners have worked their way up to the Class I earning level in 10 months, having spent the shortest possible times in Classes IV, III, and II on the way up. They would then achieve the highest credit-earning rate for the last 50 months of their 60-month maximum terms.<sup>28</sup> Performing these compound calculations, prisoners would earn MRDs after about 22 months or 37 percent of their maximum terms.

<sup>28</sup> For 30 days in Class IV, prisoners earn no credits. For 60 days in Class III, they could earn as many as 40 days of credits. For the next 180 days in Class II, they could earn as many as 240 days. Thus, after their first 10 months, prisoners with peak earnings would carry forward 280 days of credits. For the remainder of their sentences, prisoners who had risen to Class I would earn 75 additional days of credits each month. In the case of a five-year sentence, after the initial 10 months, and subtracting about nine months of credits already earned, the higher earning rate would apply to the 41 months remaining in the sentence. At the generous Class I rate, this remainder would take only 12 months to complete. Thus, total time served until reaching the earliest possible MRD would be about 22 months. A similar calculation is performed to estimate the earliest possible MRDs in Alabama Figures 6 and 8.



For a sentence class that is 100 percent indeterminate, our normal rules of calculating the population multiplier potential (PMP) cannot be applied. Because the shortest possible stay under the law is zero, the normal PMP equation would yield a nonsensical ratio of  $\infty:1$ . For sentences of this kind in this project, we have chosen instead to use a stand-in PMP of “greater than 100:1.”<sup>29</sup>

*General-rules prisoners with maximum terms of more  
than five years and up to 10 years*

For general-rules prisoners with judicial maximum sentences of more than five and up to 10 years, “initial parole consideration” is scheduled “approximately 18 months prior to the minimum release date” (Alabama’s term for the MRD).<sup>30</sup> Alabama Figure 5 displays the prison-release timeline for a sentence in this class, with a 10-year maximum term, assuming that no incentive time credits have been earned. First parole consideration would occur after 102 months of the 10-year term, or at the 85-percent mark.

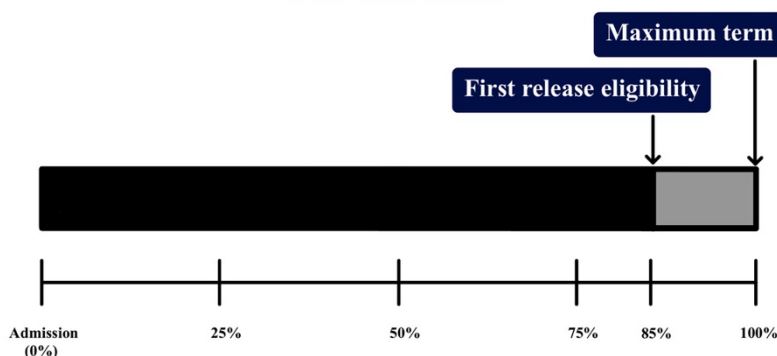
Alabama Figure 6 then displays the prison-release timeline for a sentence in this class, with a 10-year maximum term, assuming that the most possible incentive time credits have been earned in the shortest possible time. In such a case, the movable MRD would occur after about 39 months, or at the 33-percent mark of the maximum term. First parole eligibility would come at 21 months (18 months earlier), at the 18-percent mark of the maximum.

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<sup>29</sup> 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 81. Other states that require the 100-percent indeterminate sentence configuration for at least some groups of prisoners include Hawaii, Iowa, North Dakota, and Utah. Five additional states allow judges to pronounce such sentences in individual cases: Idaho, Michigan, Nebraska, Vermont, and Wyoming. *See Id.* at 136-42, Appendix Table 2.

<sup>30</sup> Ala. Code § 15-22-28(e)(1)(b).

