



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

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

***STATE REPORT: ARIZONA***

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# Prison-Release Discretion and Prison Population Size

## State Report: Arizona

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

### Definitions and Concepts

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

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

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

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

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

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

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

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

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

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

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

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

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: Arizona<sup>1</sup>

#### *Executive Summary*

On our subjective ranking scale, we rate Arizona’s prison-sentencing system as one with an *extremely low degree of indeterminacy* overall, better stated as an *extremely high degree of determinacy*. Discretionary parole release has been abolished for all prisoners. The vast majority must serve at least 86 percent of their judicial maximum terms before release. These are among the most determinate sentences in the country for ordinary prisoners, comparable to those in Virginia, Oregon, and the federal system.

As with most American systems that have abolished parole-release discretion for the majority of prisoners, the primary location of back-end release discretion in Arizona is in the department of corrections, exercised by prison officials who administer the credit-earning and forfeiture rules. Other forms of back-end release discretion such as executive clemency and medical parole are rarely used and have no major impact on the system’s operation as a whole.

#### *Terminology note*

The Arizona Board of Executive Clemency acts as a parole board for the small number of prisoners in Arizona who are eligible for discretionary parole release. This report will refer to the board as the “Board of Executive Clemency.” The Arizona Department of Corrections will be referred to as the “department of corrections.”

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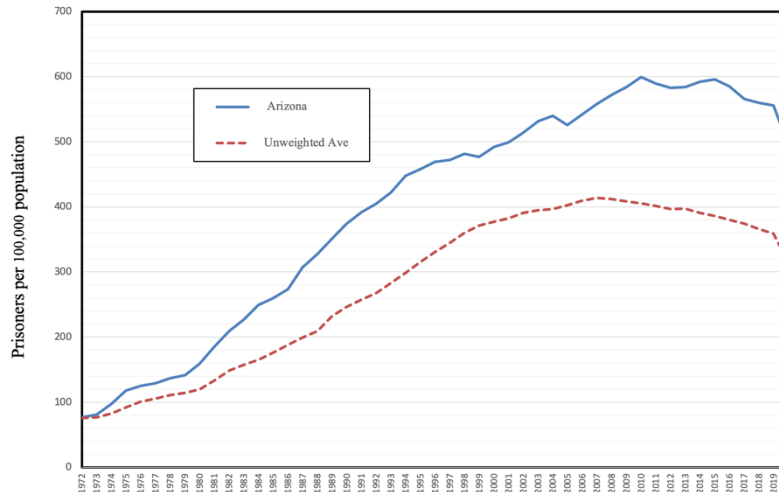
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures.

**Introduction**

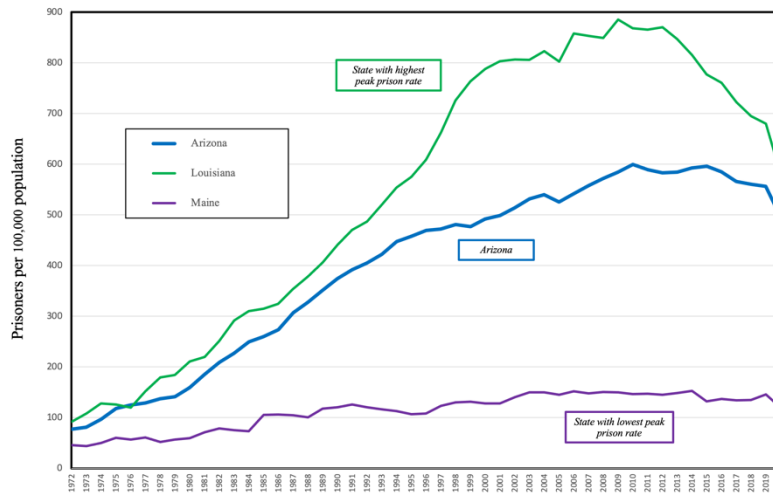
*Arizona’s prison-rate history, 1972 to 2020*

At yearend 2020, Arizona’s prison rate was 495 per 100,000 general population, with a prison population of 37,101.<sup>2</sup> Arizona’s prison rate was 5<sup>th</sup> highest among all states.

