



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: WYOMING

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Prison-Release Discretion and Prison Population Size

State Report: Wyoming

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

Definitions and Concepts

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

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

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

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

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

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

Rankings of “Degrees of Indeterminacy”

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

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

Benchmarks for rankings of “degrees of indeterminacy”

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

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

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

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

Prison-Release Discretion and Prison Population Size

State Report: Wyoming¹

Executive Summary

We rate Wyoming's prison-sentencing system overall as one that operates with a *high degree of indeterminacy* within the ranking system developed for this project (see p. iv). This judgment is based on considerable guesswork, because sentencing courts in Wyoming have wide discretion to vary the degrees of indeterminacy in their individual sentences. They generally have discretion to set minimum terms anywhere from 0 to 90 percent of the maximum sentences they impose. Based on a number of hypothetical scenarios, and our expectations of how judges would operate within the Wyoming framework, we make an educated guess that the most common prison sentences would carry a *high degree of indeterminacy*.

Through good time credit earnings, movable mandatory release dates (MRDs) in Wyoming can reduce judicial maximum sentences by as much as one-third. Such reductions are well within the mainstream of practice across all 50 states. Given that movable MRDs are driven by good time in Wyoming (as opposed to earned time), it is likely that a large percentage of prisoners receive the full one-third reduction.

Terminology note

This report will refer to the Wyoming Board of Parole as the “parole board.” The Wyoming 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 Wyoming, see Alexis Lee Watts, Ni Zhang, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Wyoming* (Robina Institute of Criminal Law and Criminal Justice, 2017) (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

Wyoming's prison-rate history, 1972 to 2020

At yearend 2020, Wyoming's prison rate was 358 per 100,000 general population, with a prison population of 2,087.² Wyoming's prison rate was 18th highest among all states.

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

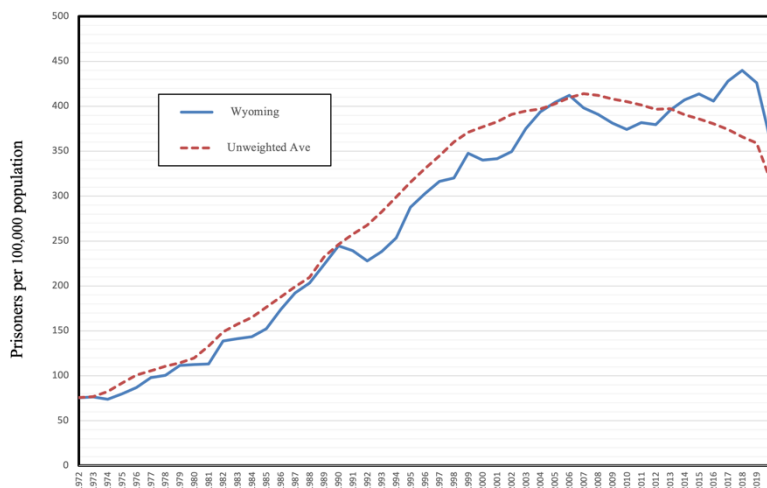
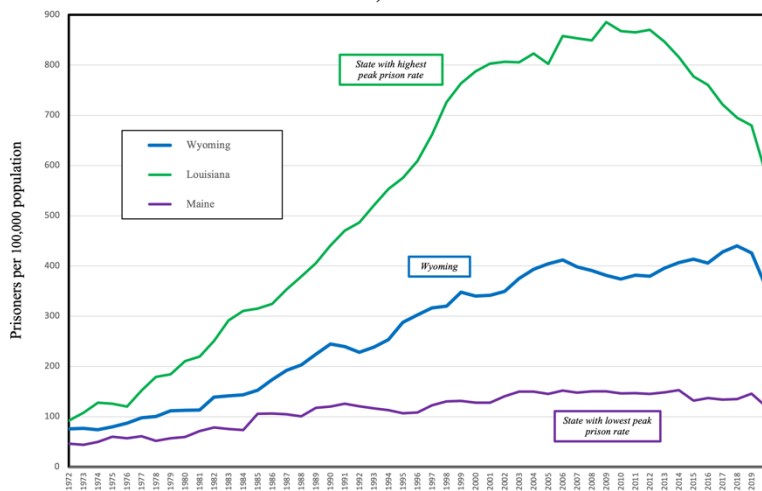


Figure 2. Prison Rate Change in Wyoming, Louisiana, and Maine, 1972 to 2020



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 Wyoming's imprisonment rates after 2020 is presented below in the section on "The COVID period in Wyoming."

