



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: MISSISSIPPI

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Prison-Release Discretion and Prison Population Size

State Report: Mississippi

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Definitions and Concepts

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

Scaling up to the systemwide level, the project explores the degree to which prison population size in each state is placed under the jurisdiction of decision makers who exercise time-served discretion after judicial sentences have been finalized. Higher degrees of indeterminacy across individual sentences add up to greater control over prison population size by “back-end” agencies such as parole boards and departments of correction. These structural features vary greatly across U.S. jurisdictions. One goal is to inform state governments how they may deliberately adjust their laws and practices of prison-release authority to achieve desired policy goals, such as reductions of prison populations in a manner consistent with public safety

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

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

Each of the five categories can be expressed in alternative terms: either the *degree of indeterminacy* or *degree of determinacy* thought to be present. Our five tiers are based on the variations we observe in current American sentencing systems, not any absolute or theoretical conceptions of degrees of indeterminacy that could be imagined in hypothetical systems.

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

Rankings of “Degrees of Indeterminacy”

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

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

Benchmarks for rankings of “degrees of indeterminacy”

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)

Prison-Release Discretion and Prison Population Size

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Executive Summary

We classify Mississippi's prison-sentencing system as operating with a *high degree of indeterminacy* overall. This assessment takes account of the different prison-release formulas applicable to Mississippi's two main classes of sentences. Under the general rules for prisoners convicted of nonviolent crimes, parole-release eligibility occurs at the 25 percent mark of their judicial maximum terms or 10 years, whichever is less. In the project's ranking system, such sentences carry a *high degree of indeterminacy*. For most prisoners convicted of violent offenses, parole-release eligibility comes at the 50-percent milestone of their maximum terms or after 20 years, whichever is less. We rank these sentences as *moderate in indeterminacy*.

Mississippi provides the possibility of generous conduct-based credits to some prisoners, which reposes appreciable time-served power in the department of corrections. At full extension, conduct-based credits add up to deductions of 50 percent from prisoners' judicial maximum sentences if full credits are earned and not forfeited. For most prisoners, credit allowances at the highest levels eliminate most or all of the parole board's release-denial discretion.

Mississippi also operates a program of "administrative parole release" (APR) for prisoners convicted of nonviolent offenses. If they have fulfilled the requirements of their case plans and other statutory conditions are met, they are released at first eligibility without a hearing before the parole board.

Terminology note

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

¹ This report was prepared with support from Arnold Ventures in connection with the *Prison Release: Degrees of Indeterminacy Project*. 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 Mississippi, see Alexis Lee Watts, Julie Matucheski, Noah Finn, & Kevin R. Reitz, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Mississippi* (Robina Institute of Criminal Law and Criminal Justice, 2019) (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

Mississippi's prison-rate history, 1972 to 2020

At yearend 2020, Mississippi's prison rate was 584 per 100,000 general population, with a prison population of 17,311.² Mississippi's prison rate was the highest among all 50 states.

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

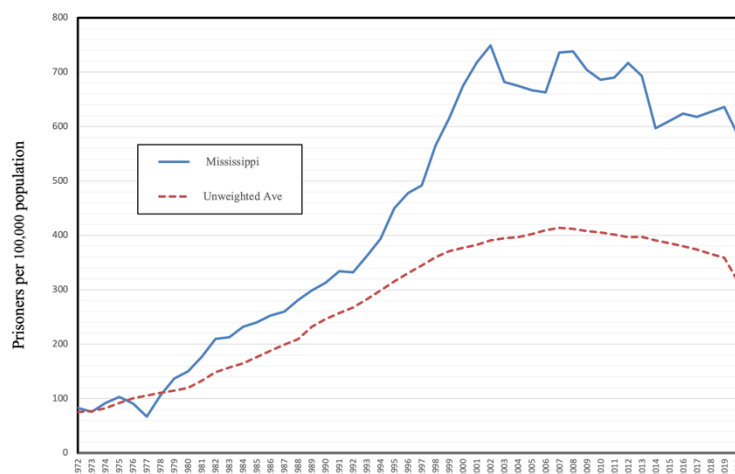
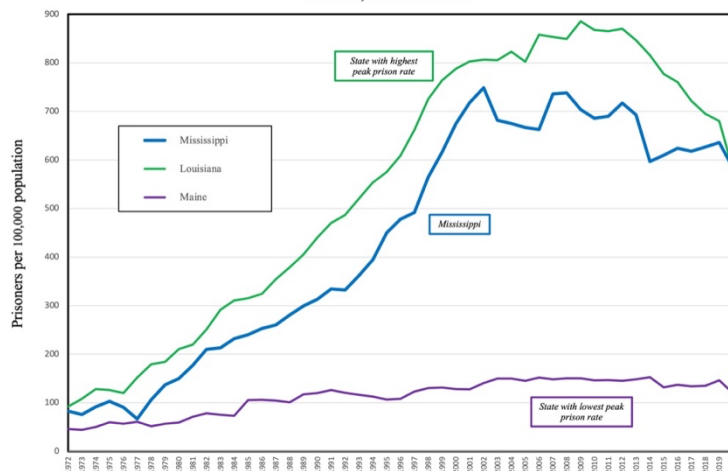


Figure 2. Prison Rate Change in Mississippi, Louisiana, and Maine, 1972 to 2020



Sources: Timothy J. Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research

² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7. Preliminary information about changes in Mississippi's imprisonment rates after 2020 is presented below in the section on "The COVID period in Mississippi."

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).

Mississippi reached its peak prison rate in 2002 at 749 per 100,000, which dropped to 584 per 100,000 in 2020. This is a net difference of -165 per 100,000, which was the 16th 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 lived through 35 years of uninterrupted growth in the nationwide prison rate. This might be called the Great Prison Buildup. Since 2007, prison rates have been dropping in the average American state, although each state has charted its own course.