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



**Figure 2. Prison Rate Change in Arizona, 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

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



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 table 7 (for 2019-2020).

Arizona reached its peak prison rate in 2010 at 599 per 100,000, which dropped to 495 per 100,000 in 2020. This is a net difference of -104 per 100,000, which was the 29<sup>th</sup> largest prison-rate drop of all states from their peak positions (in various years) through 2020.

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

### *The COVID period*

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

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

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

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

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

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

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

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court

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

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

<sup>6</sup> Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2 (reporting a decrease of 15.8 percent in the state prison population overall in 2020 followed by a decrease of 1.8 percent in 2021).

<sup>7</sup> For a survey of state releasing practices in response to COVID, see Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 2022) (finding that 24 states released 0 to 150 prisoners in response to the pandemic from March 2020 through December 2021, while only five states and the federal system released more than 3,000 prisoners). The effects on annual imprisonment rates were even less than the absolute numbers of releases would suggest. Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions was “short time left on sentence.” Thus, some of the accelerated COVID releases in 2020 and 2021 were of prisoners who would have been released in the same year anyway, albeit somewhat later.

commitments, fewer revocations from community supervision, and some prisons' embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.<sup>8</sup>

### *The COVID period in Arizona*

Arizona made no special uses of prison-release processes in the early COVID period. In a separate study, the Robina Institute found no (zero) COVID-influenced releases in Arizona from March 2020 through December 2021. Arizona was one of 14 states that made no special effort to expedite prison releases in response to COVID.<sup>9</sup>

In calendar year 2020, Arizona's prison rate fell from 556 to 495 per 100,000—a one-year decline of -61 per 100,000. This was the 17<sup>th</sup> largest (fourth lowest) one-year drop reported among all 50 states for that year.<sup>10</sup> Measured in percentage terms, it was a five percent reduction in the state's prison rate. The state's total prison population fell by 3,850 people, from 40,951 to 37,101.<sup>11</sup>

Falling admissions were the overwhelming factor in Arizona's reduction of prison population in 2020. The number of prison admissions in the state dropped by 25.6 percent in 2020 compared

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

<sup>9</sup> 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), at 34 Appendix A.

<sup>10</sup> The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7.

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

with the previous year (from 13,440 to 9,999).<sup>12</sup> Total numbers of releases increased by 6.9 percent (from 13,034 in 2019 to 13,938 in 2020).<sup>13</sup>

From yearend 2020 to December 2021, the Vera Institute reported that Arizona saw a continued decrease in its prison population, from 37,731 to 33,886—or 10.2 percent.<sup>14</sup> As of July 31, 2022, the Arizona Department of Corrections reported a total prison population of 33,326.<sup>15</sup>

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

Arizona adopted a “truth in sentencing” scheme in 1993, abolishing discretionary parole release for nearly all prisoners effective January 1, 1994.<sup>16</sup> Prisoners in Arizona are released after serving their full judicial maximum terms minus any “earned release credits” they have accumulated (and not forfeited).<sup>17</sup>

General-rules prisoners in Arizona earn credits at the rate of one day per every six days of confinement.<sup>18</sup> All prisoners are admitted without credit-earning eligibility until they can be classified by the department of corrections. Eligibility is based on “factors related to a prisoner’s record while in the custody of the department, including work performance, compliance with all rules of the department, progress in any appropriate education, training

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

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

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

<sup>15</sup> Arizona Department of Corrections Rehabilitation and Reentry, ADC Institutional Capacity & Committed Population for the MONTH ENDING July 31, 2022, at <https://corrections.az.gov/sites/default/files/documents/reports/Bed%20Capacity/2022/bed-capacity-july22.pdf>.