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).

Wyoming reached its peak prison rate in 2018 at 440 per 100,000, which dropped to 358 per 100,000 in 2020. This is a net difference of -82 per 100,000, which was the 38th 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 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.⁶

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year or so, it is relevant to ask whether indeterminacy in American prison sentences played a consequential role in events. An adequate history cannot yet be written, but considerable data has already been assembled.

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

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

In calendar year 2020, Wyoming's prison rate fell from 426 to 358 per 100,000—a one-year decline of -68 per 100,000. This was the 8th largest one-year drop reported among all 50 states for that year.⁹ Measured in percentage terms, it was a 16-percent reduction in the state's prison rate. The state's total prison population fell by 392 people, from 2,479 to 2,087.¹⁰

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.

Special initiatives for COVID releases were not the major cause of this drop. In a separate study, the Robina Institute found no (zero) “non-routine” COVID-influenced releases in Wyoming from March 2020 through December 2021.¹¹

Falling admissions appear to have been the most important factor in Wyoming’s reduction of prison population in 2020, although routine releases may have played a partial role. The number of prison admissions in the state dropped by 24 percent in 2020 compared with the previous year (from 952 to 726). Total numbers of releases increased in 2020 by eight percent (from 1,013 to 1,094). Wyoming was one of only 11 states to see an increase in the absolute number of releases in 2020.¹² This suggests that the routine processes of prison release in the state, such as discretionary parole release, shifted into a somewhat higher gear during the first year of the pandemic.

The COVID drop in Wyoming’s prison population did not extend to a second year. From yearend 2020 to December 2021, the Vera Institute reported that Wyoming saw an increase in its prison population, from 2,087 to 2,164—or 3.7 percent.¹³ At the end of March 2022, the Wyoming Department of Corrections reported a total prison population of 2,280, which indicates a continuing rise beyond 2021.¹⁴

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, forthcoming 2022), Appendix A.

¹² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 18 table 8, 20 table 9.

¹³ We suspect an error of some kind because Vera’s West Virginia prison population total for yearend 2019 is identical to BJS’s. See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2. As a general matter, Vera’s *People in Prison* reports should not be treated uncritically as “updates” of BJS’s annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau’s July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁴ Wyoming Department of Corrections, *Population Report for Quarter Ending: 2022 Q1*, at https://drive.google.com/file/d/1wUgwXb2_vFgKI3Vne89HjFuIR2PN9Y5d/view.

1. General rules of prison release in Wyoming

Unlike most other states, Wyoming has no general scheme for the grading of felonies and misdemeanors. Instead, authorized punishments are set out in statutory provisions applicable to specific crimes.¹⁵ For most crimes, sentencing courts have broad discretion to select maximum terms within statutory limits and to impose minimum terms of any length up to 90 percent of the judicial maximum sentence the court has selected. The courts' wide discretion to set minimum terms may be restricted for offenses that require a statutory minimum term of designated length.¹⁶

Prisoners' first eligibility for discretionary parole release eligibility occurs after completion of their judicial minimum terms reduced by any applicable good time credits they have earned.¹⁷ Under the current system, standard good time credits accrue at a rate of 15 days per month in the discretion of prison officials—an earning rate that would reduce the minimum term by 33 percent.¹⁸ In addition, the parole board is authorized to award “special good time” within regulatory limits.¹⁹ With respect to special good time credits, Wyoming takes the unusual approach of placing the parole board in the role of granting credits. In most cases, special good

¹⁵ See, e.g., Wyo. Stat. § 6-2-101(b) (“A person convicted of murder in the first degree shall be punished by death, life imprisonment without parole or life imprisonment according to law, except that a person convicted of murder in the first degree who was under the age of eighteen (18) years at the time of the offense shall be punished by life imprisonment.”); Wyo. Stat. § 6-2-104(a) (a person convicted of murder in the second degree “shall be imprisoned in the penitentiary for any term not less than twenty (20) years, or during life”); Wyo. Stat. § 6-2-105(b) (“...manslaughter is a felony punishable by imprisonment in the penitentiary for not more than twenty (20) years.”); Wyo. Stat. § 6-2-107(b) (“Criminally negligent homicide is a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than two thousand dollars (\$2,000.00), or both.”).