Recent changes in law

Mississippi's laws of prison release have been in considerable flux since the mid-1990s. Prior to "truth-in-sentencing" legislation in 1995, the state had a traditional "indeterminate" system in which actual lengths of most prison sentences were subject to the parole board's release discretion. For most prisoners under the old regime, parole-release eligibility occurred after they had served 25 percent of their judicial maximum sentences. Under the 1995 truth-in-sentencing law, parole-release discretion was abolished so that all newly-convicted prisoners were required to serve a full 85 percent of their judicial maximum terms.³

In 2001, parole-release eligibility was restored for most first-time offenders convicted of nonviolent offenses. In 2008, discretionary parole release was restored more broadly to extend to nearly all prisoners convicted of nonviolent crimes—a change that was given retroactive effect. In 2014, some formulas for the lengths of minimum terms were amended to shorten the time to parole-release eligibility for many prisoners.⁴ Also, a streamlined process that we call "administrative parole release" or APR was instituted in 2014 for prisoners convicted of nonviolent crimes.⁵

³ Miss. Code §§ 47-7-3, 47-5-138 & § 47-5-139 (June 30, 1995). For a brief history, see JFA Institute and Mississippi Department of Corrections, *Reforming Mississippi's Prison System* (2010), at 2, available at <https://www.scribd.com/document/26281916/Reforming-Mississippi-s-Prison-System>.

⁴ Joint Legislative Committee on Performance Evaluation and Expenditure Review, *Report to the Mississippi Legislature: A Review of the Mississippi State Parole Board* (2021), at 6-7.

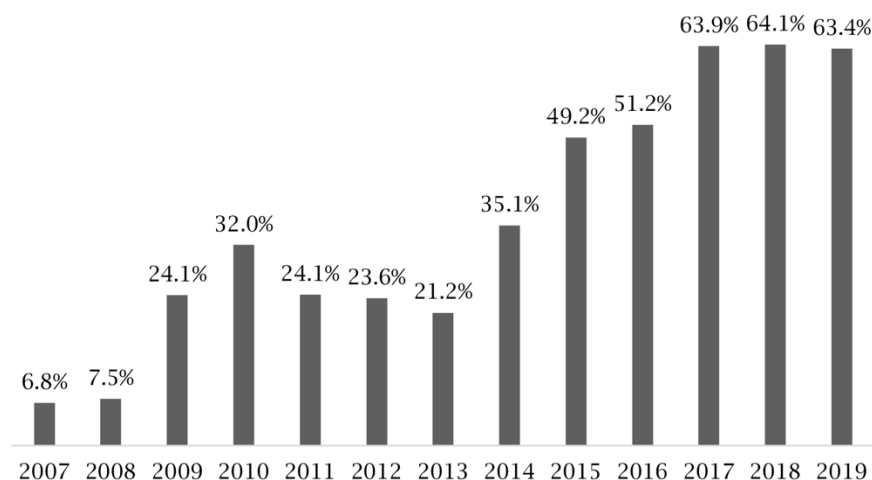
⁵ Miss. Code § 47-7-18. The term "administrative parole release" was adopted for this project; there is no uniform usage across states. In the course of the project, we found programs in 12 states that met our definition of APR,

In mid-2021, parole-release eligibility was restored for most prisoners convicted of violent crimes (as summarized in this report), a change that was once again enacted with retroactive effect on previously-sentenced prisoners.⁶ The streamlined procedures of APR were not applied to this class of prisoners, however.

In addition to changes in the law of parole release, conduct-based credits have been expanded since the late 1990s. “Trusty earned time” was instituted in 1999 at an earning rate of 10 days of credits per 30 days, a formula that was increased to 30 days per 30 days in 2004.⁷

Overlapping with these many changes, the percentage of all prison releases in Mississippi by discretionary parole increased more than ninefold from 2007 to 2019—from 6.8 percent of releases to 63.4 percent. The figure below was compiled by the Joint Legislative Committee on Performance Evaluation and Expenditure Review for its 2021 report:

Exhibit 2: Percentage of Offenders Released on Parole (2007 through 2019)



SOURCE: PEER analysis of MDOC annual reports.

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), Chapter 5.

⁶ See Senate Bill 2795, effective July 1, 2021; Geoff Pender & Bobby Harrison, *Gov. Reeves signs parole eligibility bill, after last year’s veto*, Mississippi Today, April 22, 2021; Emily Wagster Pettus, *Will more Miss. inmates be eligible for possible parole? Governor decides yes, signs bill*, The Clarion-Ledger, April 22, 2021.

⁷ JFA Institute and Mississippi Department of Corrections, *Reforming Mississippi’s Prison System* (2010), at 2.

The many changes in Mississippi's prison-release laws and practices since 2001 may explain some of the choppiness in the state's prison-rate curve after 2002, as shown in Figures 1 and 2 above.

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.⁸

In calendar year 2020, most states saw unusually large drops in their prison rates. Prison rates fell in 49 states, the District of Columbia, and the federal system. The aggregate 50-state prison rate for the U.S. dropped by about 15 percent in a single year. From yearend 2019 to yearend 2020, the (unweighted) average state prison rate fell from 359 to 308 prisoners per 100,000 general population, for an average incremental downturn of -51 per 100,000.⁹ We believe this was the largest one-year decline in state prison rates in American history.¹⁰

In calendar year 2021, U.S. prison rates did not continue to descend at the same dramatic speed. Preliminary data from the Vera Institute indicate that the aggregate 50-state prison population fell by about 1.8 percent from January to December 2021. Prison populations actually rose in 19 states.¹¹

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year or so, it is relevant to ask whether indeterminacy in American prison

⁸ 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 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).

⁹ 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.

¹⁰ Historical sources show no one-year decline in average state prison rates approaching -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).

¹¹ 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 2019 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.

sentences played a consequential role in events. An adequate history cannot yet be written, but considerable data has already been assembled.

Nationwide, COVID-driven changes in prison-release practices were not the main driving force of prison population shrinkage from March 2020 forward. This is not to say that there was no expansion of prison release during the pandemic. Most 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.¹²

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 dropped by an astonishing 40 percent in a single year from 2019 to 2020.¹³

¹² 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 150 or fewer or no 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). Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions was “short time left on sentence.”

¹³ 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 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.

The COVID period in Mississippi

The state-specific experience of Mississippi does not suggest a mobilization of new or old prison-release processes in the immediate period of COVID shock.