Alabama Figure 5. Prison-Release Timeline for General-Rules Sentences with 10-Year Maximum and No Good-Time Credits



Alabama Figure 6. Prison-Release Timeline for General-Rules Sentences with 10-Year Maximum and Most Possible Good-Time Credits

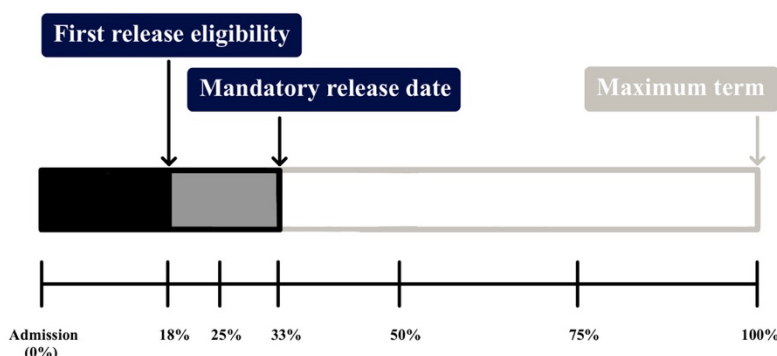


Figure 6 is the basis for our PMP calculation because it marks the earliest possible date of release realistically available to prisoners with this class of sentence. The PMP is 5.6:1. That is, under a persistent *longest-time-served scenario*, this group of prisoners would eventually grow to 5.6 times the size of the same group under a persistent *shortest-time-served scenario*.

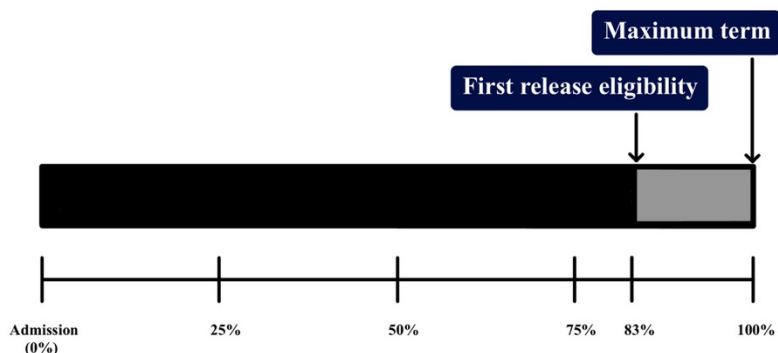
*General-rules prisoners with maximum terms of more than 10 years and up to 15 years*

For general-rules prisoners with judicial maximum sentences of more than 10 and up to 15 years, “initial parole consideration” is scheduled “approximately two years and six months [30 months] prior to the minimum release date” (Alabama’s term for movable MRDs).<sup>31</sup> Alabama Figure 7 displays the prison-release timeline for a sentence in this class, with a 15-year

<sup>31</sup> Ala. Code § 15-22-28(e)(1)(c).

maximum term, assuming that no incentive time credits have been earned. First parole consideration would occur after 150 months of the 180-month term, or at the 83-percent mark.

**Alabama Figure 7. Prison-Release Timeline for General-Rules Sentences with 15-Year Maximum and No Good-Time Credits**



**Alabama Figure 8. Prison-Release Timeline for General-Rules Sentences with 15-Year Maximum and Most Possible Good-Time Credits**