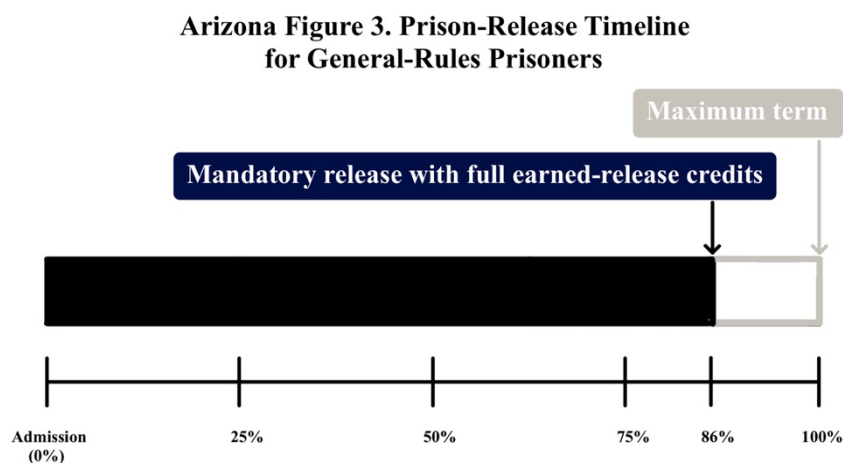
<sup>16</sup> Arizona State Senate, *Issue Brief: Truth in Sentencing* (2018), at 2.

<sup>17</sup> See Ariz. Rev. Stat. § 41-1604.07(D), (E).

<sup>18</sup> See Ariz. Rev. Stat. § 41-1604.07(B)(2).

or treatment programs and the performance of any assignments of confidence or trust.”<sup>19</sup> Credit-earning eligibility can be lost after it is won, and credits earned may be forfeited.<sup>20</sup>

Figure 3 charts the timeline for general-rules prisoners in Arizona, showing the earliest possible mandatory release dates at the 86-percent mark of the judicial maximum term. If some credits are not earned, or are forfeited and not restored, prisoners’ actual time served would fall in between the 86-percent mark and 100-percent completion of the judicial maximum sentence. Using this project’s subjective ranking scale, we rank Figure 3 sentences *extremely low in indeterminacy*, although it is probably more natural to say they have an *extremely high degree of determinacy*. (In our lexicon, these are alternative terms with the same meaning.) The sentences depicted in Figure 3 are among the most determinate general-rules sentences in the country, resembling those in Virginia, Oregon, and the federal system.



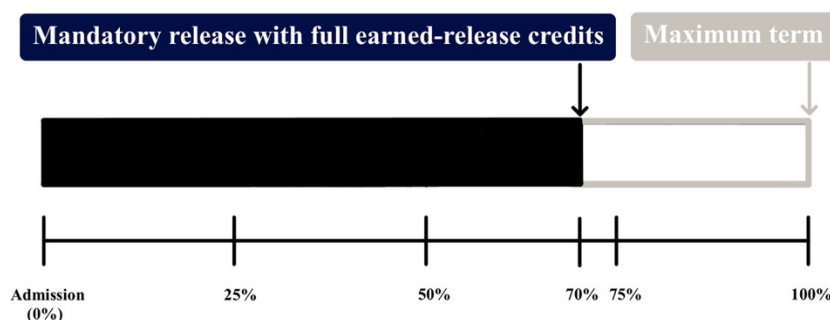
Prisoners convicted of certain drug possession offenses who have “completed a drug treatment program or other major self-improvement program” earn credits at the higher rate of three days for every seven days of confinement.<sup>21</sup> Figure 4 shows the timeline for such sentences, which allow for mandatory release as early as the 70-percent mark of the judicial maximum term.

<sup>19</sup> Ariz. Rev. Stat. § 41-1604.06(B). Current department of corrections policy is to classify prisoners within 20 days of admission. See Arizona State Senate, *Issue Brief: Truth in Sentencing* (2018).