In calendar year 2020, Mississippi's prison rate fell from 636 to 584 per 100,000—a one-year decline of -49 per 100,000. This was the 23rd largest one-year drop reported among all 50 states for that year.¹⁴ Measured in percentage terms, it was a 7.7 percent fall in the state's prison rate. The state's total prison population fell by 1,604 people, from 18,915 to 17,311.¹⁵

COVID releases made no discernible contribution to this drop. In a separate study, the Robina Institute found no (zero) COVID-influenced releases in Mississippi from March 2020 through December 2021.¹⁶ Instead, falling admissions appear to have been the critical factor in the state's loss of prison population. The number of prison admissions in Mississippi dropped by 31 percent in 2020 compared with the previous year (from 7,284 in 2019 to 5,051 in 2020). Total numbers of releases did not grow in 2020, but fell by 5.6 percent from 2019 (from 7,047 to 6,655).¹⁷

From yearend 2020 to December 2021, the Vera Institute reported that Mississippi saw only a modest decrease in its prison population, from 17,652 to 17,494—or 0.9 percent. According to Vera's figures, Mississippi still had the highest prison rate of all states in December 2021, just as it did at yearend 2020.¹⁸

The Mississippi Department of Corrections reports that the state's prison population reached a low of 16,499 in early February 2022.¹⁹ Since then the population has been growing, reaching

¹⁴ 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.

¹⁵ *Id.*, at 11 table 4.

¹⁶ 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). Mitchell et al. report that 14 states made no COVID releases.

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

¹⁸ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 2, 3 table 2. Vera does not use the same prisoner counts as BJS, nor does it calculate state prison rates in the same way. For example, Vera reports a larger total of Oklahoma prisoners and a higher prison rate in December 2021 than reported by BJS for yearend 2020. BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Bureau's July 1 estimates (six months earlier). Because of such incompatibilities, we do not attempt to integrate data from the two sources.

¹⁹ Mississippi Department of Corrections, *Fiscal Year Net Admissions July 1, 2021 thru June 30, 2022*, at <https://www.mdcc.ms.gov/Admin-Finance/NetAdmissionsFiscal/Net%20Admissions%20-%20Fiscal%20Year%202022.pdf>.

a total of 17,450 in early June 2022.²⁰ The recent turnaround appears related to the state's prison-release policies and practices. In early 2022, parole releases in Mississippi dropped precipitously compared with previous years, coinciding with a changeover in the parole board's chair. Under the previous chair, who retired at the end of 2021, "about six of every 10 inmates who appeared before the Parole Board earned their release." By April 2022, however, release rates had fallen to 17 percent.²¹

1. General rules of prison release in Mississippi

As a general rule, prisoners convicted of nonviolent offenses and sentenced to one year or more are eligible for discretionary parole release after serving 25 percent of their judicial maximum sentences or 10 years, whichever is less.²² The same formula applies to offenses classified as "nonviolent and nonhabitual drug offenses."²³

Under new legislation effective in 2021, most prisoners convicted of "violent offenses" (as statutorily defined) become eligible for discretionary parole release after having served 50 percent of their judicial maximum sentences or 20 years, whichever is less.²⁴ (From 1995 until July 2021, such prisoners had not been eligible for discretionary release.)

Prisoners denied release by the parole board are entitled to subsequent release hearings at least once per year.²⁵

²⁰ Mississippi Department of Corrections, *Fact Sheet: As of June 1, 2022*, at <https://www.mdoc.ms.gov/Admin-Finance/MonthlyFacts/06-01-2022.pdf>.

²¹ Jerry Mitchell, *Mississippi prison population back on rise, thanks to flurry of parole rejections* (Mississippi Center for Investigative Reporting, May 19, 2022), at <https://www.mississippicir.org/news/mississippi-prison-population-back-on-rise-thanks-to-flurry-of-parole-rejections>.

²² Miss. Code. § 47-7-3(1),(1)(h)(i)(1). For purposes of this paragraph, "nonviolent crime" means a felony not designated as a crime of violence in Section 97-3-2.

²³ Miss. Code. § 47-7-3(1),(1)(h)(i)(3).

²⁴ Miss. Code. § 47-7-3(1),(1)(h)(i)(2). The statutory definition of "violent offenses" is found in Miss. Code. § 97-3-2(1) (these are: driving under the influence, murder and attempted murder, aggravated assault, manslaughter, killing of an unborn child, kidnapping, human trafficking, poisoning, rape, robbery, sexual battery, drive-by shooting or bombing, carjacking, felonious neglect, abuse or battery of a child, burglary of a dwelling, use of explosives or weapons of mass destruction, statutory rape (classification is rebuttable on hearing by a judge), exploitation of a child, gratification of lust, and shooting into a dwelling).

Three selected violent offenses fall subject to a somewhat different rule: parole-release eligibility at the 60-percent mark of their judicial maximum sentences or 25 years, whichever is less. These offenses are: robbery with a deadly weapon, drive-by shooting, and carjacking. Miss. Code. § 47-7-3(1),(1)(h)(i)(2).

²⁵ Miss. Code § 47-7-18(6).

Prisoners convicted of capital murder, murder in the first or second degree, most sex offenses, human trafficking, and drug trafficking are ineligible for parole release.²⁶ Most “habitual offenders” are also ineligible. However, habitual offenders “who have not committed a crime of violence” can be made eligible for parole release upon petition to the sentencing court after they have served 25 percent of their judicial maximum terms.²⁷

If not released at an earlier date by the parole board, most prisoners are eligible to earn conduct-based credits that result in deductions from their judicial maximum sentences. If credits are earned and not forfeited, this results in earlier mandatory release dates (MRDs). Credits have no effect on dates of parole-release eligibility in Mississippi.

Three different categories of conduct-based credits are available under current Mississippi law, as outlined below.