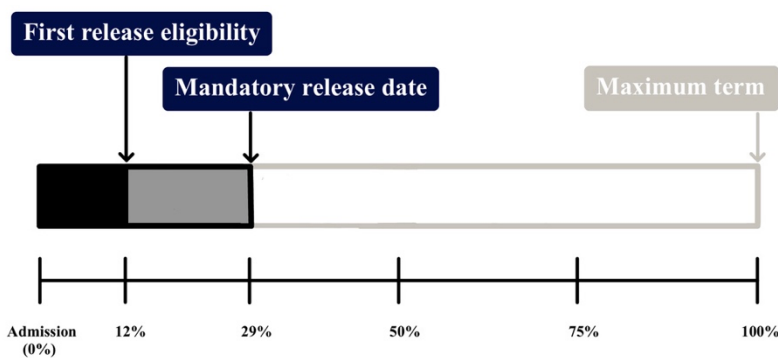
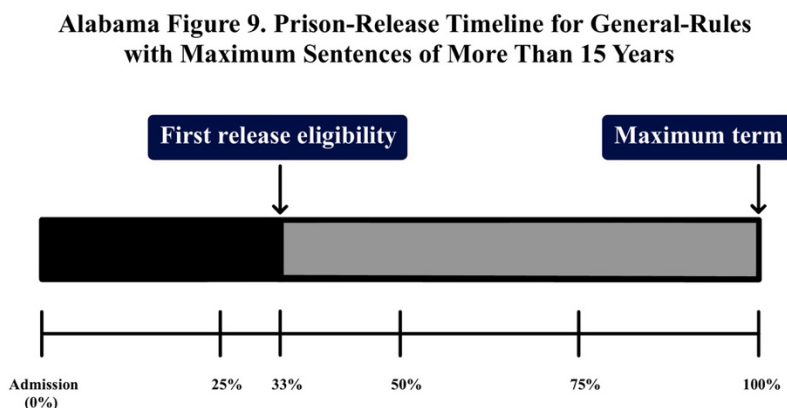


Figure 8 then displays the prison-release timeline for a sentence in the same class, also with a 15-year maximum term, but now assuming that the most possible incentive time credits have been earned in the shortest possible time. In such a case, the movable MRD would occur after 52 months, or at the 29-percent mark of the maximum term. First parole eligibility would come 30 months earlier, at the 12-percent mark of the maximum.

Figure 8 is the basis for our PMP calculation of 8.3:1. That is, under a persistent *longest-time-served scenario*, this group of prisoners would eventually grow to 8.3 times the size of the same group under a persistent *shortest-time-served scenario*.

*General-rules prisoners with maximum terms of more than 15 years*

For these prisoners, minimum terms are set at one-third of their judicial maximum terms.<sup>32</sup> This group receives no incentive time credits; there are no movable MRDs.<sup>33</sup> Figure 9 shows the prison-release timeline for this class of sentence.



This class of sentences is *highly indeterminate*, breaking from the pattern of extremely-high indeterminacy for all other classes of general-rules sentences in Alabama. The PMP for this class of sentence is 3:1. That is, under a persistent *longest-time-served scenario*, this group of prisoners would eventually grow to three times the size of the same group under a persistent *shortest-time-served scenario*.

Moreover, for this class of sentence, the department of corrections holds no formal time-served authority. That is a sharp break with other classes of sentences in Alabama, under which movable MRDs can always subtract large portions of time-to-be-served through the earning and retention of credits. This yields a strange pattern in the distribution of indeterminacy across individual sentences: for sentences with judicial maximum sentences of more than five years and up to 15 years, potential MRD reductions increase as maximum terms increase. For sentences longer than 15 years, however, MRD reductions are eliminated entirely. There is an

<sup>32</sup> Ala. Code § 15-22-28(e)(3).

<sup>33</sup> Ala. Code § 14-9-41(e)(10)(c).

abrupt break in applied policy when comparing sentences of 15 years with those of 15 years and one day.

For most classes of prison sentences in Alabama, the department of corrections holds a great deal of prison-release discretion that overlaps with the release and release-*denial* discretion of the parole board. One important effect of this is that the department of corrections, through the award of credits, can cancel the release-denial discretion of the parole board across most of the sentence timeline. Conversely, even if the department of credits denies or forfeits all credits in a particular case, the parole board still holds unilateral release authority. In this project, we have called this a “checks-and-balances” approach to the allocation of back-end release discretion.

