



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: IDAHO

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Prison-Release Discretion and Prison Population Size

State Report: Idaho

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

Definitions and Concepts

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

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

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

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

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

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

Rankings of “Degrees of Indeterminacy”

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

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

Benchmarks for rankings of “degrees of indeterminacy”

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

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

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

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

Prison-Release Discretion and Prison Population Size

State Report: Idaho¹

Executive Summary

With low confidence, we rate Idaho's prison sentencing system overall as one that operates with a *moderate degree of indeterminacy*, within the ranking system developed for this project (see pp. iii-iv). There is no state law or policy that speaks to the degrees of indeterminacy that ought to be built into prison sentences. Instead, the degree of indeterminacy of individual sentences and, over hundreds or thousands of cases, the degree of indeterminacy of the system as a whole, is the product of judicial discretion. This is because courts are generally free to set the minimum-maximum ratios of their individual sentences, ranging from 0 to 100 percent. Our characterization of Iowa's system is based on the guess that, on the whole, Idaho judges will equally impose sentences with higher and lower degrees of indeterminacy across the wide range of statutory permissibility, averaging out in the middle. With data, we might discover that the operation of the system at any moment in time is very different from our averaged-out characterization.

In one way, Idaho's system is simple to model because it is one of only four states with no formulaic credit-based reductions of prison terms. For time-served determinations, the principal moving parts in the system are the sentencing courts and the parole board. It is difficult to speak to the amount of power vested in the parole board in Idaho's structure, however. Collectively, sentencing courts act as "gatekeepers" of the degrees of indeterminacy in their individual sentences and for the entire system. The parole board has no power except that the courts decide to give it. In the big picture, the importance of parole board decisionmaking in the determination of the state's prison population size is contingent on changeable judicial sentencing patterns.

Terminology note

This report will refer to the Idaho Commission of Pardons and Parole as the "parole board." The Idaho Department of Correction 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 Idaho, see Alexis Lee Watts, Kevin R. Reitz, and Edward R. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Idaho* (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

Idaho's prison-rate history, 1972 to 2020

At yearend 2020, Idaho's prison rate was 398 per 100,000 general population, with a prison population of 7,343.² Idaho's prison rate was 10th highest among all states.

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

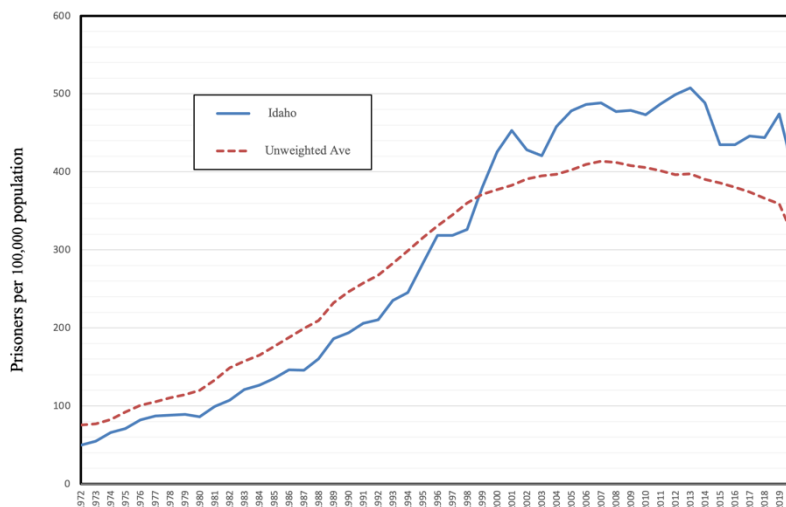
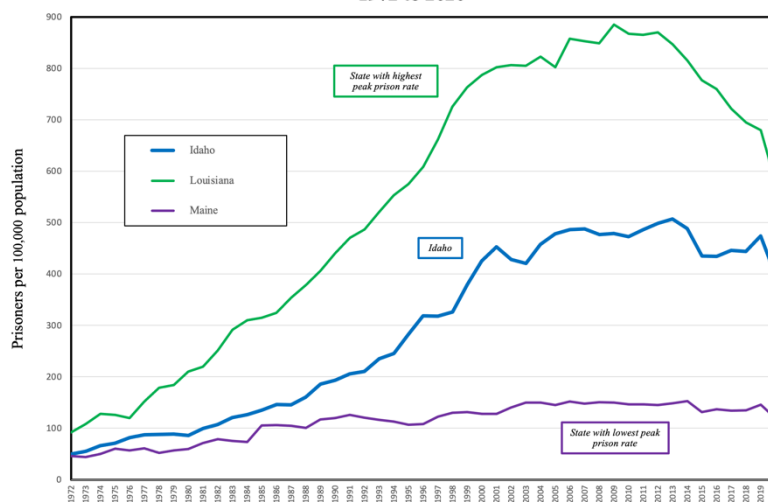