Earned time allowance. Eligible prisoners receive an “earned time allowance” at a rate of 4.5 days for every 30 days served for abiding by “good conduct and performance requirements.” Credits earned and not forfeited are deducted from prisoners’ judicial maximum sentences to produce earlier mandatory release dates (MRDs), with deductions limited to 15 percent of the maximum term.²⁸

Prisoners who are not eligible for earned time allowances include life prisoners, habitual offenders, those convicted of a sex crime, and those who have not served out their mandatory minimum terms for conviction of robbery or attempted robbery with a deadly weapon.²⁹

Meritorious earned time. Prisoners may be awarded meritorious earned time for completing educational or instructional programs, satisfactory participation in work projects, and satisfactory participation in any special incentive program.³⁰ There are no fixed credit allotments for meritorious earned time. Instead, the Commissioner of Corrections is statutorily empowered to determine the number of days of reduction in sentence that may be awarded based on each particular program or project.³¹

²⁶ Miss. Code. § 47-7-3(1)(a)-(g).

²⁷ Miss. Code. § 47-7-3(1)(h)(iv) (if the sentencing judge is retired, disabled, or incapacitated, the senior circuit judge may authorize a prisoner to be eligible for parole consideration).

²⁸ Miss. Code. § 47-5-138(5),(6) (prisoners under age of 21, convicted for a nonviolent offense, are not subject to the fifteen-percent limit on earned time allowance). The 15-percent limit would seem superfluous because full credit earnings at the rate of 4.5 days per month would produce release at the 87-percent mark of the maximum sentence—a reduction of only 13 percent. Prisoners released in this way are placed on “earned-release supervision” until expiration of their judicial maximum terms. Miss. Code. § 47-5-138(6).

²⁹ Miss. Code. § 47-5-139(1).

³⁰ Miss. Code. § 47-5-142(2).

³¹ Miss. Code. § 47-5-142(4).

Trusty time. Some prisoners may be placed in “trusty status as defined by the classification board of the Department of Corrections.” Such prisoners receive “trusty-time” at a rate of thirty days for each thirty days of participation in an approved program, including satisfactory participation in work projects and satisfactory participation in special incentive programs.³² By department of corrections policy, prisoners cannot earn both trusty time and meritorious earned time for the same program.³³

Prisoners may forfeit all or part of their earned time for serious rules violations. Prisoner lawsuits dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted forfeit 60 days of earned time for one dismissal, 120 for two dismissals, and 180 days for three or more.³⁴ Earned time forfeited for rules violations or lawsuit dismissals cannot be restored.³⁵ All earned time is forfeited in the event of escape or aiding and abetting an escape. The Commissioner may restore all or part of the forfeited credits if the escapee returns voluntarily, without expense to the state, and without having committed any acts of violence during their time as a fugitive.³⁶

Timeline diagrams for general-rules cases

We find two sets of general rules operative for most Mississippi prisoners: those applicable to prisoners convicted of nonviolent offenses and those for prisoners convicted of violent offenses (as statutorily defined). Mississippi Figures 3, 4, and 5 examine the formulas for prisoners convicted of nonviolent offenses. The three figures reflect different assumptions concerning credits that have been earned against sentence length.

Mississippi Figure 3 shows the timeline for prisoners convicted of nonviolent offenses who have earned no credits against sentence (that is, no earned time allowance or other types of credits). In such cases, the date of first eligibility for discretionary parole release occurs after 25 percent of the judicial maximum sentence has been served (or after 10 years for maximum terms longer than 40 years). With no credit earnings, the parole board holds both release and release-denial discretion from the 25-percent milestone through expiration of the maximum term.

³² Miss. Code. § 47-5-138.1(1). Prisoners ineligible for trusty status include life prisoners, habitual offenders, those convicted of a sex crime, those convicted of trafficking in controlled substances, and those who have not served out their mandatory minimum terms for convictions of robbery or attempted robbery through the display of a deadly weapon, carjacking through the display of a deadly weapon, or drive-by shooting. Miss. Code. § 47-5-138.1(2).

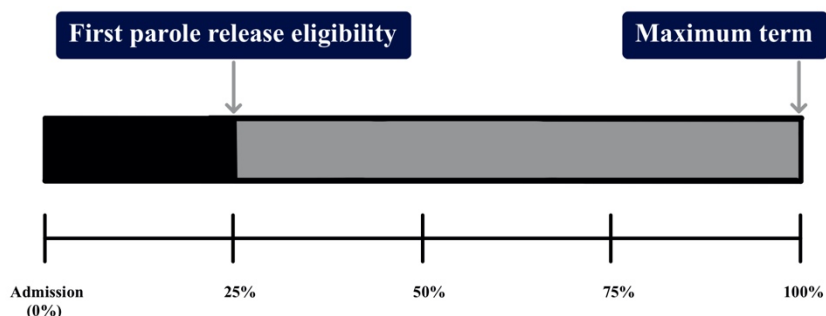
³³ Miss. Dep’t of Corr., *Frequently Asked Questions*, <https://www.mdcc.ms.gov/Victim-Services/Pages/FAQs.aspx> (“Inmates are not eligible for MET for participation in a program if the inmate is already receiving trusty time for that program.”) (last visited June 12, 2022).

³⁴ Miss. Code. § 47-5-138(3)(b).

³⁵ Miss. Code. § 47-5-138(2).

³⁶ Miss. Code. § 47-5-139(3).

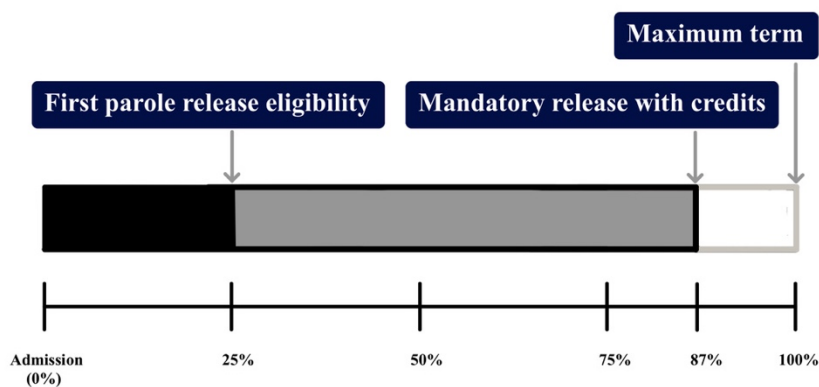
Mississippi Figure 3. Prison-Release Timeline for General-Rules Sentences (Nonviolent Offenses) with No Earned Time Allowance



Note: For maximum sentences longer than 40 years, parolee release eligibility is set at ten years

Next, Mississippi Figure 4 illustrates cases in which prisoners convicted of nonviolent offenses have earned their full “earned time allowances” at the rate of 4.5 days per 30 days. This would give them a 13 percent deduction from their judicial maximum terms, with a mandatory release date (MRD) at 87 percent of the maximum (if no credits have been forfeited).