¹⁶ Wyo. Stat. § 7-13-201 (“Except where a term of life is required by law, ... when a person is sentenced for the commission of a felony, the court imposing the sentence shall not fix a definite term of imprisonment but shall establish a maximum and minimum term within the limits authorized for the statute violated. The maximum term shall not be greater than the maximum provided by law for the statute violated, and the minimum term shall not be less than the minimum provided by law for the statute violated, nor greater than ninety percent (90%) of the maximum term imposed.”).

¹⁷ Wyo. Stat. § 7-13-402(a). Unusually, good time formulas in Wyoming are set by rulemaking by the governor. See Wyo. Stat. § 7-13-420(a) (“The governor, after consultation with the board and the department, shall adopt rules and regulations to establish a system of good time and special good time allowances for inmates of ... any state penal institution.”).

¹⁸ Good time is awarded at the warden's discretion, for “proper and helpful attitude, conduct, and behavior,” which includes compliance with an individualized case plan, participation in work, education, vocation programs, job training, treatment, or rehabilitative programs, and adherence to institutional rules. Wyo. Rules & Regs. 001.0001.0 §§ 2(i),3(b).

¹⁹ Wyo. Rules & Regs. 001.0001.0 § 2(j) (““Special good time allowance” is a reduction of the minimum sentence of an inmate in addition to the monthly good time allowance authorized herein. Special good time may be awarded at the discretion of the Board within limits set forth herein based on an inmate's especially proper and helpful attitude and exemplary conduct and behavior. The granting of special good time is a matter of grace and not that of a right of inmates.”).

time may be granted up to one month for each year of a prisoner's minimum term, with a total cap of one year's reduction.²⁰ Thus, in most cases, special good time could add up to 30 days of credit per year; in percentage terms this translates into roughly an eight percent reduction from the minimum term. Combined with ordinary good time, this brings the total available deduction from judicial minimum terms to about 41 percent.²¹

Prisoners denied parole release at their initial hearing are heard annually thereafter by the parole board.²²

Standard good time is also deducted from judicial maximum sentences to establish earlier mandatory release dates (MRDs), provided credits have not been forfeited. "Special good time" awards are not credited against maximum terms.²³ Standard good time earned continuously throughout a prison term would "move" the MRD back to the two-thirds mark of the judicial maximum term.²⁴

²⁰ Wyo. Rules & Regs. 001.0001.0 § 4(a) ("The Board may award up to one month of special good time off the minimum sentence for every year in length of the minimum sentence, up to a maximum reduction of one year, in addition to the monthly good time allowance authorized herein."). Awards of special good time must be based off one of the following circumstances per Wyo. Rules & Regs. 001.0001.0 § 4(a)(i-vii):

- (i) It will assist the inmate in attending a program needed for rehabilitation, mental or medical treatment;
- (ii) It will prevent an inmate from returning to general population upon completion of ITU/TC;
- (iii) It will expedite an Immigration and Customs Enforcement detainer for deportation only;
- (iv) It will expedite a felony detainer from another jurisdiction with a term of imprisonment equal to or greater than their current sentence;
- (v) It will assist in further education;
- (vi) It will assist in transition back to the community; or
- (vii) An inmate has demonstrated an especially proper and helpful attitude and exemplary conduct and behavior.

Special good time in the lump sum of one year may also be awarded, regardless of the length of a prisoner's minimum term, for the purpose of parole to a community treatment program. Wyo. Rules & Regs. 001.0001.0 § 4(d).

²¹ For minimum terms of longer than twelve years, however, the availability of special good time credits would run out after they had added up to one year. This could occur as early as the 12-year mark of time served by an individual prisoner.

²² Wyo. Bd. of Parole, Policy and Procedure Manual, (2018), at 22, <https://drive.google.com/open?id=1wkXChfYsBtG7RXzGkU-grIHLmGtI6oEA>.