Figure 2. Prison Rate Change in Idaho, Louisiana, and Maine, 1972 to 2020



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 11 table 4, 15 table 7.

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).

Idaho reached its peak prison rate in 2013 at 507 per 100,000, which dropped to 398 per 100,000 in 2019. This is a net difference of -109 per 100,000, which was the 26th largest prison-rate drop of all states from their peak positions (in various years) through 2020.

The basic story of prison population size in Idaho over the past five decades has been one of significantly more year-by-year growth than in sister states. At the outset of the prison buildup period in 1972, Idaho's prison rate was in the lowest quartile of all states; by the early 2010s, it was in the highest quartile.³

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.⁴

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 1972, Idaho had the 37th highest prison rate of all 50 states.

⁴ 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 100,000.⁵ We believe this was the largest one-year decline in state prison rates in American history.⁶

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.⁷

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.⁸

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

⁵ 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.

⁶ 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).

⁷ 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).

⁸ 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 2020.⁹

The COVID period in Idaho

In a separate study, the Robina Institute found no (zero) releases in Idaho from March 2020 through December 2021 that were accelerated in response to the pandemic.¹⁰

In calendar year 2020, Idaho's prison rate fell from 474 to 398 per 100,000—a one-year decline of -76 per 100,000. This was the fourth largest one-year drop reported among all 50 states for that year.¹¹ Measured in percentage terms, it was a 16-percent reduction in the state's prison rate. The state's total prison population fell by 1,228 people, from 8,571 to 7,343.¹²

Falling admissions were the driving force in Idaho's loss of prison population in 2020. The number of prison admissions in the state dropped by 48.2 percent in 2020 compared with the previous year (from 5,250 to 2,717). Total releases in 2020 fell by 9.9 percent over 2019 (from 4,443 to 4,001).¹³

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² *Id.*, at 11 table 4.

¹³ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8, 19 table 9.

Idaho's prison-rate drop reversed after calendar year 2020. From yearend 2020 to December 2021, the Vera Institute reported that Idaho saw an increase in its prison population, from 8,025 to 8,732—or 8.8 percent.¹⁴

1. General rules of prison release in Idaho

Idaho is one of 14 states that does not have an organized scheme for the grading of felonies and misdemeanors.¹⁵ Authorized sentences are set out separately for each offense in the criminal code. Most punishment provisions set out authorized statutory maximum terms for specified offenses (such as different degrees of murder or manslaughter).¹⁶ In some cases, the range of choices given to sentencing courts when selecting maximum terms is extremely broad. For example, the punishment range for rape is “imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence.”¹⁷

Judges also have wide-open discretion to set the relationship (or ratio) between minimum and maximum terms in the individual sentences they impose. Courts must specify a “minimum period of confinement” and may add a subsequent “indeterminate period” of the sentence. Prisoners become parole eligible upon the expiration of the minimum period of their sentence. Another way of saying the same thing is that they become eligible on the date their indeterminate period begins.¹⁸ The combined “minimum” and “indeterminate” periods (called the “unified sentence”) may not exceed the statutory maximum sentence for the relevant offense.¹⁹

¹⁴ See 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 See American Law Institute, *Model Penal Code: Sentencing* (forthcoming 2022), Section 6.01, Reporters' Note b.