Mississippi Figure 4. Prison-Release Timeline for General-Rules Sentences (Nonviolent Offenses) with Full Earned Time Allowance

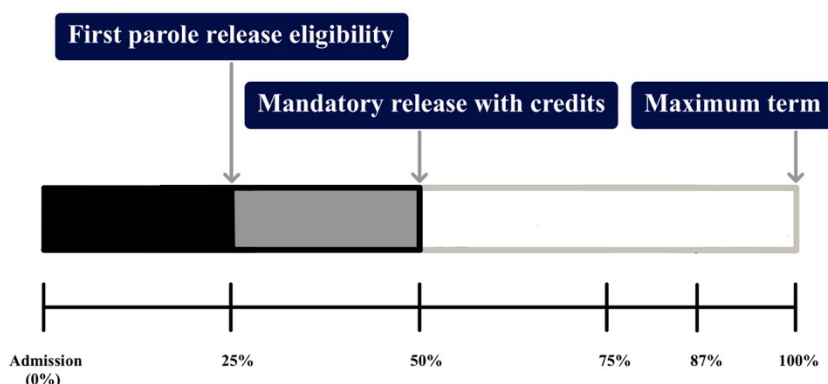


In Mississippi Figure 4, the parole board’s release discretion still activates at 25 percent of the timeline but the board’s release-denial discretion has been cut off at the 87-percent mark. In

the language of this project, mandatory release at the 87-percent mark is due to a “movable MRD” that is driven by credits awarded at a “minimal” earnings level.³⁷

Mississippi Figure 5 then considers cases in which prisoners have been classified by the department of the corrections as eligible to earn “trusty time,” which is awarded at a rate of 30 days per 30 days. At full earnings, this would result in an MRD at the 50-percent mark of the timeline (if no trusty time credits have been forfeited).

Mississippi Figure 5. Prison-Release Timeline for General-Rules Sentences (Nonviolent Offenses) with Full Trusty Time Allowance



In cases of this kind, the parole board’s release discretion activates at the 25-percent mark, but the board’s release-denial discretion has been extinguished at the 50-percent mark. In the language of this project, mandatory release at the 50-percent mark is the product of a “movable MRD” driven by credits awarded at a “generous” earnings level.

Mississippi Figures 4 and 5 do not take account of the possible accrual of “meritorious earned allowances,” which are given to prisoners in amounts not specified by statute, but are determined in the discretion of the department of corrections. By the literal terms of the statute, this creates the possibility of deductions greater than shown in Mississippi Figure 5 for prisoners who earn full trusty time. For purposes of our analysis, however, we assume that meritorious earned allowances are never dispensed in greater amounts than trusty time allowances.³⁸ On this view, meritorious earned allowances would give rise to movable MRDs

³⁷ In this project, we consider credit amounts that subtract 0-19 percent from sentence requirements to be “minimal,” 20-39 percent to be “average,” and 40 percent or more to be “generous.” 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 65. For an extended discussion of movable MRDs, see *id.*, Chapter 7.

³⁸ We are supported in this view by the apparent policy of Mississippi’s department of corrections not to award meritorious earned allowances to prisoners who qualify for trusty time.

that could occur at any milestone between those shown in Mississippi Figures 4 and 5. We have not produced separate diagrams to capture this range of possibilities. At full extension, we presume that awards of meritorious time allowances would produce a timeline identical to Mississippi Figure 5.

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 is 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*).

Taking Mississippi Figures 3, 4, and 5 together, the general-rules class of sentences for prisoners convicted of nonviolent offenses is 25 percent determinate and 75 percent indeterminate, with a population multiplier potential (PMP) of 4:1. That is, if all else is equal, the subpopulation of prisoners with this type of sentence would be four times larger under a sustained *longest-time-served* scenario than under a sustained *shortest-time-served* scenario.

The range of possibility in the 4:1 PMP is subject to the discretionary decisions of both the parole board and the department of corrections. The DOC has authority to select prisoners to be given trusty status, and to then bestow credit earnings of up to 50 percent of their judicial maximum terms. Through this authority, the DOC has unilateral release discretion from the 50-percent mark through the expiration of the judicial maximum term. However, the DOC holds no unilateral release-*denial* discretion across this segment of the timeline. Even if all favorable classifications and credits were withheld by the DOC, it would still be within the purview of the parole board to unilaterally order release from the 25-percent mark forward.

With full credit awards to prisoners with trusty status, the parole board retains release discretion and release-*denial* discretion from the 25- to 50-percent marks of the timeline. If something less than full trusty-time credits is allowed by the DOC, the effect is to expand the portion of the timeline in which the parole board has unilateral release and release-denial discretion.

For the general-rules class of sentences for nonviolent offenders, we would describe the time-served discretion of the DOC—at full extension—as greater than the remaining time-served discretion of the parole board. For this class of sentence, Georgia has instituted a checks-and-balances approach. Within the indeterminate segment of the timeline (from 25 to 100 percent),

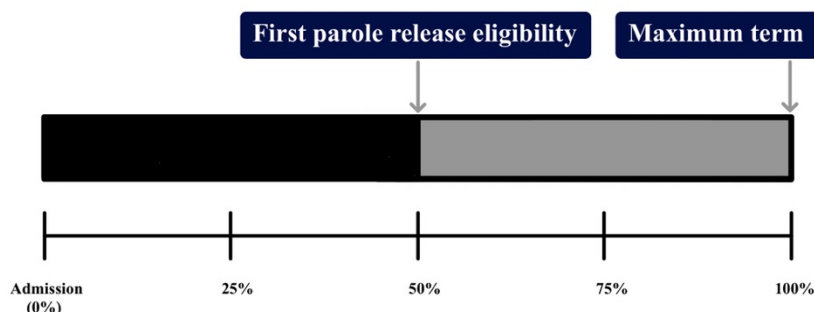
only one agency ever has unilateral release-denial discretion, and that unilateral discretion exists only from the 25- to 50-percent mark. From the 50-percent mark through expiration of the maximum term, two agencies have unilateral release discretion, and a decision to release by either agency would cancel out a decision to deny release by the other agency.

