



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: NEVADA

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Definitions and Concepts

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

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

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

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

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

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

Rankings of “Degrees of Indeterminacy”

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

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

Benchmarks for rankings of “degrees of indeterminacy”

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

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

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

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

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We rate Nevada’s prison sentencing system overall as one that operates with an *extremely high degree of indeterminacy* within the ranking system developed for this project (see pp. iii-iv). Our ranking is based on the state’s treatment of sentences that fall under the general rules of prison release for felony Classes B through E. For all (or nearly all) such cases, prison sentences under the standard formulas are *extremely high in indeterminacy*.

Nevada also makes liberal use of the mechanism of “movable mandatory release dates” (“movable MRDs”) based on the accumulation of good time and earned time credits, which reduce prisoners’ maximum terms if they fail to win earlier release by the parole board. Compared with other states surveyed in this study, the percentage reductions driving movable MRDs in Nevada are among the most generous.

Terminology note

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

¹ This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures. For a broad overview of the law of parole release and supervision in Nevada, see Alexis Lee Watts, Edward E. Rhine, and Steven Graziano, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Nevada* (Robina Institute of Criminal Law and Criminal Justice, 2018) (including surveys of parole-release criteria, procedures for release decisions, laws relating to parole supervision and revocation, and the institutional attributes of the parole board).

Introduction

Nevada's prison-rate history, 1972 to 2020

In 2020, Nevada's prison rate was 361 per 100,000 general population, with a yearend prison population of 11,422.² Nevada's prison rate was 17th highest among all states

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

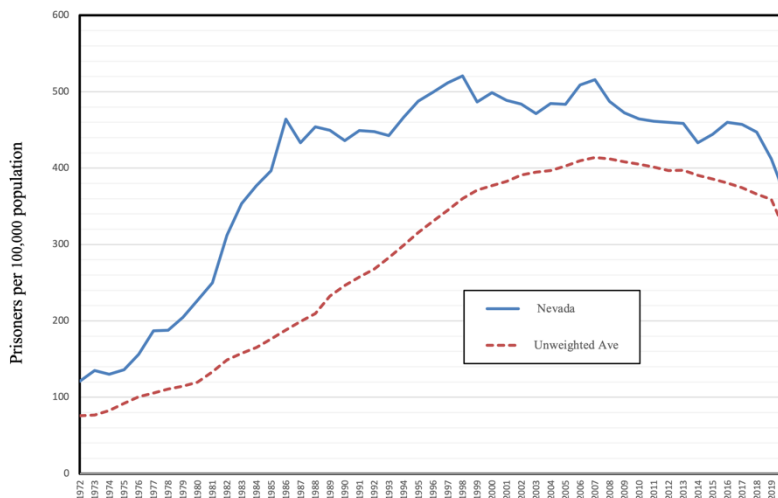
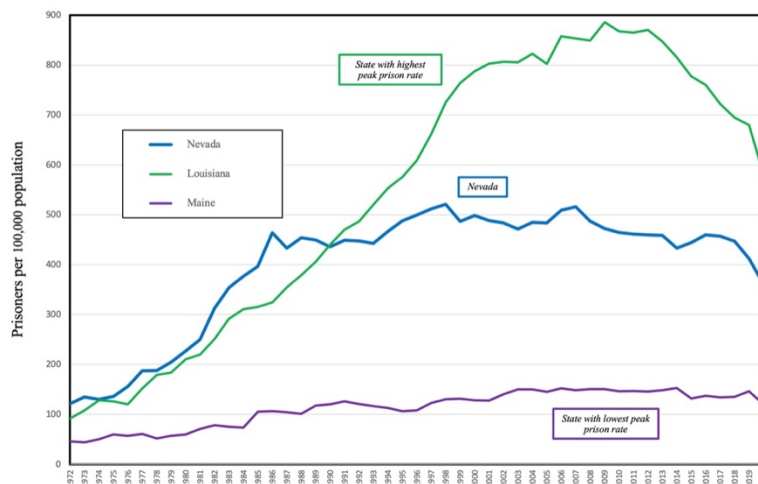


Figure 2. Prison Rate Change in Nevada, Louisiana, and Maine, 1972 to 2020



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

² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 12 table 4, 16 table 7. Preliminary information about changes in Nevada's imprisonment rates after 2020 is presented below in the section on "The COVID period in Nevada."

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).

Nevada reached its peak prison rate in 1998 at 521 per 100,000, which had dropped to 361 per 100,000 in 2019. This is a net difference of -160 per 100,000, which was the 17th largest prison-rate drop of all states from their peak rates (in various years) through 2020.