²³ Wyo. Rules & Regs. 001.0001.0 § 2(j).

²⁴ Movable MRDs of this kind are common nationwide. The amount of percentage reductions offered by Wyoming is in the "average" range when compared to other states. In this project, we use the following benchmarks for

Either the department of corrections or the parole board may remove a prisoner's good time credits for failure to demonstrate a proper and helpful attitude, conduct, and behavior. The DOC or parole board may also foreclose future earnings, but only after the prisoner has been given an evidentiary hearing. Once lost, good time may be restored at the discretion of the parole board.²⁵

Timeline Diagrams

Wyoming is among a minority of states that allow trial courts substantial latitude in fashioning the “minimum-maximum ratios” of their prison sentences. This has the effect of delegating considerable power to sentencing courts to decide the amount of indeterminacy that will be built into their individual sentences. Across all judicial sentences, these case-by-case decisions have large impact on the degree of indeterminacy in the prison-sentencing system as a whole. To an important extent, the courts act as “gatekeepers” of the degrees of indeterminacy that will be present throughout the system.

The judicial gatekeeping power over indeterminacy extends to all general-rules felonies. It is therefore impossible to create fixed models of time-served discretion under judicial sentences in Wyoming, but we can posit a number of possible scenarios as illustrations of the rules of prison release at work.

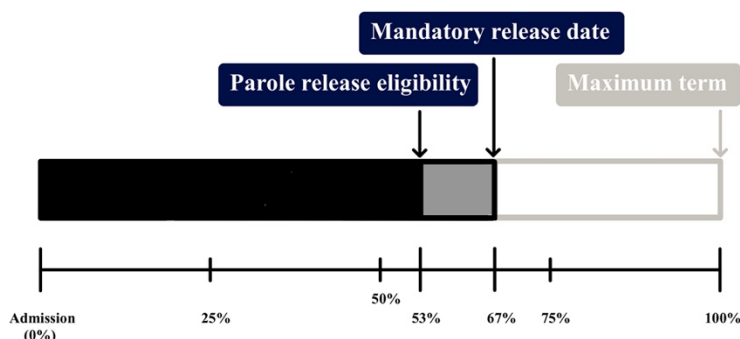
First, Wyoming Figure 3 depicts cases in which the sentencing court has imposed the longest allowable minimum term of 90 percent the length of the judicial maximum term. The figure also takes account of generally-available good time and special good time credits, which could reduce the judicial minimum term by as much as 41 percent. With this total deduction, first parole release eligibility could occur as early as the 53-percent mark of the judicial maximum sentence. Wyoming Figure 3 incorporates these available credit-based discounts. In the scale created for this project, the sentence shown in Wyoming Figure 3 carries a *moderate degree of indeterminacy* (see p. iv).

Wyoming Figure 3 also shows the possible effect of Wyoming's movable MRDs on time served under this sentence. For a prisoner who has not won earlier release from the parole board, full good time credits would place the MRD at the two-thirds mark of the maximum term.

classifications of credit earning levels as “generous,” “moderate,” or “minimal.” Our cutoffs are: “generous” deductions (40 percent off or more); “average” (20 to 39 percent); and “minimal” (19 percent or less). 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.

²⁵ Wyo. Rules & Regs. 001.0001.0 §§ 5,6.

Wyoming Figure 3. Prison-Release Timeline for General-Rules Sentences with Minimum Term Set by Court at 90 Percent of Judicial Maximum Term

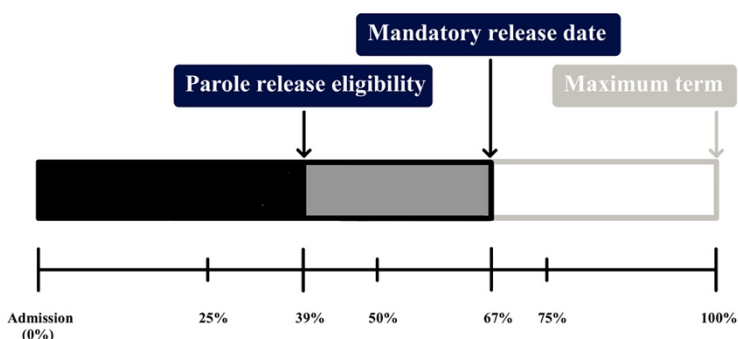


The PMP for the sentence in Wyoming Figure 3 is 1.9:1.