The story is somewhat different under the general rules for prisoners convicted of violent offenses, as shown in Mississippi Figures 6, 7, and 8.

Mississippi Figure 6 shows the timeline for prisoners convicted of violent offenses who have earned no credits against sentence (that is, no earned time allowance or other types of credits). In such cases, the date of first eligibility for discretionary parole release occurs after 50 percent of the judicial maximum sentence has been served (or after 20 years for maximum terms longer than 40 years).

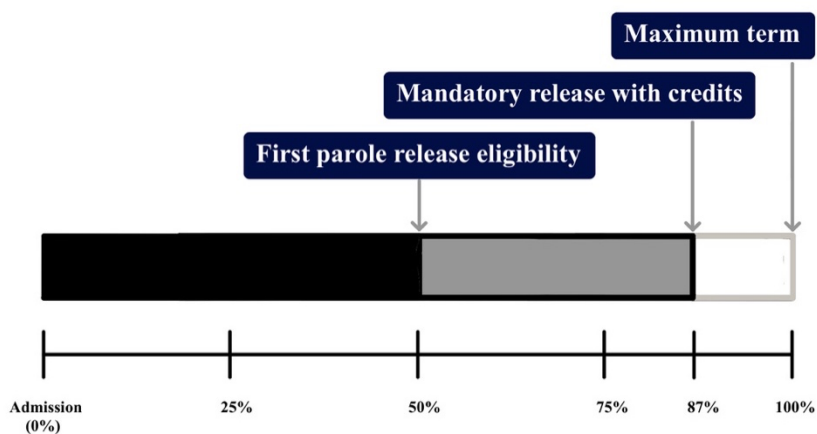
Mississippi Figure 7 illustrates cases in which prisoners convicted of violent offenses have earned their full earned time allowances at the rate of 4.5 days per 30 days. This would give them a 13 percent deduction from their judicial maximum terms, with a mandatory release date (MRD) at 87 percent of the maximum (if no credits have been forfeited). The parole board's release discretion still activates at the 50-percent mark of the timeline but the board's release-*denial* discretion has been cut off at the 87-percent mark. In the language of this project, release at the 87-percent mark is due to a "movable MRD" that is driven by credits awarded at a "minimal" earnings level.

Mississippi Figure 6. Prison-Release Timeline for General-Rules Sentences (Violent Offenses) with No Earned Time Allowance



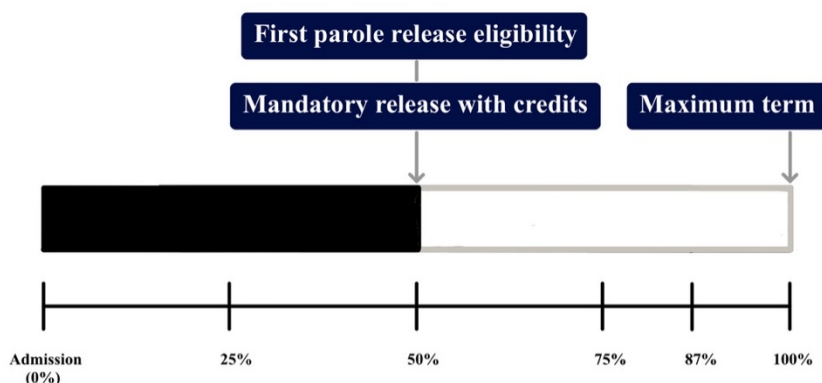
Note: For maximum sentences longer than 40 years, parolee release eligibility is set at 20 years

Mississippi Figure 7. Prison-Release Timeline for General-Rules Sentences (Violent Offenses) with Full Earned Time Allowance



Mississippi Figure 8 then considers cases in which prisoners have been classified by the department of the corrections as eligible to earn “trustworthy time” as a discount against sentence, which is awarded at a rate of 30 days per 30 days. At full earnings, this would result in an MRD at the 50-percent mark of the timeline (if no trustworthy time credits have been forfeited). In cases of this kind, the parole board’s release discretion does not activate until the 50-percent mark, and the board’s release-denial discretion has been extinguished at that exact same milestone.

Mississippi Figure 8. Prison-Release Timeline for
General-Rules Sentences (Violent Offenses)
with Full Trusty Time Allowance



In the language of this project, release at the 50-percent mark under Figure 8 is due to a “movable MRD” that is driven by credits awarded at a “generous” earnings level. The effect of the movable MRD is especially impressive in this instance, because all release-denial discretion potentially held by the parole board has been eliminated. Technically, the parole board may decide to release at the 50-percent mark but has no unilateral power to deny release at or beyond the 50-percent mark.³⁹

Taking Mississippi Figures 6, 7, and 8 together, the general-rules class of sentences for prisoners convicted of violent offenses is 50 percent determinate and 50 percent indeterminate, with a PMP of 2:1. That is, holding all else equal, the subpopulation size of prisoners with this type of sentence would be twice as large under a sustained *longest-time-served* scenario than under a sustained *shortest-time-served* scenario.

The institutional division of time-served authority for most prisoners convicted of violent offenses is different from the general rules for prisoners convicted of nonviolent offenses. Here, at full extension, the DOC has the power to completely eclipse the parole board’s release-denial discretion. The opposite is also true. Even if the DOC withholds all favorable classifications and credit awards, the parole board still retains unilateral release discretion from the 50 to 100 percent milestones of the timeline.