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

The COVID period

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

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

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

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

In calendar year 2021, U.S. prison rates did not continue to descend at the same dramatic 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.⁶

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.⁷

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

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

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

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

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court commitments, fewer revocations from community supervision, and some prisons' embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.⁸

The COVID period in Nevada

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

In calendar year 2020, Nevada's prison rate fell from 412 to 361 per 100,000—a one-year decline of -51 per 100,000. This was the 24th largest one-year drop reported among all 50 states for that year.⁹ Measured in percentage terms, it was a 12.4-percent reduction in the state's prison rate. The state's total prison population fell by 1,418 people, from 12,640 to 11,422.¹⁰

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

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

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

⁹ The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 16 table 7.

¹⁰ *Id.*, at 12 table 4.

2021. Nevada was one of 14 states that made no special effort to expedite prison releases in response to COVID.¹¹

Falling admissions appear to have been the dominant factor in Nevada's reduction of prison population in 2020. The number of prison admissions in the state dropped by 25.7 percent in 2020 compared with the previous year (from 5,805 to 4,311).¹² Total numbers of releases did not increase in COVID's first year, but fell by 14 percent (from 6,689 in 2019 to 5,753 in 2020).¹³

From yearend 2020 to December 2021, the Vera Institute reported that Nevada saw a continued decrease in its prison population, from 11,134 to 10,400—or 6.6 percent.¹⁴ As of February 28, 2022, the Nevada Department of Corrections reported a total prison population of 10,300.¹⁵

1. General rules of prison release in Nevada

Minimum and maximum terms

Nevada subdivides felony offenses into five grades, designated Classes A to E. Class A includes offenses punishable by death, life without parole (LWOP), and life with parole. For Classes B through E, prison sentences for terms of years are authorized. For each grade, Nevada statute prescribes limits on what minimum and maximum sentences may be. Within those ranges, sentencing courts have a degree of freedom to vary the relative lengths of minimum and

¹¹ 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.

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

¹³ *Id.* at 20 table 9.

¹⁴ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 4 table 2. As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁵ Nevada Department of Corrections, *StatFacts Monthly: As of February 28, 2022*, at [https://doc.nv.gov/uploadedFiles/docnvgov/content/About/Statistics/Monthly Reports by Year/20220228_StatFacts.pdf](https://doc.nv.gov/uploadedFiles/docnvgov/content/About/Statistics/Monthly%20Reports%20by%20Year/20220228_StatFacts.pdf).

maximum terms (the “minimum-maximum ratio”), but the minimum term may never exceed 40 percent of the judicial maximum term.¹⁶

- For Class B felonies, “the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years.”¹⁷
- For Class C felonies: “a minimum term of not less than 1 year and a maximum term of not more than 5 years.”¹⁸
- For Class D felonies: “a minimum term of not less than 1 year and a maximum term of not more than 4 years.”¹⁹
- For Class E felonies: “imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years” but there is a statutory presumption that the sentencing court will impose a suspended sentence.²⁰

Thus, for each felony grade, the court’s choice of a maximum prison sentence (within the authorized statutory range) yields a range of minimum terms the court may select in conjunction within that maximum. The minimum term can be no less than one year, and no more than 40 percent of the judicial maximum sentence chosen by the court. For example, if the court were to impose a maximum sentence of 20 years for a Class B offense, the judge could select a minimum term anywhere from one to eight years.

This is a substantial amount of judicial discretion to vary the minimum-maximum ratio and the degree of indeterminacy that is built into individual sentences. In our ranking system, a sentence of one-to-20 years has an *extremely high degree of indeterminacy*, while eight-to-20 years falls exactly on the borderline between *high* and *moderate* indeterminacy (see p. iv).

For lower-grade felonies, sentencing courts have far less control over the minimum-maximum ratios of their sentences. If a court were to impose the highest allowable maximum sentence of five years for a Class C felony, for example, the court would have discretion to vary the length of the minimum only from one to two years. If a court were to impose a maximum sentence

¹⁶ See Nev. Rev. Stat. § 193.130(1) (“[A] person convicted of a felony [Classes B through E] shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.”).

¹⁷ Nev. Rev. Stat. § 193.130(1)(b).

¹⁸ Nev. Rev. Stat. § 193.130(1)(c).

¹⁹ Nev. Rev. Stat. § 193.130(1)(d).

²⁰ Nev. Rev. Stat. § 193.130(1)(e).

of four years for a Class D or E felony, the court would have discretion to vary the length of the minimum anywhere from one year to about 19 months.²¹

Because of this statutory framework, sentencing courts in Nevada are to some extent “gatekeepers” of the degrees of indeterminacy built into their individual sentences, but the scope of their gatekeeping power varies with the grade of the offense and the length of maximum term chosen by the judge.²²

For most people serving a prison sentence of three years or more, there is a presumption of release when they come within one year of expiration of their judicial maximum terms or their earlier mandatory release dates (MRDs) won through the accrual of credits.²³ In most cases under this provision, the board has the option of allowing release without a meeting.²⁴ The relevant statute says that eligible prisoners “*must be released on parole*” at this time, but the parole board has discretion to deny release and hold prisoners for the remainder of their terms “if the Board finds that there is a reasonable probability that [the prisoner] will be a danger to public safety while on parole.”²⁵ This standard gives the board considerable discretion to deny releases in individual cases.