We cannot assume that Wyoming sentencing judges regularly impose minimum terms at the 90-percent limit allowed by statute, as shown in Wyoming Figure 3. Wyoming Figure 4 works out the configuration of a sentence with a judicial minimum term that is set at the two-thirds mark of the judicial maximum. With full credits, parole release eligibility could occur as early as the 39-percent mark of the maximum. On our scale, such a sentence carries a *high degree of indeterminacy*, but it is very close to the borderline of moderate indeterminacy.

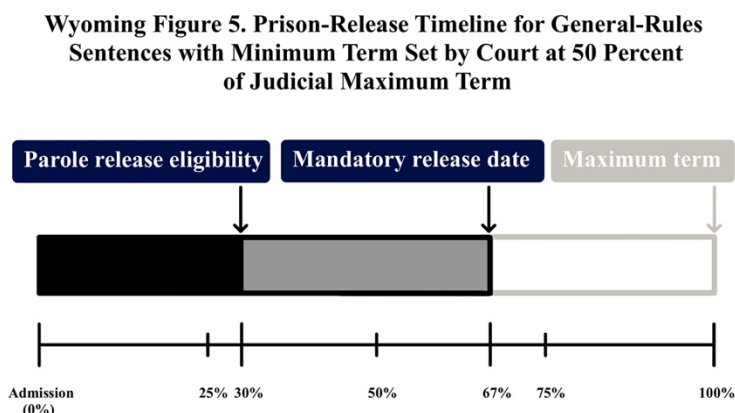
Wyoming Figure 4 also shows the possible effect of Wyoming's movable MRDs, which could occur as early as the two-thirds mark of the maximum term based on ordinary good time credits earned and not forfeited. (The potential one-third discount via movable MRDs is consistent across all classes of general-rules sentences in Wyoming.)

Wyoming Figure 4. Prison-Release Timeline for General-Rules Sentences with Minimum Term Set by Court at 67 Percent of Judicial Maximum Term



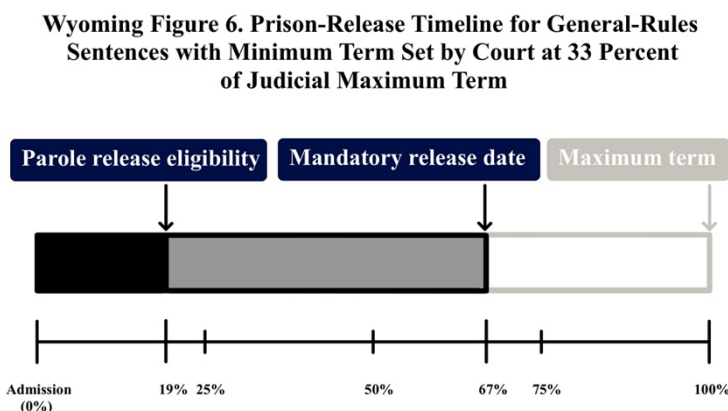
The PMP for the sentence in Wyoming Figure 4 is 2.6:1.

Wyoming Figure 5 repeats the exercise, this time assuming a case in which the judicial minimum term is set at 50 percent of the judicial maximum sentence. With all available credits, parole release eligibility could occur as early as 30 percent of the maximum term. The movable MRD, as in all general-rules felony cases, could be located as early as the two-thirds mark. The sentence shown in Wyoming Figure 5 is in the heart of the range of sentences that we consider to have a *high degree of indeterminacy*.



The PMP for the sentence in Wyoming Figure 5 is 3.3:1.

Wyoming Figure 6 now assumes a judicial minimum term at the one-third mark of the judicial maximum term. With full credit deductions, parole release eligibility could come as early as the 19-percent mark of the maximum sentence. The MRD is still positioned at the two-thirds mark. The sentence in Wyoming Figure 6 carries an *extremely high degree of indeterminacy* according to the scale for this project. Indeed, all judicial minimum terms at the 33-percent mark or lower would create sentences that carry an extremely high indeterminacy.