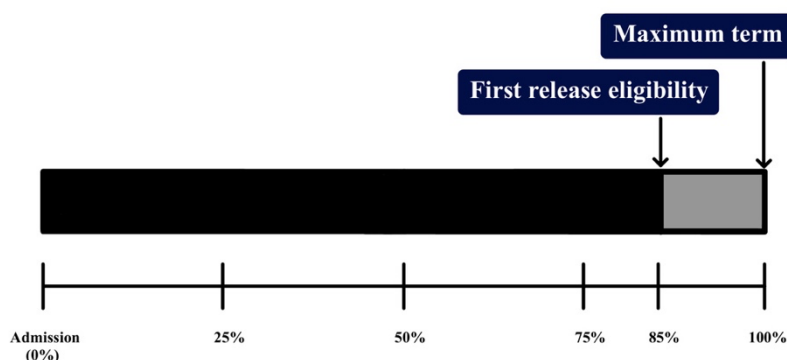
The checks-and-balances framework in Alabama completely disappears for sentences longer than 15 years. This is not to say that there is no indeterminacy in the sentence class. There is still quite a lot. The most dramatic difference is that the department of corrections has been removed from any position of time-served decisionmaking so that the entire indeterminate segment of the timeline is now governed by the parole board alone.

While there may be a coherent policy rationale for the dramatic shift in institutional powers at the 15-year mark, as described above, the reasoning is not obvious to us.

*Parole release eligibility for prisoners convicted of  
especially serious violent crimes*

Prisoners convicted of especially serious violent Class A felonies (as enumerated by statute) receive sentences of *extremely low indeterminacy*. For this group, first parole consideration comes at the 85-percent mark of the judicial maximum sentence or 15 years, whichever is less.<sup>34</sup> Figure 10 illustrates the standard configuration of this type of sentence when minimum terms are set at the 85-percent mark of the maximum sentence. Such sentences carry a PMP of 1.17:1.

**Alabama Figure 10. Prison-Release Timeline for General-Rules  
Prisoners Convicted of Designated Especially Serious  
Violent Offenses**



Note: no good-time credits are available for this class of sentence.

For maximum terms approaching 18 years and longer, Figure 10 no longer applies because minimum terms may not exceed 15 years. Degrees of indeterminacy increase with longer maximum terms. For example, a judicial maximum sentence of 60 years would have a minimum term (of 15 years) that falls near the 25-percent mark of the maximum.

*Prisoners with no parole-release eligibility*

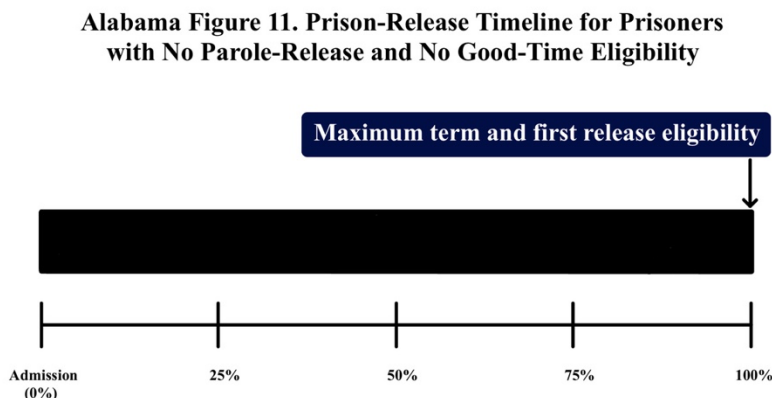
The following prisoners are not eligible for parole-release: (1) those convicted of the act or attempt of murder, rape, robbery, or assault with a deadly weapon which caused a serious physical injury following a previous conviction of the same sort;<sup>35</sup> (2) those convicted of a second Class A felony resulting in life imprisonment;<sup>36</sup> (3) those convicted of a sex offense

<sup>34</sup> Ala. Code § 15-22-28(e)(2). The enumerated offenses are as follows: rape in the first degree, kidnapping in the first degree, murder, attempted murder, sodomy in the first degree, sexual torture, robbery in the first degree with serious physical injury, burglary in the first degree with serious physical injury, and arson in the first degree with serious physical injury.

<sup>35</sup> Ala. Code § 15-22-27.1.