After a denial of parole, the parole board must schedule a rehearing within three years for most prisoners.²⁶ Prisoners with more than ten years remaining on their sentences must be given a rehearing within five years.²⁷

Good time and earned time credits

²¹ Across felony Classes B through D, if the sentencing court were to impose a judicial maximum term shorter than the longest allowable statutory maximum sentence, the court’s discretion to vary the minimum-maximum ratio would shrink.

²² It is hard to supply a rationale for this pattern. In most states that vary DOIs by seriousness of offenses, it is the lower-level felonies that receive sentences with the highest DOIs. Nevada is a rare instance of the opposite approach. Perhaps the Nevada legislature believed it was important to create a meaningful gatekeeping authority for the longest sentences, but appropriate to scale it down for less serious cases.

²³ Ineligible prisoners include those with a consecutive sentence still to serve, those previously granted parole on the same sentence, and those ineligible for discretionary parole release. Nev. Rev. Stat. § 213.1215(1).

²⁴ Nev. Rev. Stat. § 213.1215(6). Under the wording of this provision, this streamlined procedure is not available if a victim has formally requested notification of parole release hearings.

²⁵ Nev. Rev. Stat. § 213.1215(1),(6).

²⁶ Nev. Rev. Stat. § 213.142.

²⁷ *Id.*

Nevada has a multi-layered system of good time and earned time credits, which are deducted from prisoners' minimum and maximum terms.²⁸ The advancement of parole release eligibility is limited to 58 percent of the minimum term.²⁹ Deductions from judicial maximum terms produce earlier mandatory release dates (MRDs) so long as credits earned are not forfeited. "Movable MRDs" are very common nationwide, but Nevada is among the more generous states in the total deductions that are reasonably possible for prisoners to earn.³⁰

Nevada offers good time credits of 20 days per month without serious infraction and performance of assigned duties in a "faithful, orderly and peaceable" manner; and up to 10 additional days per month for "diligence in labor and study."³¹ Full good-time earnings of 30 days per month throughout a prison term would result in an MRD at the 50-percent mark of a prisoners' judicial maximum term.

In addition, earned time credits are available under the following schedules:

- 60 days for earning a GED or its equivalent
- 90 days for earning a high school diploma
- 120 days for earning an associate degree
- Up to 90 days for each additional higher education degree earned
- Up to 10 days each month for participation in reentry programs, work release programs, conservation camps, or in a center for the purpose of making restitution³²
- Up to 60 days for completion of a substance use disorder program.³³

²⁸ Nev. Rev. Stat. § 209.4465(7)(a),(b) ("Except as otherwise provided in subsections 8 and 9, credits earned pursuant to this section: ... [m]ust be deducted from the maximum term or the maximum aggregate term imposed by the sentence, as applicable; and ... [a]pply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.").

²⁹ Nev. Rev. Stat. § 209.4465(9).

³⁰ 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). We define "generous" deductions from maximum terms through movable MRDs as deductions of 40 percent or more that are realistically achievable by prisoners. "Average" deductions are those in the range of 20 to 39 percent. "Minimal" deductions are in the range of 19 percent or less. See *id.* at 88.

³¹ Nev. Rev. Stat. § 209.4465(1),(2). Additionally, the Governor may, by executive order, authorize credit for up to 5 days each month a prisoner serves, if the Governor determines it to be necessary. Nev. Rev. Stat. § 209.4465(10). (Credits must be applied uniformly to all prisoners serving a sentence at the time the Governor issues the executive order.)

³² Nev. Rev. Stat. § 209.4465(2)-(4).

³³ Nev. Rev. Stat. § 209.448.

- Up to 60 days for completion of a vocational education and training program or any other program approved by the department of corrections³⁴

A prisoner may forfeit all or part of their credits for commission of a new crime, serious violations of DOC regulations, or for a positive drug test.³⁵ The department of corrections has discretion to restore credits after they are forfeited.³⁶

Parole conditioned on restitution

Certain crimes against victims 60 or older require a prisoner to pay the victim at least 80 percent of any restitution set by the court before the prisoner may be released on parole.³⁷ Before release is denied on these grounds, however, the parole board must determine that the prisoner has the ability to make restitution but has willfully failed to make payments.³⁸

Indeterminacy varies by felony class

The general rules for prison release in Nevada create different patterns of indeterminacy for (1) Class B felonies; (2) Class C felonies; and (3) Classes D and E felonies.³⁹ Within each of these felony classes, degrees of indeterminacy also vary depending on the judicial maximum sentence and the minimum-maximum ratio set by the court within statutorily permissible boundaries. For each felony class, sentences with higher degrees of indeterminacy are associated with longer maximum terms and shorter minimum terms.