¹⁶ See e.g., Idaho Code § 18-4004 (authorized punishments for first- and second-degree murder); Idaho Code § 18-4007 (authorized punishments for voluntary, involuntary, and vehicular manslaughter). In cases where the punishment for the felony offense is not proscribed by statute, the offense carries a punishment of imprisonment in the state prison of up to five years, or by fine not to exceed \$50,000, or both. Idaho Code § 18-112.

¹⁷ Idaho Code § 18-6104.

¹⁸ Idaho Code § 19-2513(1).

¹⁹ Idaho Code § 19-2513(1). The minimum period is also called the determinate or fixed portion of the sentence. See Idaho Commission of Pardons & Parole, *Frequently Asked Questions: When is an offender eligible for parole?*, at <https://parole.idaho.gov/frequently-asked-questions> (last visited Sept. 12, 2022).

For example, the authorized range of imprisonment for grand theft is “imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years.”²⁰ This means a court could impose a judicial maximum (“unified”) sentence of any length between one to 20 years, and could carve up the minimum and indeterminate periods within that total in any of the mathematically possible ratios. For example, a minimum term of one year along with an indeterminate period of 19 years is statutorily permissible—or vice versa—a minimum period of 19 years with an indeterminate period of one year.²¹

As a general rule, Idaho courts have this kind of broad discretion over minimum terms, maximum sentences, and the ratio between the two—but not always. If an offense carries a mandatory minimum penalty, the court must specify a minimum period of confinement consistent with the statute.²²

If an eligible prisoner is denied release by the parole board, there is no set timeline for reconsideration. The offender may *apply* for reconsideration one year after the initial denial of parole, and at one-year intervals following a self-initiated parole reconsideration denial. The parole board is not required to grant such applications.²³

²⁰ Idaho Code § 18-2408(1).

²¹ A total of 11 states grant courts at least some discretion to set the ratio between minimum and maximum terms or their sentences. Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 32-33.

²² Idaho Code § 19-2513(2). A recent Idaho Court of Appeals case held that the statute prescribing the minimum punishment for second degree murder, “imprisonment of not less than ten years,” was actually in reference to the unified sentence and not the mandatory period of confinement. In that case, the unified sentence, encompassing both the fixed and indeterminate terms, had to be at least ten years. *State v. Anderson*, 266 P.3d 496, 498 (Idaho Ct. App. 2011).

²³ Idaho Admin. Code r. 50.01.01.500. Their applications must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. IDAPA 50.01.01.500(01)(c).

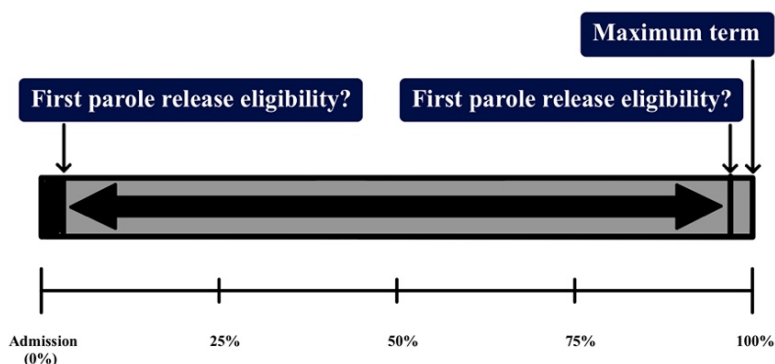
No good time scheme in Idaho

Idaho eliminated the good time credit scheme applicable to state prisoners in 1986.²⁴ Currently, Idaho is one of only four states that operate without credit-based discounts against sentence based on a good-time model, earned-time model, or both.²⁵

Timeline Diagrams

Idaho Figure 3 illustrates the scope of judicial discretion to vary the ratio between minimum and maximum terms in their sentences (the “minimum-maximum ratio”). In most cases, judges are permitted to craft sentences that are 0 percent indeterminate, 100 percent indeterminate, or anything in between. To capture most (but not all) of the potential variation, Idaho Figure 3 starts at the left with a sentence that is 94 percent indeterminate (with parole

Idaho Figure 3. Prison-Release Timeline for General-Rules Sentences: Parole Release Eligibility Depends on Length of “Minimum Confinement Period” Imposed by Court in Relation to “Indeterminate Period” Imposed by Court*