We see this as a strong checks-and-balances approach, in which two agencies have overlapping release discretion across the full indeterminate segment of the sentence. (In the ordinary

³⁹ Once again, we have not produced separate diagrams to depict the possible timelines that could result from the award of meritorious time allowances by the DOC. There is no fixed statutory formula for the award of such credits, with their amounts left to the discretion of the DOC. For purposes of our analysis, we assume that such credits would not be granted to produce results more generous than those associated with trusty time as shown in Figure 8.

course, no back-end agency has release discretion during the determinate segment of the timeline, from the 0 to 50 percent milestones.⁴⁰) No agency possesses unilateral release-denial discretion during any part of the indeterminate segment. In other words, denial of release requires the unfavorable actions of two agencies from the 50-percent mark forward, but release requires the favorable actions of only one agency.⁴¹

Administrative parole release

The mechanics of parole release in Mississippi are different from those in many other states, at least for prisoners convicted of nonviolent offenses. For many such prisoners, Mississippi operates a program of “administrative parole release” (APR) (a term used in this project, not Mississippi law). We define APR as a routinized path to release that requires fewer procedural stages and less case-by-case discretion than the traditional parole-release process. APR is fundamentally built on a “contract” model: Prisoners are assigned a correctional plan early in their terms; if they follow the plan, the state extends them a credible promise that they will be released on an established date.⁴²

Mississippi’s APR program covers all prisoners eligible for discretionary parole release except those convicted of sex offenses and crimes of violence or those eligible for geriatric parole. Eligible prisoners must be released on their parole eligibility dates without a hearing before the parole board as long as they meet the following conditions:

- (1) The prisoner has satisfied the requirements of his or her parole case plan;
- (2) A victim of the offense has not requested a hearing before the parole board;
- (3) The prisoner has not received a serious or major violation report within the past six (6) months;
- (4) The prisoner has agreed to the conditions of supervision; and
- (5) The prisoner has a discharge plan approved by the board.

⁴⁰ We put aside the low-probability prospects of release via clemency, medical parole, etc.

⁴¹ We note that, for three designated violent offenses, first parole eligibility does not occur until the 60-percent mark of the judicial maximum term or 25 years, whichever is shorter. The prison-release timelines and allocations of discretion for this class of sentence are somewhat different than discussed in text above, but we treat this as a narrow sentence class that applies to too few prisoners to be considered part of Mississippi’s general rules of prison release.

⁴² 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), Chapter 5.

If the above conditions are met, the parole board has no discretion to deny release or even convene a hearing. The statute provides that an eligible prisoner “*shall be* released from incarceration to parole supervision on the inmate's parole eligibility date, without a hearing before the board.”⁴³

At least 30 days prior to a prisoner’s parole eligibility date, the department of corrections must notify the parole board in writing of the prisoner’s compliance or noncompliance with the case plan.⁴⁴ Under certain circumstances, the prisoner must come to a hearing before the parole board for a release decision. These include:

- (1) The department of corrections notifies the board that the prisoner has not satisfied the requirements of their parole case plan, or there is insufficient information for the board to determine whether there has been compliance;
- (2) A victim of the offense has requested a hearing; or
- (3) A law enforcement official from the community to which the prisoner will return requests a hearing to consider information relevant to public safety risks posed by the prisoner if released at initial eligibility.⁴⁵

If a hearing is required, the parole board may decide to release the prisoner or deny release, under criteria provided by statute. For example, the board may release prisoners who have not fulfilled the requirements of their case plans if it finds that the unfilled requirements can be satisfied in the community after release. Alternatively, the board can grant release if it finds that the incomplete case plan “is not the fault of the inmate and that granting parole is not incompatible with public safety.”⁴⁶ This provision would seem to cover instances in which prisoners fail to complete their case plans because of the unavailability of programs, waiting lists, administrative inefficiency, and the like.

If the parole board denies release, the prisoner formerly eligible for APR is no longer eligible for future release without a hearing before the board. Effectively, there is no repeat APR eligibility in Mississippi, as there is in some other states.⁴⁷ Instead, prisoners move into the

⁴³ Miss. Code § 47-7-18(1).

⁴⁴ Miss. Code § 47-7-18(2).

⁴⁵ Miss. Code § 47-7-18(2)-(5).

⁴⁶ Miss. Code § 47-7-18(2),(6).

⁴⁷ See the discussion of New Jersey’s APR program in 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 53.

discretionary parole release track are entitled to subsequent release hearings before the board at least once per year.⁴⁸

It is notable that crime victims in Mississippi may derail otherwise eligible prisoners from the APR process by requesting a hearing. In our view of APR nationwide, we have found such “victim veto” power in one-third of such programs.⁴⁹

2. Life sentences in Mississippi

a. Adults

Prisoners serving a life sentence may be eligible for parole consideration after having served at least ten years of their sentence.⁵⁰ Prisoners convicted of a capital offense and serving a life sentence in lieu of the death penalty are not eligible for parole.⁵¹

b. Juvenile life sentences

Following the Supreme Court’s ruling in *Miller v. Alabama*, the Mississippi Supreme Court held that all homicide cases require individual determinations of parole eligibility before a life sentence without parole may be imposed on a juvenile offender.⁵²

3. Infrequently used forms of prison release in Mississippi

a. Compassionate release

The Commissioner and the medical director may approve medical release for eligible prisoners who have served at least one year of their sentence.⁵³ Bedridden nonviolent offenders may be

⁴⁸ Miss. Code § 47-7-18(6).

⁴⁹ 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), 49-51 table 7, 60.

⁵⁰ Miss. Code. § 47-7-3(1).

⁵¹ Miss. Code. § 47-7-3(1)(d)-(e).

⁵² *Parker v. State*, 119 So. 3d 987, 999 (Miss. 2013). See *Miller v. Alabama*, 567 U.S. 460, 480 (2012) (holding mandatory sentences of life without parole unconstitutional when applied to defendants who were under age 18 at the time of their crimes; stating further that, “[a]lthough we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”); *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).

⁵³ Miss. Code. § 47-7-4(1) (note that sex offenders are not eligible for medical release).

approved for medical release regardless of their time served.⁵⁴ To be considered for medical release, a prisoner must meet the following criteria:

- 1) The prisoner is suffering from a significant permanent physical medical condition with no possibility of recovery;
- 2) The prisoner's incarceration will serve no rehabilitative purposes; and
- 3) The state would incur unreasonable expenses as a result of the prisoner's continued incarceration.⁵⁵

Medical release is conditional and may be revoked.⁵⁶ A prisoner on medical release who is no longer bedridden must be returned to custody.⁵⁷

The parole board may grant medical parole and referral to a special care facility for inmates deemed to be "medically frail."⁵⁸ "Medically frail" is defined as any individual with a mental or physical condition from which they are not expected to recover which renders them unable to perform daily activities and a minimal threat to society.⁵⁹ Those ineligible for medical parole include prisoners sentenced to capital punishment, convicted of a sex offense, or posing a public safety or flight risk as determined by the parole board.⁶⁰

Aging prisoners. Prisoners who have reached 60 years of age and have served at least 10 years but less than one-fourth of their sentence(s) are eligible for parole so long as they were not convicted as a habitual offender, for a crime of violence, for trafficking in controlled substances, or for a sex crime.⁶¹

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Miss. Code. § 47-7-4(2)(a).