One broad observation is applicable to all general-rules prison sentences in Nevada: The longest possible minimum term imposed by the court can never be more than 40 percent of the judicial maximum, and such “40-percent” minimum terms can be shortened by Nevada’s system of good time and earned time credits.⁴⁰ Such credits may produce reductions of as much as 58

³⁴ Nev. Rev. Stat. § 209.449 ([p]risoners who complete such programs with “meritorious or exceptional achievement” may be granted up to 60 days in addition to the 60 days for completion).

³⁵ Nev. Rev. Stat. § 209.451.

³⁶ *Id.*

³⁷ Nev. Rev. Stat. § 213.1216. The crimes included may be found in Nev. Rev. Stat. § 193.167(1)(h)-(1)(i) and Nev. Rev. Stat. § 193.167.

³⁸ Nev. Rev. Stat. § 213.1216(2).

³⁹ Class A felonies all carry life terms or the death penalty. The rules of indeterminacy for life sentences in Nevada are considered later in this report.

⁴⁰ Of course, the Nevada system is capable of producing individual sentences with lower degrees of indeterminacy than the general-rules classes of sentences discussed above. These would include sentences for especially severe crimes or repeat offenders that carry mandatory minimum terms longer than one year as well as special classes of sentences that limit or remove parole eligibility entirely, such as life without parole (LWOP). The focus of this project, however, is on the states’ approaches to general-rules prison sentences that apply to the main body of the prison population.

percent of prisoners' judicial minimum terms. (In theory, greater reductions could be won with heavy earned time credits, but there is a statutory cutoff of 58 percent.) Thus, when judges impose 40-percent judicial sentences (those with the longest allowable minimum terms), potential credit allowances push first parole release eligibility to the 16.8-percent mark of the judicial maximum term. Such sentences are about 83 percent indeterminate.

Among all classes of sentences that follow the general rules of prison release, therefore, the *least* indeterminate sentences are *extremely high in indeterminacy* in the ranking system developed for this project (see pp. iii-iv). When comparing one Nevada general-rules prison sentence to another, many different degrees of indeterminacy are allowable—but all fall within the category of extremely high indeterminacy.

The highest degree of indeterminacy for Classes B through E felonies is constrained by the requirement that minimum prison sentences must always be at least one year. For each class of felony, sentencing judges have the power to vary the lengths of minimum terms between one year and the 40-percent mark of whatever maximum sentence the judge chooses to impose. For more serious felonies, this is a modest form of “gatekeeping” discretion in the hands of sentencing courts. For less serious felonies, it is a power of diminishing consequence.

Class B felonies

For Class B felonies, Nevada courts can come very close to producing sentences of 100 percent indeterminacy, but only in limited circumstances. For such offenses, the mandatory one year minimum could conceivably be matched with a judicial maximum term as long as 20 years (the longest maximum allowable by law). Such a sentence would be 95 percent indeterminate, even before taking account of good time and earned time credits. With full credit earnings, the one-year minimum term could be reduced to a little over five months (under the statutory cap of 58-percent reductions from minimum terms). Thus, parole eligibility could in theory arrive as early as two percent of the judicial maximum term. At 98 percent indeterminacy, this is the highest degree of indeterminacy the Nevada system is capable of producing—but only for Class B felonies with maximums at the statutory ceiling of 20 years. For shorter maximum sentences, the highest possible degree of indeterminacy would be less. The same required minimum term of one year applies no matter how long or short the maximum sentence.

In summary, ordinary sentences for Class B felonies in Nevada are extremely high in indeterminacy, but courts have some authority to alter the degrees of indeterminacy in the individual sentences they impose. The total range of variability is between sentences that are 83 and 98 percent indeterminate.

Nevada Figures 3 and 4 below depict sentences for Class B felonies with 20-year judicial maximum terms (the longest available to sentencing judges). Nevada Figure 3 illustrates such sentences in which the court has imposed the *longest* allowable minimum term (at the 40-percent mark, reducible to about 17 percent with full credits). Nevada Figure 4 shows the same

sentence with the *shortest* allowable minimum term (one year, reducible to about five months with full credits).