<sup>36</sup> Ala. Code § 15-22-27.2.

involving a child constituting a Class A or B felony;<sup>37</sup> and, (4) those sentenced to death who have had their sentence commuted by the Governor.<sup>38</sup> Figure 11 below is a graphical representation of this class of sentence, showing that actual time served is wholly dependent on the length of the judicial sentence (which in turn may be dictated by the charge of conviction, if the sentence is mandated by statute).



The PMP for Figure 11 sentences is 1:1. That is, the size of the subpopulation of prisoners with this class of sentence is entirely determined by the judicial sentence (and the many causal factors that contribute to it, such as charging and plea bargaining discretion). For this class of sentence, there is no frequently-applied form of back-end discretion that can vary the amount of time-actually-served by individual prisoners. Any “residual” indeterminacy for this group would depend on infrequently-used release mechanisms such as clemency or medical parole.

### *Reconsideration after denial of release*

The Board may, at its discretion, determine a future date for a previously-denied case to be brought back for parole consideration. For inmates serving sentences of 20 years or less while convicted of nonviolent offenses, the future parole consideration date must be set within two years of a denial. In all other cases, the date for future parole consideration must be set within five years of the previous denial.<sup>39</sup> If the board denies release and does not schedule a reset date, prisoners must serve the remainder of their sentences without another parole consideration hearing.<sup>40</sup>

<sup>37</sup> Ala. Code § 15-22-27.3.

<sup>38</sup> Ala. Code § 15-22-27(b),(d).

<sup>39</sup> Ala. Bureau of Pardons & Paroles Admin. Code, Ch. 640-X-3-.03, <https://paroles.alabama.gov/wp-content/uploads/Chapter-640-X-3-Scheduling-Parole-Consideration.pdf>.

<sup>40</sup> Ala. Bureau of Pardons & Paroles, *Parole – FAQs*, <https://paroles.alabama.gov/about-us/faqs-paroles/>.

### *Failsafe release for mandatory supervision*

There is a statutory mandatory supervision period for prisoners who are not released on parole. These guidelines are not applicable to people convicted of a sex offense involving a child.<sup>41</sup> Defendants sentenced to five years or less must be released to supervision within three to five months prior to the release date.<sup>42</sup> Offenders sentenced to more than five but less than ten years must be released between six and nine months prior to the release date.<sup>43</sup> Defendants sentenced to ten or more years must be released to supervision between one and two years prior to the release date.<sup>44</sup>

### *Early parole*

The Parole board may deviate from the initial parole consideration schedule if the prisoner shows by clear and convincing evidence that they are more likely than not to be granted parole, and that they would have been considered on an earlier date under generally applicable rules or policies previously in effect.<sup>45</sup> There are a number of requirements that must be met for the offender to show they are more likely than not to be granted parole. These requirements include the prisoner having completed a minimum total period of incarceration, participation in certain programs while in custody, and having no disciplinary infractions of any kind prior to their parole application submission, among others.<sup>46</sup> The board's decision to deviate from standard guidelines is subject to legal review by the Deputy Attorney General or Assistant Attorney General prior to the offender's release.<sup>47</sup> An offender may apply for early parole consideration by submitting an application with required documentation once a year, or after 18 months if they have previously been denied or revoked from parole.<sup>48</sup>

### *Split sentences*

In Alabama, offenders can be sentenced to “straight” or “split” sentences. Most offenders serving straight sentences are eligible for sentence reductions pursuant to the Correctional Incentive Time Act and are parole eligible. In contrast, prisoners serving split sentences are not parole eligible and do not receive deductions from their sentences under the Alabama

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<sup>41</sup> Ala. Code § 15-22-26.2(b).

<sup>42</sup> Ala. Code § 15-22-26.2(a)(1).

<sup>43</sup> Ala. Code § 15-22-26.2(a)(2).

<sup>44</sup> Ala. Code § 15-22-26.2(a)(3).