<sup>20</sup> If a prisoner fails to adhere to the rules of the department or fails to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the prisoner may be reclassified to an earned release credit noneligible class. Ariz. Rev. Stat. § 41-1604.06(B), (C). Furthermore, the director may declare all release credits earned by the prisoner forfeited. Forfeited credits may be subsequently restored at the discretion of the director. Ariz. Rev. Stat. § 41-1604.07(D).

<sup>21</sup> Ariz. Rev. Stat. § 41-1604.07(B)(1).

Arizona Figure 4. Prison-Release Timeline for Prisoners  
Convicted of Low-Level Drug Offenses



On our subjective ranking scale, Figure 4 sentences have a *low degree of indeterminacy*, although we would prefer to say they carry a *high degree of determinacy*. While in Arizona, the Figure 4 sentence class applies only to a small majority of all prisoners, its configuration resembles that of general-rules sentences in states like Minnesota and Washington—our exemplars of high determinacy.

Arizona’s general-rules sentences shown in Figure 3 are 86 percent determinate and 14 percent indeterminate. They have a population multiplier potential (PMP) of only 1.16:1 (see p. v). That is, if all general-rules prisoners were held for their full maximum stays, their numbers would eventually stabilize at a point 16 percent larger than if they were all released at the earliest possible allowable date. Compared to most other states, there is not much potential impact on prison population size at the back end of Arizona’s prison-sentencing system. Variation from the smallest possible Figure 3 subpopulation to the largest is within the hands of the prison officials who administer the system of earned release credits.

For the subpopulation of prisoners serving Figure 4 sentences for low-level drug offenses, the PMP is 1.43:1. The sentences are 70 percent determinate and 30 percent indeterminate. For the Figure 4 group, the stingiest uses of release discretion by prison officials would eventually yield a subpopulation 43-percent larger in size than under the most generous uses of that discretion. This is a meaningful degree of potential impact on prison population size; however, it applies only to a small subset of all Arizona prisoners.

## 2. Life sentences

### a. Adults

In Arizona, sentences of life without the possibility of parole (LWOP) are called “natural life sentences.”<sup>22</sup> The only means by which a prisoner serving a natural life sentence can be released is via the clemency process.<sup>23</sup>

Effective January 1, 1994, parolable life sentences were abolished by the Arizona legislature. Oddly, Arizona judges continued to sentence some offenders to life with the possibility of parole pursuant to plea agreements, with minimum terms of 25 or 35 years.<sup>24</sup> In 2018, the legislature passed a law recognizing the validity of such sentences retroactively, but only for sentences imposed from January 1, 1994 through August 3, 2018.<sup>25</sup>

Based on a 2020 survey of state departments of corrections, the Sentencing Project reported that a little over four percent of all prisoners in Arizona were serving life sentences. Out of a total of 42,834 prisoners in that year, 1,231 or 2.9 percent were serving parolable life sentences and 531 or 1.2 percent were serving LWOP sentences.<sup>26</sup>

### b. Juvenile life sentences

Natural life sentences for prisoners who were under age 18 at the time of their offenses have not been banned by statute or court decision in Arizona.<sup>27</sup> Notably in 2020, the Arizona Supreme Court upheld aggregate sentences for juveniles (for multiple offenses) that extended beyond their life expectancies.<sup>28</sup>

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<sup>22</sup> Ariz. Rev. Stat. § 13-752(A); *State v. Vera*, 334 P.3d 754, 758 (Ariz. 2014).

<sup>23</sup> Ariz. Bd. of Exec. Clemency, *Frequently Asked Questions*, <https://boec.az.gov/helpful-information/frequently-asked-questions> (last visited May 27, 2023) (including prisoners with natural life sentences within the categories of inmates eligible for commutation).