Nevada Figures 3 and 4 also show the possible effects of good time and earned time on prisoners' mandatory release dates (MRDs). MRDs are movable in Nevada without any statutory cap on possible reductions, so we have estimated the total credit-based reductions that high-achieving prisoners could realistically earn before reaching their earliest MRDs. As more credits accrue, MRDs move earlier and earlier on the timeline, leaving less time for prisoners to earn additional credits.⁴¹

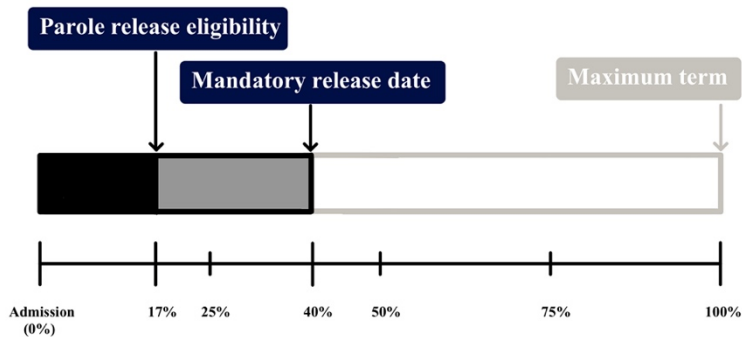
Nevada Figures 3 and 4 assume a prisoner who has earned 30 days of good time credits throughout the prison term plus an additional 10 days per month for continuous participation in reentry programs, work release programs, conservation camps, or in a center for the purpose of making restitution. These credits, accruing over time, would bring the MRD back to the 43-percent mark, or 103 months of a 240-month maximum sentence. We also assume earnings of 180 days of credit for two educational achievements and 60 days for the completion of drug treatment program—for a total of eight months of additional credits. This would move the MRD back to the 95-month mark of the timeline, or about the 40-percent mark of the maximum term.⁴² This calculation is the same for both Nevada Figures 3 and 4.

The population multiplier potential (PMP) for this class of sentences varies from 5.9:1 (for sentences with judicial minimum terms set at 40 percent of their maximum terms) to 50:1 at the highest extreme (for a 20-year judicial maximum sentence with a one-year judicial minimum).

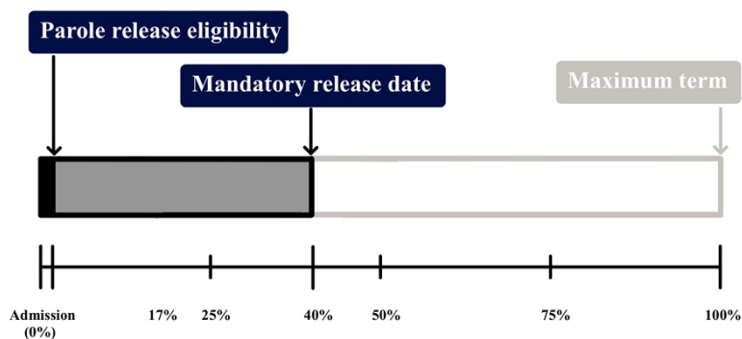
⁴¹ Nevada Figures 3 and 4 both show the same estimated reductions from the 20-year judicial maximum term based on movable MRDs because such reductions are independent of the form of the judicial sentence. (That is, while judges have discretion to vary the minimum-maximum ratios of their prison sentences, this has no effect on prisoners' statutory abilities to earn credits against the maximum.)

⁴² The position of the MRD at the 40-percent mark in Nevada Figures 3 and 4 is not meant to reflect the credit earnings of an average prisoner, but the outer boundary of what might be accomplished by a high-achieving prisoner. This is similar to the position of parole eligibility dates on our timelines, which show the earliest possible timing of parole release, not average dates of release. We conceive of indeterminacy as the full potential variation from shortest- to longest-time-served that is realistically available to individual prisoners.

Nevada Figure 3. Prison-Release Timeline for General-Rules Sentences, Class B Felony with 20-Year Maximum Term, Longest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



Nevada Figure 4. Prison-Release Timeline for General-Rules Sentences, Class B Felony with 20-Year Maximum Term, Shortest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



* Full credit earnings are based on a hypothetical high-achieving prisoner who wins all available monthly discounts plus the most most earned time credits realistically available

Class C felonies

Class C felonies have statutory maximum terms of only five years. The most indeterminate sentence a judge can produce is one-to-five years, with the one-year minimum reducible (by 58 percent) to just over five months with credits. Such a sentence would be about eight percent determinate and nearly 92 percent indeterminate.