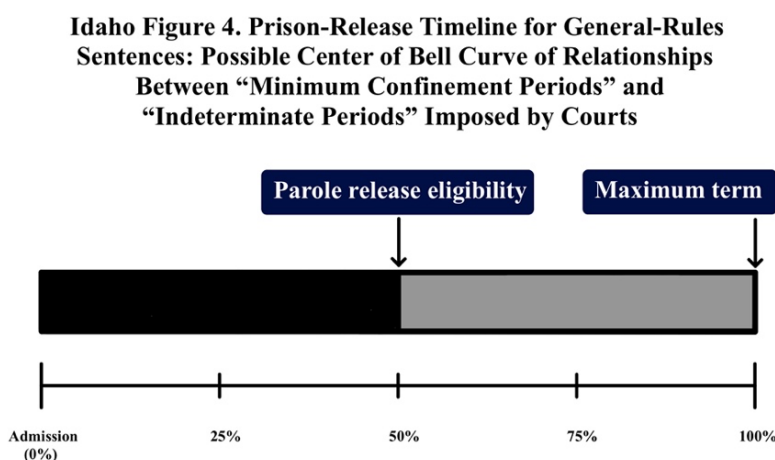
* The combined lengths of the “minimum confinement period” to first parole release eligibility and the “indeterminate period” of the sentence cannot exceed the statutory maximum prison term authorized for the offense

²⁴ Betsy Z. Russell, *Lawmakers wrestle with prison increases, question policies* (Aug. 14, 2018), Idaho Press. Idaho statute does permit state prisoners eligibility for a “meritorious conduct reduction,” to be awarded “when an inmate completes an extraordinary act of heroism at the risk of his own life or for outstanding service to the state of Idaho which results in the saving of lives, prevention of destruction or major property loss during a riot, or the prevention of an escape from a correctional facility.” This may be awarded at a maximum of 15 days for each month sentenced. The meritorious conduct reduction scheme applies to prisoners convicted of an offense committed on or after July 1, 1986. See Idaho Code § 20-101D(1). As of 2018, the Idaho state prisons Director stated that he had no knowledge of the department ever using the meritorious conduct reduction statute. Betsy Z. Russell, *Lawmakers wrestle with prison increases, question policies* (Aug. 14, 2018), Idaho Press.

²⁵ See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 75.

release eligibility at the six-percent mark of the total sentence). Moving to the right on the timeline diagram, the figure ends with a sentence that is six percent indeterminate (with parole release eligibility at the 94-percent mark of the total sentence). The double-pointed arrow is meant to show that all ratios from left to right are equally allowable under the statute. Indeed, under judges' full statutory authority to alter minimum-maximum ratios in Idaho, the arrow could be drawn from the 0 percent to the 100 percent mark.

We have no data on actual judicial sentencing patterns in Idaho. We would guess that, across the prison population as a whole, the DOI configurations of individual sentences will be something of a grab bag, including examples of most of the available possibilities. If we simply assume that judicial sentences vary randomly between the lowest and highest possible DOIs (zero to 100 percent), the *average* DOI among all judicial sentences would fall at the 50-percent mark of prisoners' total sentences. Idaho Figure 4 shows this hypothetical average configuration.



Idaho Figure 4 reflects the fairest estimate of probabilities in the absence of nearly all useful information. The actual average DOI of all judicial sentences in Idaho is almost surely to the left or right of the 50-percent mark. It is also an average that can be expected to shift over time with every change in judicial sentencing patterns. Nonetheless, we will use Idaho Figure 4 to make an unbiased guess about the average configuration of general-rules sentences in the state. Averaged out, such sentences would be 50 percent indeterminate and 50 percent determinate. They would have a *moderate degree of indeterminacy* on the ranking scale developed for this project (see pp. iii-iv). They would have an average population multiplier potential (PMP) of 2:1 (see p. v). That is, if all prisoners serving this type of sentence were held for their full maximum terms, their numbers would eventually settle at two times the size of the same group if all were released at the moment of earliest eligibility.