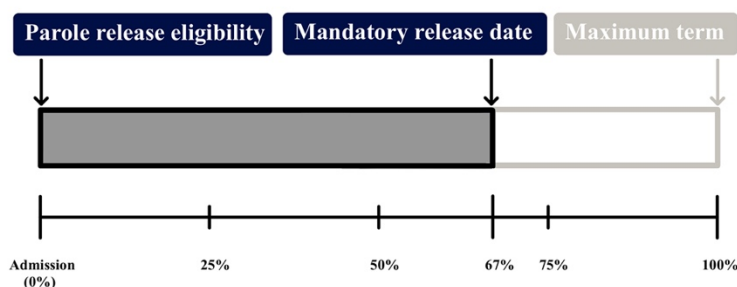


The PMP for the sentence in Wyoming Figure 6 is 5.3:1.

Finally, Wyoming Figure 7 posits a case in which the sentencing court has imposed a minimum term of zero.²⁶ The effect of a zero minimum term is that the prisoner will be eligible for parole release the moment he or she is admitted to prison. The actual length of term will be entirely within the discretion of the parole board—at least, until some competing release mechanism such as a movable MRD cancels the parole board’s power to deny release. In Wyoming Figure 6, the parole board holds unilateral release discretion and release-denial discretion until the two-thirds mark of the total sentence. After the two-thirds mark, the board’s release-denial power is no longer unilateral. After this juncture, release will be barred only if the decisions of two agencies coincide: the parole board’s denial of release and the department of corrections withholding of good time credits.

The PMP for the sentence in Wyoming Figure 7 is greater than 100:1.²⁷

Wyoming Figure 7. Prison-Release Timeline for General-Rules Sentences with Minimum Term Set by Court at Zero
Percent of Judicial Maximum Term



2. Life sentences in Wyoming

a. Adults

Wyoming has no life sentences for adults that include parole eligibility as a matter of course. Prisoners expressly sentenced to “life imprisonment without parole” must be incarcerated throughout their lives unless given a full pardon by the Governor. Other life sentences (not designated as “life imprisonment without parole”) may become parole eligible only if the Governor has commuted the sentence to a term of years.²⁸

²⁶ Sentences of this kind are authorized in several states nationwide.

²⁷ Technically, under such sentences, the parole board may release prisoners at the moment of their admission. The PMP for such sentences, if calculated in the same way as in other states, is a nonsensical ratio of ∞ :1. We prefer to use the “greater than 100:1” formulation to express the extreme indeterminacy and extremely large PMP associated with such sentence.

²⁸ Wyo. Stat. § 6-10-301(b),(c). The Wyoming Constitution expressly authorizes the legislature to create the penalty of “life imprisonment without parole” that is not subject to the Governor’s commutation power. Wyo.

b. Juvenile life sentences

By statute, a person sentenced to life imprisonment for an offense committed before age 18 is eligible for parole after commutation of their sentence to a term of years or after having served 25 years.²⁹

Life sentences for juvenile offenders may be converted into life without parole if, after they reach age 18, a prisoner serving such a sentence commits one of the following acts: “[A]ssault with a deadly weapon upon any officer, employee or inmate of any institution; or ... Escaped, attempted to escape or assisted others to escape from any institution.”³⁰

3. Infrequently used forms of prison release in Wyoming

a. Compassionate release

Prisoners eligible for “medical parole” include:

- i) Those with a serious incapacitating medical need requiring treatment beyond that which can be reasonably provided while confined in a state correctional facility;
- ii) Those incapacitated by age with deteriorating physical or mental health;
- iii) Those permanently physically incapacitated as a result of an irreversible injury, disease, or illness; and
- iv) Those suffering from a terminal illness caused by injury or disease which is predicted to result in death within twelve months.³¹

Prisoners sentenced to death or life without parole are ineligible medical parole.³²

Const. Art. 3, § 53 (“Notwithstanding Article 4, Section 5 of this Constitution, the legislature may by law create a penalty of life imprisonment without parole for specified crimes which sentence shall not be subject to commutation by the governor.”).

²⁹ Wyo. Stat. § 6-10-301(c).

³⁰ Wyo. Stat. §§ 6-10-301(c), 7-13-402(b)(i),(ii).