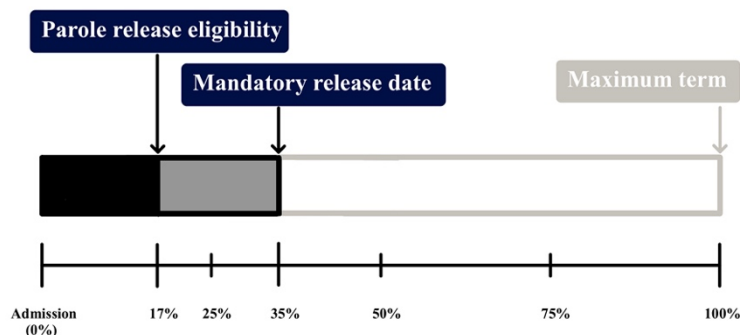
Figures 5 and 6 both posit that the sentencing court has imposed the longest allowable maximum term of five years for a Class C felony. Nevada Figure 5 further assumes that the court has chosen the *longest* permitted minimum term (40 percent of the maximum or 24 months, reducible to about 17 percent of the maximum by credits). On a five-year maximum, this means that first parole release eligibility would occur shortly after the prisoner had served 10 months.

Nevada Figure 6 takes the same sentence but assumes the sentencing court has chosen the *shortest* allowable minimum term of one year, which would be reducible to about five months with full credits. This yields parole release eligibility at about the eight-percent mark of the judicial maximum sentence.

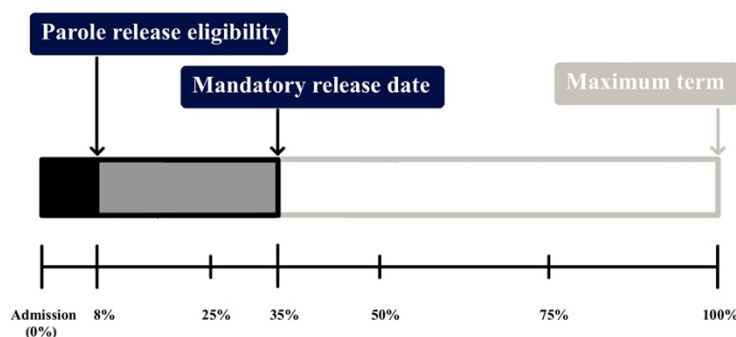
Nevada Figures 5 and 6 also show the possible effects of good time and earned time on prisoners' mandatory release dates (MRDs). As with earlier figures, we must estimate the amount of credit earnings a high-achieving prisoner could realistically expect to accrue in a sentence of this length. If we assume full and continuous earnings of good time credits plus credits for participation in reentry programs, work release programs, conservation camps, or in a center for the purpose of making restitution, prisoners would earn release dates at the 43-percent mark of their 60-month judicial maximum terms, or at about 26 months. If we then subtract 90 plus 60 days for a high school diploma and completion of a drug treatment program, the MRD moves back to 21 months—or at the 35-percent mark of the judicial maximum term.

The population multiplier potential (PMP) for this class of sentences varies from 5.9:1 (for sentences with judicial minimum terms set at 40 percent of their maximum terms) to 12.5:1 at the highest extreme (for a five-year judicial maximum sentence with a one-year judicial minimum). All PMPs in between these two extremes are consistent with our definition of *extremely high degrees of indeterminacy*.

Nevada Figure 5. Prison-Release Timeline for General-Rules Sentences, Class C Felony with 5-Year Maximum Term, Longest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



Nevada Figure 6. Prison-Release Timeline for General-Rules Sentences, Class C Felony with 5-Year Maximum Term, Shortest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



* Full credit earnings are based on a hypothetical high-achieving prisoner who wins all available monthly discounts plus the most most earned time credits realistically available

Class D and E felonies

The general rules for felonies of Classes D and E are closely similar to those for Class C, altered slightly because the longest available maximum term is four years rather than five. The longest minimum term would produce parole release eligibility at the 17-percent mark of the judicial maximum, or after a little more than eight months of a 48-month sentence. The shortest minimum term of one year would yield parole eligibility after about 5 months, or a little more than 10 percent of the maximum.

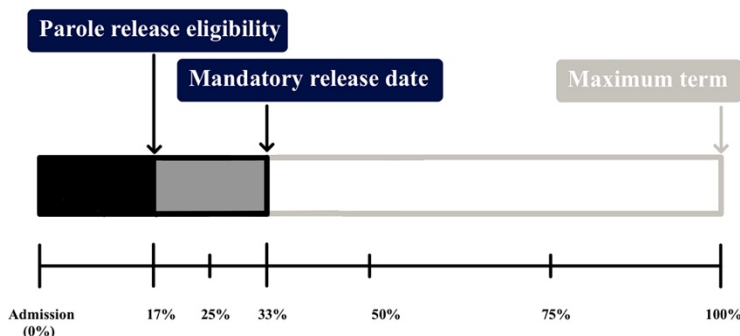
Movable MRDs for felony Classes D and E, with continuous monthly credits of all available kinds, would fall at the 43-percent mark of the maximum term or nearly 21 months. If we then subtract 90 plus 60 days for a high school diploma and completion of a drug treatment

program, the MRD moves back to 16 months—or at the 33-percent mark of the judicial maximum term.