All of these “best guesses” are subject to correction through the availability of data about actual judicial sentencing practices, with the caveat that such data would show only a

snapshot in time, subject to judges' unrestrained freedom to change their practices in setting minimum-maximum ratios in individual sentences.

2. Life sentences in Idaho

a. Adults

Offenders sentenced to death or life without parole (LWOP) are not eligible for parole.²⁶

Parolable life sentences, like all other felony sentences in Idaho, carry a minimum period that must be served prior to the offender becoming parole eligible. This minimum period is determined by the sentencing court.²⁷ In some cases, the relevant statute provides a floor below which the minimum sentence may not be set. For example, offenders sentenced to life with the possibility of parole for murder in the first degree must serve a minimum period of at least 10 years.²⁸

b. Juvenile life sentences

There is no reformed statutory parole eligibility scheme for juveniles sentenced to life without parole in light of *Miller v. Alabama*. As of 2018, Idaho had four prisoners in the state prison system sentenced to life without parole as juveniles for murder. Each prisoner appealed their sentence to the Idaho Supreme Court and all but one were denied relief.²⁹

3. Infrequently used forms of prison release in Idaho

a. Compassionate release

Inmates that have served their minimum period of confinement may be released to medical parole if they are permanently incapacitated or terminally ill, and no longer pose a threat to

²⁶ Idaho Admin. Code r. 50.01.01.250(02)(a)(ii).

²⁷ Idaho Code § 19-2513(1).

²⁸ Idaho Code § 18-4004. Judges appear to have broad discretion to determine the minimum period as long as the ultimate sentencing decision complies with the statute. *See generally* State v. Ramsey, 364 P.3d 1200 (Idaho Ct. App. 2015). The Idaho Court of Appeals ruled that for a felony conviction of robbery, a sentencing court may impose a sentence of any duration between five years and life, and the court can distribute that sentence between a determinate term and indeterminate term at its discretion. *Id.* at 1202.

²⁹ *See* Dean Johnson, *Supreme Court case: Hope for Idaho teens sentenced to life?*, KTVB7 (Mar. 6, 2018), at <https://www.ktvb.com/article/news/crime/supreme-court-case-hope-for-idaho-teens-sentenced-to-life/277-460686202> (reporting on the four juveniles serving life without parole in Idaho); *Boise man who killed his mother resented*, KTVB7 (May 15 2019), at <https://www.ktvb.com/article/news/crime/boise-man-who-killed-his-mother-resented/277-5c120f1f-46e7-44e0-b6b5-5f98b6e02b35> (reporting on Ethan Windom's resentencing); Adamcik v. State, 408 P.3d 474 (Idaho 2017) (affirming Torey Adamcik's sentence, who was received life without parole as a juvenile).

the safety of society.³⁰ Inmates or designated Department of Corrections personnel may petition the parole board to consider medical parole.³¹ The parole board must consider factors relevant to any parole release, including the results of a psychiatric exam if deemed necessary, the results of a risk assessment, criminal history, program participation, compliance and competition, institutional misconduct, and other characteristics including likelihood of reoffending.³²

b. Clemency

The parole board is also Idaho's Commission of Pardons, with authority to grant commutations and pardons for all offenses except treason or impeachment. The commutation or pardon of any sentence or conviction requires a majority decision by the Commission and a full hearing in open session. The Governor of Idaho has the power to temporarily grant respites or reprieves, in all cases excepting treason and impeachment, but these will only remain in effect until the Commission can ultimately render a clemency decision.³³

Recently, the Idaho Supreme Court held that a statute granting the governor power to approve commutations in circumstances of life and death after a recommendation from the Commission was permissible under the state constitution.³⁴

c. Release during overcrowding emergencies

Idaho has no statutory scheme designed to respond to conditions of prison overcrowding.³⁵

4. Overall assessment of indeterminacy in Idaho's prison-sentencing system

With low confidence, we rate Idaho's prison sentencing system overall as one that operates with a *moderate degree of indeterminacy* within the ranking system developed for this project (see pp. iii-iv). Idaho judges have the remarkable power to vary the minimum-maximum ratios of their sentences from 0 percent to 100 percent. Our ranking of moderate indeterminacy is based on a "best guess" that, on the whole, Idaho judges will equally impose sentences with

³⁰ Idaho Code § 20-1006(1). "Permanently incapacitated" inmates are those "who, by reason of an existing physical condition that is not terminal, is permanently and irreversibly physically incapacitated." "Terminally ill" refers to inmates that have "an incurable condition caused by illness or disease and who is irreversibly terminally ill." Idaho Code § 20-1006(3).