³¹ Wyo. Stat. § 7-13-424.

³² Wyo. Bd. of Parole, Policy and Procedure Manual (2018), at 50, <https://drive.google.com/open?id=1wkXChfYsBtG7RXzGkU-grIHLmGtI6oEA>.

b. Clemency

The Governor has the power to grant reprieves, commutations, and pardons after conviction for all offenses except cases of treason or impeachment.³³ The parole board may submit recommendations to the Governor for commutations.³⁴ Prisoners must serve a minimum of ten years before they may submit a “Petition for Commutation Hearing” to the parole board, and may submit only one petition every five years thereafter.³⁵

c. Release during overcrowding emergencies

Wyoming does not have a statute providing a permanent mechanism for responding to emergencies of prison overcrowding.

4. Overall assessment of Wyoming’s prison-sentencing system

With trepidation, we rate Wyoming’s prison-sentencing system overall as one that operates with a *high degree of indeterminacy* within the ranking system developed for this project (see p. iv). This judgment is based on educated guesswork. We have no data concerning the configurations of judicial criminal sentences in Wyoming. Crucially, we know nothing about courts’ past decision patterns in setting the minimum-maximum ratios of their prison sentences. In theory, all options shown earlier in Wyoming Figures 3 through 7 could describe the average sentence configuration in the state.

It is somewhat informative that the full range of options in Wyoming Figures 3 through 7 run from moderate to extremely high indeterminacy. This is because, even if a court imposes a minimum sentence of 90 percent of the maximum sentence, potential good time credits still establish at least a moderate degree of indeterminacy in the date of first parole release eligibility. We are confident that general-rules sentences cannot produce low or extremely low degrees of indeterminacy. This narrows down Wyoming’s relative position compared with other states.

Wyoming is not the only state in this study that gives appreciable judicial gatekeeping power over the DOIs of their sentences. When confronted with such a framework, our usual assumption is that judges prefer not to pronounce sentences with extremely high degrees of indeterminacy if they can just as easily do otherwise. Extremely high DOIs transfer most decisional power over time served to decisionmakers at the back end of the prison-sentencing system, making the judicial sentence a matter of secondary importance. Our general rule of

³³ Wyo. Const. art. IV, § 5.

³⁴ Wyo. Bd. of Parole, Policy and Procedure Manual (2018), at 31, <https://drive.google.com/open?id=1wkXChfYsBtG7RXzGkU-grIHLmGtI6oEA>.

³⁵ *Id.*

thumb is that judges have a bias towards preserving a substantial amount of meaningfulness in their pronounced sentences.

If we are correct, we would expect to see few sentences of the kind described in Wyoming Figures 6 and 7 (which carry extremely high degrees of indeterminacy). Instead, we would anticipate the center of gravity to be in the vicinity of Wyoming Figures 4 and 5 (with high degrees of indeterminacy). For lack of hard information, that is the basis for the back-of-the-envelope classification we offer in this report.

It is possible, however, at least based on our assumptions, that Wyoming judges might prefer to cast most of their sentences to be as determinate as the law allows. The furthest Wyoming courts can go in such a direction given credit-based reductions of minimum terms is to create sentences with a moderate degree of indeterminacy (as in Wyoming Figure 3). Given the way Wyoming's system is set up, this would require a fair amount of consistency in judicial practices—towards always setting very long minimum terms, near the uppermost legal limit of 90 percent. In other words, most judges would have to “pin the needle” in the direction of the highest DOI permitted in law. We view such lock-step decision patterns as inherently unlikely, although a tight-knit judicial culture—which could exist in a small-population state like Wyoming—might promote such uniformity of practice.

In contrast with the wide ranges of possible DOIs in Wyoming's prison sentences, the state has one standard approach to movable MRDs, which are equally available to all classes of general-rules sentences. There is no general rule, for example, that credit earning levels are reduced for prisoners convicted of violent offenses or prisoners with longer maximum terms. Movable MRDs in Wyoming can exert a meaningful effect on time actually served by individual prisoners, but the total amount of possible reductions from maximum terms are not unusually high (or low) by national standards. Wyoming's use of movable MRDs is near the middle of the bell curve of national approaches across all states.