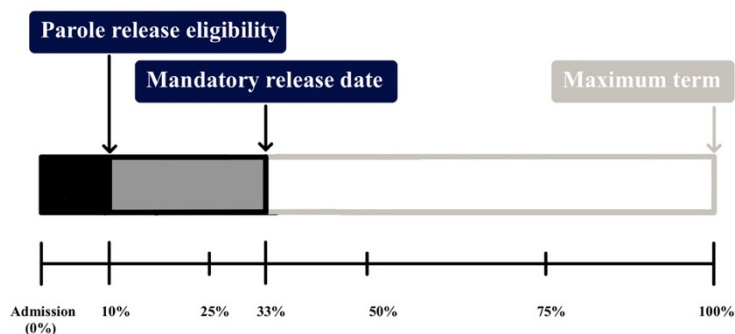
The population multiplier potential (PMP) for this class of sentences varies from 5.9:1 (for sentences with judicial minimum terms set at 40 percent of their maximum terms) to 10:1 at the highest extreme (for a four-year judicial maximum sentence with a one-year judicial minimum). All PMPs in between these two extremes are consistent with our definition of *extremely high degrees of indeterminacy*.

As shown in Nevada Figures 7 and 8, the prison-release timelines for felony Classes D and E are only modestly different than those for felony Class C (shown in Nevada Figures 5 and 6).

Nevada Figure 7. Prison-Release Timeline for General-Rules Sentences, Class D or E Felony with 4-Year Maximum Term, Longest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



Nevada Figure 8. Prison-Release Timeline for General-Rules Sentences, Class D or E Felony with 4-Year Maximum Term, Shortest Allowable Minimum Term, and Full Good Time and Earned Time Credits*



* Full credit earnings are based on a hypothetical high-achieving prisoner who wins all available monthly discounts plus the most most earned time credits realistically available

Collapsed sentences

The analysis above may overlook an authorized sentence configuration within Nevada’s general rules of prison release. For all felony Class B through E sentences in Nevada, a literal reading of the statutes might allow “collapsed sentences” in which the sentencing court imposes a maximum term only slightly higher than the one-year minimum term required in every case. We think such sentences would be rare, especially for more serious felonies, and we are also unsure whether this configuration would be held to violate the statutory rule that minimum terms can be no longer than 40 percent of maximum terms. That is, we do not know which of two statutory rules would prevail if the two were to come into conflict: the rule that the required minimum term must be no shorter than one year or the rule that the longest allowable minimum term may be no longer than 40 percent of the maximum term.

Although we believe there would be small numbers of collapsed sentences (even if they were held legally permissible), they would still carry substantial degrees of indeterminacy. For instance, a maximum term of one year and one day, if matched with a minimum term of one year, would carry parole release eligibility after about five months for prisoners who earned good time and earned time credits up to the statutory cap of 58-percent reduction. Parole eligibility for this extremely collapsed sentence would be at the 42-percent mark of the one year maximum. For a somewhat less collapsed sentence of one year to 18 months, parole eligibility after five months would come at the 28-percent mark of the judicial maximum term.

For the small category of collapsed sentences, therefore, it is possible to imagine sentences that carry *moderate* or *high* degrees of indeterminacy. This may be an exception to our statement earlier that general-rules sentences in Nevada are all extremely high in indeterminacy. Perhaps we should say instead that this is “nearly always” the case. Without evidence that collapsed sentences are imposed frequently in Nevada, however, we do not consider them to affect our overall understanding of prison release in general-rules cases.

2. Life sentences in Nevada

a. Adults

For offenses that carry parolable life terms, the permissible lengths of minimum terms are specified separately for each offense.⁴³ For people convicted of first degree murder who are given parolable life sentences, the required minimum term is 20 years.⁴⁴ Those convicted of second degree murder receive a minimum term of 10 years.⁴⁵ Judges have no discretion to alter these formulas.

⁴³ Nev. Rev. Stat. § 193.130(2)(a).

⁴⁴ Nev. Rev. Stat. § 200.030(4)(b)(2).