⁵⁹ Miss. Code § 47-7-4(2)(b).

⁶⁰ Miss. Code § 47-7-4(2)(c)(i)–(iii).

⁶¹ Miss. Code. § 47-7-3(h)(ii).

b. Clemency

The Governor has constitutional authority to grant reprieves and pardons in all criminal and penal cases except convictions for treason and impeachment.⁶² The Governor may grant reprieves for treason only with consent of the senate.⁶³

c. Release during overcrowding emergencies

The following outlines Mississippi's Prison Overcrowding Emergency Powers Act, which is set for automatic repeal on July 1, 2025.⁶⁴

The prison system population must be in excess of 95 percent operating capacity for at least 30 consecutive days before the governor may consider declaring a prison system overcrowding state of emergency.⁶⁵ Whenever the prison system exceeds 95 percent operating capacity, the Department must immediately notify the governor and the Board.⁶⁶ Upon such notification, the Board must convene to determine whether the Board has fully utilized the powers available to them in an effort to reduce the prison system population or expand operating capacity.⁶⁷ The Board must submit a report to the governor on their efforts within 10 days.⁶⁸ Upon receiving reports from the Department and the Board, the governor may determine 1) that the Department and the Board's powers to resolve prison overcrowding have not been fully utilized, 2) that declaring a state of emergency would injure or threaten the safety of the public, or 3) determine that the conditions for a state of emergency have been met and advance parole eligibility dates from thirty to ninety days.⁶⁹

The Department must certify the prison system population weekly during a state of emergency, and the governor must terminate the order upon report that the prison system

⁶² Miss. Const., art. 5, § 124.

⁶³ *Id.*

⁶⁴ Miss. Code. § 47-5-731.

⁶⁵ Miss. Code. § 47-5-705.

⁶⁶ Miss. Code. § 47-5-707. *See also* Miss. Code. § 47-5-705 (Requiring that the Department utilize its powers to reduce the prison population or increase capacity prior to the governor's declaration of a state emergency. Such powers include earned time allowances as specified in [Sections 47-5-138](#) and [47-5-139, Mississippi Code of 1972](#), review of prisoners for reclassification, reevaluation of persons eligible for consideration for work release, supervised earned release or other release programs, and arrangements for housing prisoners in local or county jails or other facilities.).

⁶⁷ *See also* Miss. Code. § 47-5-705(c) ("Such powers include, but are not limited to, parole as provided in Section 47-7-3, Mississippi Code of 1972, the review of inmates who have had their parole revoked and the reevaluation of inmates previously denied parole.").

⁶⁸ Miss. Code. § 47-5-709(c).

⁶⁹ Miss. Code. § 47-5-711 (The governor has fourteen days upon receipt of the reports to exercise their powers – otherwise action under §§ 47-5-701 through 47-5-729 is considered terminated.).

population has been at or below 95 percent for seven consecutive days.⁷⁰ If after 60 days the prison population continues to be in excess of 95 percent operating capacity, the Department must report whether an additional advancement of parole eligibility dates by 30 to 90 days is necessary to reduce the prison population.⁷¹

Once the state of emergency has been terminated, parole eligibility dates that had been conditionally advanced are reset to the dates set prior to the emergency for prisoners who had not been released on parole.⁷²

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

We classify Mississippi's prison-sentencing system as operating with a *high degree of indeterminacy overall*, but this is a rough judgment that requires balancing the prison-release formulas applicable to Mississippi's two main classes of sentences. Under the general rules for prisoners convicted of nonviolent crimes, parole-release eligibility occurs after they have served 25 percent of their maximum terms or 10 years, whichever is less. In our subjective ranking system, such sentences carry a *high degree of indeterminacy*. For most prisoners convicted of violent offenses, parole-release eligibility comes at the 50-percent milestone of their maximum terms or after 20 years, whichever is less. We rank these sentences as *moderate in indeterminacy*. If we simply "average out" these two main formulas, parole eligibility at the 37.5-percent mark of maximum terms would qualify for a ranking of *high indeterminacy*.⁷³

Mississippi provides the possibility of generous conduct-based credits to some prisoners, a system that reposes more time-served power in the department of corrections than that held by the parole board. At full extension, conduct-based credits add up to deductions of 50 percent from prisoners' judicial maximum sentences, with mandatory release at that milestone if full credits are earned and not forfeited. For most prisoners, credit allowances at the highest levels would eliminate most or all of the parole board's release-denial discretion.

Mississippi also operates with a system of "administrative parole release" (APR), available only to prisoners convicted of nonviolent offenses. APR provides a streamlined process for prisoners to be released at their earliest dates of parole eligibility. If prisoners have fulfilled the

⁷⁰ Miss. Code. § 47-5-715 ("If no declaration of termination is issued within seven (7) days after the certification of conditions for termination of the state of emergency, the state of emergency is considered terminated as of the seventh day after the certification.").

⁷¹ Miss. Code. § 47-5-717 ("The report shall include those factors which would tend to indicate that the prison system population is likely to increase above operating capacity within ninety (90) days. The report shall discuss the availability of field supervisors, the currently existing supervision caseloads, and the measures that could be taken and the resources that would be needed to provide appropriate supervision of persons released early as a result of an additional advancement of the parole eligibility dates.").

⁷² Miss. Code. § 47-5-713.

⁷³ Our benchmark for high determinacy is sentences that carry first prospect of release at 20-39.99 percent of the judicial maximum sentence (see p. iv).

requirements of their case plans and other statutory conditions are met, they are released at first eligibility without a hearing before the parole board.