³¹ Idaho Admin. Code r. 50.01.01.250(05)(b).

³² Idaho Code § 20-1006(1); Idaho Code § 20-1005(4)-(6).

³³ Id. Const. Art. IV § 7; Idaho § 20-1016.

³⁴ State v. Pizzuto, No. 49489, 2022 WL 3591723 (Idaho Aug. 23, 2022).

³⁵ Rebecca Boone, *Idaho inmates sue, claiming overcrowding at state prison*, KTVB7 (May 7, 2020), at <https://www.ktvb.com/article/news/health/coronavirus/idaho-inmate-lawsuit-prison-overcrowding-coronavirus-sanitation/277-e2e63c8a-f444-4646-90cf-59552b581cb6>.

higher and lower degrees of indeterminacy across the spectrum of statutory permissibility, averaging out to the middle. We could be quite wrong, but we know of no data that speaks to this question.

In one way, Idaho's system is simple to model because it is one of only four states with no meaningful credit-based reductions of prison terms. For time-served determinations, the principal moving parts in the system are the sentencing courts and the parole board.

In every other way, Idaho's prison-sentencing system is indistinct in a way that defies simple description. There is no state law or policy that speaks to the degrees of indeterminacy that ought to be built into prison sentences. Instead, the degree of indeterminacy of individual sentences and, over hundreds of cases, the degree of indeterminacy of the system as a whole, is the product of unguided judicial discretion. We are unsure of the principles that are meant to inform courts' decisions when determining the minimum-maximum ratios of their individual sentences.

It is difficult to speak to the amount of power vested in the parole board in Idaho's structure. The board could be a supremely powerful agency in the determination of the size of Idaho's prison population, or it could be an insignificant player, or anything in between. Collectively, sentencing courts act as "gatekeepers" of the degrees of indeterminacy in their individual sentences and, collectively, for the entire system. The parole board has no power except that which the courts decide to give it. In the big picture, the importance of parole board decisionmaking in the determination of the state's prison population size is contingent on changeable judicial sentencing patterns.

The hegemony of the courts in Idaho's approach to indeterminacy is the major headline in our survey. As in most American states, Idaho sentencing courts generally have discretion to select any judicial maximum term that does not exceed the statutorily authorized maximum term for the offense of conviction. Discretion to choose maximum terms gives judges the power to place an absolute ceiling on defendants' time-served exposure. In the aggregate, the lengths of maximum terms imposed by judges is a limiting factor in how large a state's prison population can grow.

Because Idaho judges may choose virtually any minimum-maximum ratio, judicial sentences also determine which government officials will have jurisdiction over actual time served in individual cases. If the court imposes a sentence with zero indeterminacy, then actual time served is largely settled at the front end of the prison-sentencing system. Not only the judge, but all actors whose decisions contributed to the final judicial sentence, are the relevant decisionmakers. The judicial sentence does not spontaneously generate from the judge's preferences. Its content may be driven in large part by prosecutorial charging and bargaining decisions, or the parties' plea bargaining or sentencing agreements.

If, on the other hand, the court fashions a sentence with a high degree of indeterminacy, then the court is "transferring" or "ceding" time-served discretion to the back end of the system. In

Idaho, the transferred power goes almost entirely to the parole board because there are no important credit-based sentence discounts in the state. The department of corrections has no direct authority to influence actual sentence length no matter what the sentencing courts do.

It is hard to imagine all the different factors that Idaho judges may consider when deciding to impose sentences with higher or lower DOIs. It may turn on judges' expectations of how the parole board will make use of any discretion that the judge chooses to give it. Or it may depend on the acceptability of one form of sentence versus another to the victim or the public. Or it may be a matter addressed in a plea or sentence bargain. Probably, different judges in Idaho have their own philosophies about what factors are relevant and how they should be weighted.