⁴⁵ Nev. Rev. Stat. § 200.030(5)(a).

b. Juvenile life sentences

Nevada has abolished sentences of life without parole (LWOP) for juveniles under age 18 at the time of their offenses.⁴⁶ Unless subject to earlier parole eligibility by any other provision of law, prisoners sentenced as an adult for an offense committed while under the age of 18 are eligible for parole after serving 15 years if the offense did not result in a victim's death, or after serving 20 years if the offense resulted in one victim's death.⁴⁷

People sentenced to LWOP who were under age 16 at the time of their offenses must be released upon completing their minimum terms if:

- 1) The prisoner has completed a general education, industrial, or vocational training program;
- 2) The Department has not identified the prisoner as a member of a group that poses a security threat; and
- 3) The prisoner has not committed any major regulations violations or been housed in disciplinary segregation within the last 24 months.⁴⁸

3. Infrequently used forms of prison release in Nevada

a. Compassionate release

In Nevada, medical release to residential confinement is available to certain prisoners, also known as the "298 Program."⁴⁹ Prisoners are eligible if they are physically incapacitated, severely ill, or expected to die within 18 months due to illness, and the Department has determined the prisoner is unlikely to pose a threat to public safety at present or in the future.⁵⁰ A transfer to residential confinement assigns a prisoner to the custody of the Division of Parole and Probation, but it is considered a continuation of imprisonment and not a release on

⁴⁶ Nev. Rev. Stat. § 176.025.

⁴⁷ Nev. Rev. Stat. § 213.12135 (not applicable to offenses that resulted in the death of two or more victims).

⁴⁸ Nev. Rev. Stat. § 213.1215(2)(a)-(d). (This statute provides additional reasons for mandatory release not cited here.)

⁴⁹ Nev. Rev. Stat. § 209.3925. (Pursuant to Nev. Rev. Stat. § 209.392, a prisoner is ineligible for residential confinement of any kind if they have recently committed a serious rule infraction, failed to perform their assigned duties in a faithful and orderly manner, have more than one prior conviction for any felony, have ever escaped or attempted escape from any jail or correctional institution, or if they have been convicted of a sexual offense, a category A or B felony, or any other felony involving the use or threatened use of force or violence within the last three years.)

⁵⁰ *Id.*

parole.⁵¹ Prisoners sentenced to death or to life without the possibility of parole are not eligible for transfer to residential confinement due to their health.⁵²

Prisoners aged 65 or older who have served more than half of their maximum terms are eligible for geriatric parole if:

- 1) They have not been convicted of a crime of violence, a crime against a child, a sexual offense, vehicular homicide, or certain DUI offenses;
- 2) They are not habitual criminals;
- 3) They are not serving a death or LWOP sentence; and
- 4) They do not pose a “significant and articulable” risk to public safety.⁵³

b. Clemency

Nevada’s State Board of Pardons Commissioners consists of the Governor, state supreme court justices, and the attorney general.⁵⁴ This Board examines applications for remission, commutation, and pardon.⁵⁵ The Board may commute a death sentence, but is prohibited by law from commuting a death sentence or a life sentence without parole to a sentence that would allow parole.⁵⁶

c. Release during overcrowding emergencies

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

4. Overall assessment of indeterminacy in Nevada’s prison-sentencing system

We rate Nevada’s prison sentencing system overall as one that operates with an *extremely high degree of indeterminacy* within the ranking system developed for this project (see pp. iii-iv). Our ranking is based on the state’s treatment of sentences that fall under the general rules of prison release for felony Classes B through E. For all (or nearly all) such cases, prison sentences under the standard formulas are *extremely high in indeterminacy*.

Extreme indeterminacy is produced in Nevada by statutory rules that judicial minimum terms may be no longer than 40 percent of judicial maximum terms, and the time to parole release

⁵¹ *Id.*

⁵² *Id.*

⁵³ Nev. Rev. Stat. § 213.12155.

⁵⁴ Nev. Rev. Stat. § 213.010.

⁵⁵ *Id.*

⁵⁶ Nev. Rev. Stat. § 213.085. Unless the prisoner was convicted for a crime they committed while under the age of 18, in which case, the Board may commute the sentence to one that would allow parole.

eligibility is reducible by as much as 58 percent through the accrual of credits. This places dates of parole release eligibility under the joint control of sentencing courts and the department of corrections.

Sentencing courts are free to impose minimum terms as short as one year for felony Classes B through E. With 58-percent reductions for good time and earned time, these one-year minimums can be shortened to about five months. When Nevada sentencing courts impose the shortest allowable minimum terms, they can occasionally produce sentences that approach 100 percent indeterminacy.

Nevada makes liberal use of the mechanism of movable mandatory release dates (“movable MRDs”) to shorten prisoners’ terms if they fail to win earlier release by the parole board. By our estimates, for the longest maximum prison terms, the accrual of good time and earned time credits could shave off as much as 60 percent of time-to-be-served, with MRDs at the 40-percent mark of the judicial maximum sentence. For shorter sentences of four or five years, we estimate slightly earlier MRDs for high-earning prisoners measured as percentages, with reductions nearing two-thirds of judicial maximum terms. Compared with other states surveyed in this study, the percentage reductions driving movable MRDs in Nevada are among the most generous.