<sup>45</sup> Ala. Code § 15-22-28(f)(1)(b).

<sup>46</sup> Ala. Code § 15-22-28(f)(3).

<sup>47</sup> Ala. Code § 15-22-28(f)(2).

<sup>48</sup> Ala. Bureau of Pardons & Paroles Admin., *Parole - FAQs*, <https://paroles.alabama.gov/resources/faqs-paroles>.



Correctional Incentive Time Act.<sup>49</sup> Offenders serving a split sentence must first serve a maximum of two to five years in prison depending on the offense before the remainder of their sentence is suspended and they are placed on probation.<sup>50</sup> The sentencing court retains jurisdiction over the matter until the offender has served probation for such a period as “the court deems best.”<sup>51</sup> Certain offenses are ineligible for split sentencing, including offenses in which the offender is sentenced to more than 20 years imprisonment and felony sex offenses involving children.<sup>52</sup>

## **2. Life sentences in Alabama**

### **a. Adults**

Alabama authorizes sentences of life without parole (LWOP) for some especially serious Class A and B felonies, sometimes depending on prior convictions.<sup>53</sup> Prisoners with parolable life sentences for murder must serve 30 years before parole eligibility.<sup>54</sup>

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

Juveniles convicted of murder are sentenced to life, either with or without the possibility of parole. Juvenile LWOP sentences are subject to constitutional restrictions.<sup>55</sup> Juveniles sentenced to life with the possibility of parole must serve 30 years before becoming eligible for parole.<sup>56</sup>

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<sup>49</sup> Ala. Code § 15-18-8(a)).

<sup>50</sup> Ala. Code § 15-18-8(a),(b).

<sup>51</sup> Ala. Code § 15-18-8(a),(b).

<sup>52</sup> Ala. Code § 15-18-8(a).

<sup>53</sup> See Ala. Code §§ 15-22-27.2; 15-22-27.3.

<sup>54</sup> Ala. Code § 13A-6-2(c) (“If the defendant is sentenced to life on a capital offense, the defendant must serve a minimum of 30 years, day for day, prior to first consideration of parole.”).

<sup>55</sup> See *Graham v. Florida*, 560 US 48 (2010) (robbery case; holding life without parole an unconstitutional penalty when applied to a juvenile offender for a non-homicide offense); *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 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).

<sup>56</sup> Ala. Code § 13A-6-2(c).

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

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

The Alabama Medical Parole Act establishes a special medical parole docket in which the parole board may consider for parole those offenders with certain medical conditions.<sup>57</sup> Offenders with medical conditions eligible for parole include (1) geriatric inmates, defined as those 60 years or older convicted of non-capital felony offenses who suffer from chronic life-threatening illnesses related to aging and who require assistance with necessary daily life function and pose a low risk to community, (2) permanently incapacitated inmates, defined as inmates who are unable to perform one or more necessary daily life functions and have such limited physical or mental capacity that they pose a low risk of physical threat to themselves or others, and (3) terminally ill inmates, defined as an inmate who has an incurable condition that will produce death within 12 months and who does not constitute a danger to themselves or society.<sup>58</sup> The Act does not apply to inmates convicted of capital murder or a sex offense.<sup>59</sup>

Alabama has established a medical furlough program that permits permanently incapacitated or terminally ill offenders to apply for early release at the discretion of the commissioner.<sup>60</sup> Other concerned persons including the inmate's attorney, family, physician, or an employee of the department may also submit an initial medical release application along with supporting documentation.<sup>61</sup> Even inmates who have not served their minimum sentence are considered eligible, so long as they were not convicted of capital murder or a sexual offense.<sup>62</sup> Generally, the medical furlough of an inmate shall be for the remainder of the inmate's sentence.<sup>63</sup> The furlough shall be revoked by the commissioner if the offender no longer meets the criteria, violates a condition of release, or becomes a danger to themselves or others.<sup>64</sup>

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<sup>57</sup> Ala. Code § 15-22-43(a)(1).