<sup>24</sup> Michael Kiefer, *Hundreds of people were sentenced to life with chance of parole. Just one problem: It doesn't exist*, Ariz. Republic (Mar. 19, 2017), <https://www.azcentral.com/story/news/local/arizona-investigations/2017/03/19/myth-life-sentence-with-parole-arizona-clemency/99316310>.

<sup>25</sup> Ariz. Rev. Stat. § 13-718(A).

<sup>26</sup> Ashley Nellis, *No End in Sight: America's Enduring Reliance on Life Imprisonment* (The Sentencing Project, 2021), at 10 table 1.

<sup>27</sup> See Josh Rovner, *Juvenile Life Without Parole: An Overview* (The Sentencing Project, 2020).

<sup>28</sup> *State v. Soto-Fong*, 474 P.3d 34 (Ariz. 2020) (upholding consecutive sentences totaling 140 and 109 years); see *Court upholds sentences for juveniles beyond life expectancy* Associated Press (Oct. 9, 2020), <https://apnews.com/article/arizona-prisons-crime-us-supreme-court-sentencing-93491d8233a26305662dffc6896cfa53>.



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

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

The director of the department of corrections may authorize the furlough, temporary removal, or temporary release of any prisoner for compassionate leave *in order to* access medical treatment not available at the prison or institution, for purposes preparatory to the prisoner's return to the community, or for disaster aid.<sup>29</sup>

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

The governor of Arizona has the power to grant reprieves, commutations and pardons for all offenses except treason and impeachment.<sup>30</sup> Before the Governor decides to grant a pardon, the application must be reviewed by the Board of Executive Clemency. If the majority of the Board votes in favor of granting the pardon, the recommendation is forwarded to the Governor for a final decision.<sup>31</sup>

Arizona governors grant pardons infrequently, with Governor Doug Ducey granting only one pardon in his first term. Governor Ducey's predecessor, Jan Brewer, granted 13 pardons, whereas Janet Napolitano before her granted 22.<sup>32</sup>

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

If the director of the department of corrections declares there is a shortage of beds available for prisoners, any first-time, non-violent offender who has served at least six months of their sentence, has been sentenced for a class 4, 5, or 6 felony, has not been convicted of a sexual offense, the use or exhibition of a deadly weapon or dangerous instrument, or the infliction of serious physical injury, shall become eligible for parole, home arrest, or work furlough.<sup>33</sup>

### ***4. Overall assessment***

On our subjective ranking scale, we rate Arizona's prison-sentencing system as one with an *extremely low degree of indeterminacy* overall, better stated as an *extremely high degree of determinacy*. Parole-release discretion has been abolished for all prisoners. For the great majority of prisoners, earned release credits can shave no more than 14 percent from judicial

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<sup>29</sup> Ariz. Rev. Stat. § 31-233(B).

<sup>30</sup> Ariz. Const. art. 5, § 5.

<sup>31</sup> Ariz. Bd. of Exec. Clemency, *Frequently Asked Questions*, at <https://boec.az.gov/helpful-information/frequently-asked-questions> (last visited May 27, 2023).

<sup>32</sup> Rachel Leingang, *Ducey record on pardons, commutations not forgiving*, Ariz. Capitol Times (Mar. 9, 2018), <https://azcapitoltimes.com/news/2018/03/09/arizona-doug-ducey-pardons-commutations-not-forgiving>.

<sup>33</sup> Ariz. Rev. Stat. § 41-1604.11(K).



maximum sentences. This is among the lowest available discounts nationwide. While a small number of prisoners enjoy a somewhat higher credit-earning rate, this group is not large enough to affect our overall evaluation of the system.

As with most American systems that have abolished parole-release discretion for the majority of prisoners, the primary location of back-end release discretion in Arizona is in the department of corrections, exercised by prison officials who administer the credit-earning and forfeiture rules. Other forms of back-end release discretion such as executive clemency and medical parole are rarely used and have no important impact on the system's operation as a whole.