<sup>58</sup> Ala. Code § 15-22-42 (2),(4),(5).

<sup>59</sup> Ala. Code § 15-22-43(e).

<sup>60</sup> Ala. Code § 14-14-5(d).

<sup>61</sup> Ala. Code § 14-14-5(a).

<sup>62</sup> Ala. Code § 14-14-4(b)-(c).

<sup>63</sup> Ala. Code § 14-14-4(g).

<sup>64</sup> Ala. Code § 14-14-4(h).

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

The governor has the power to grant clemency to those sentenced to death in Alabama. The legislature regulates the administration of pardons and paroles and may authorize the courts having criminal jurisdiction to suspend sentence and order probation.<sup>65</sup>

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

Alabama does not have a statutory process specifically devoted to responding to emergencies of prison overcrowding.

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

Alabama is a candidate for having the most complicated prison-release rules in the nation. An overall assessment of the degree of indeterminacy in Alabama's prison-sentencing system requires consideration of several different sentence classes, each with its own general rules of prison-release discretion. Overall, we estimate that the great majority of prisoners in Alabama are serving sentences that carry an *extremely high degree of indeterminacy*.

In Alabama, sentences with judicial maximum terms of five years or less are as indeterminate as sentences can be under our mathematical models. They are 100 percent indeterminate—easily qualifying as *extremely high in indeterminacy* on the scale developed for this project (see pp. iv-v). However, most of the indeterminate segment of such sentences—roughly 60 percent—is controlled by the unilateral release discretion of the DOC.<sup>66</sup> That is, for prisoners who earn full incentive credits from the DOC, the parole board loses its release-*denial* discretion at about the 40-percent mark of the judicial maximum term.

For sentences with judicial maximum terms of more than 5 years and up to 15 years, Alabama also operates with an *extremely high degree of indeterminacy*, although not to the dramatic extent attached to shorter sentences. Most of this indeterminacy is controlled by the DOC through administration of the state's very generous credit earning rates. For most sentences of this kind, the DOC has authority to cut off 60 to 70 percent of maximum sentences simply by awarding full credits to advance prisoners' mandatory release dates (MRDs). This may be the

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<sup>65</sup> Ala. Const. art. V, § 124.

<sup>66</sup> Iowa is the only other state in the country with a similar configuration. See Kevin R. Reitz, Melanie Griffith, & Edward E. Rhine, *Prison-Release Discretion and Prison Population Size, State Report: Iowa* (Robina Institute of Criminal Law and Criminal Justice, 2020).

nation's most aggressive system of "movable MRDs."<sup>67</sup> When used to full extent, this cuts off 60-70 percent of the parole board's release-*denial* discretion.

Compared with some other states, full credit earnings in Alabama are relatively easy for prisoners to get because they are awarded on a good-time model (that is, the main prerequisite is to avoid serious disciplinary infractions). Indeed, full credits are calculated early in prisoners' terms, and projected release dates remain in place unless some or all credits are forfeited. DOC release discretion is not limited by the availability of prison programming, as in an earned-time credit model.<sup>68</sup>

For most prisoners, incentive time credits can also move first parole eligibility dates to much earlier locations on the sentence timeline than their starting positions (with no credits). One way to look at this is that the bulk of the parole board's *release* discretion is dependent on favorable treatment of prisoners by the DOC in its administration of credits and the forfeiture process.

For most sentences of more than 15 years, the general rules of prison-release give rise to *highly indeterminate sentences*—a step down from the extremely-high indeterminacy of shorter sentences. The greatest shift occurs when judicial maximums exceed 15 years, when the DOC no longer holds any power to determine actual time served or the timing of parole eligibility. The incentive credit system is inoperative for these prisoners. Thus, for this class of sentence, all the back-end time-served discretion is vested in the parole board.

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<sup>67</sup> Movable MRDs are a topic of particular interest to this project. 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.

<sup>68</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. 6 ("Variations in the use of good-time and earned-time discounts").