



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

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# PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

## *STATE REPORT: KENTUCKY*

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# **Prison-Release Discretion and Prison Population Size**

## **State Report: Kentucky**

### **Table of Contents**

#### ***Executive Summary***

#### ***Introduction***

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

#### ***2. Life sentences in Kentucky***

##### ***a. Adults***

##### ***b. Juvenile life sentences***

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

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

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

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

#### ***4. Overall assessment of indeterminacy in Kentucky's prison-sentencing system***

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: Kentucky<sup>1</sup>

#### *Executive Summary*

In this project's ranking system, we classify Kentucky's prison-sentencing system as operating with a *high degree of indeterminacy* overall, not far from the borderline of extremely high indeterminacy.

The Kentucky prison-sentencing system cedes a great deal of power to the parole board over actual time served by individuals and overall prison population size.

Kentucky's department of corrections also wields considerable authority over time served and prison population size through the administration of credit-driven movable mandatory release dates (MRDs). Many credit deductions depend on prisoners' participation in and completion of prison programs. Therefore, the true impact of Kentucky's credit-based sentence reductions depends on the availability of program slots and the ability of prison personnel to enroll prisoners into programs as needed.

#### *Terminology note*

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

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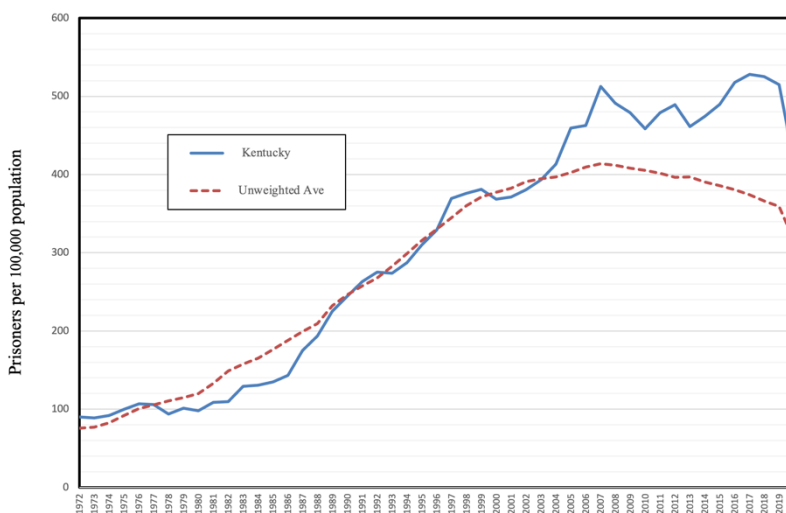
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures. For a broad overview of the law of parole release and supervision in Kentucky, see Alexis Lee Watts, Julia Barlow, & Kevin R. Reitz, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Kentucky* (Robina Institute of Criminal Law and Criminal Justice, 2018) (including surveys of parole-release criteria, procedures for release decisions, laws relating to parole supervision and revocation, and the institutional attributes of the parole board).

## Introduction

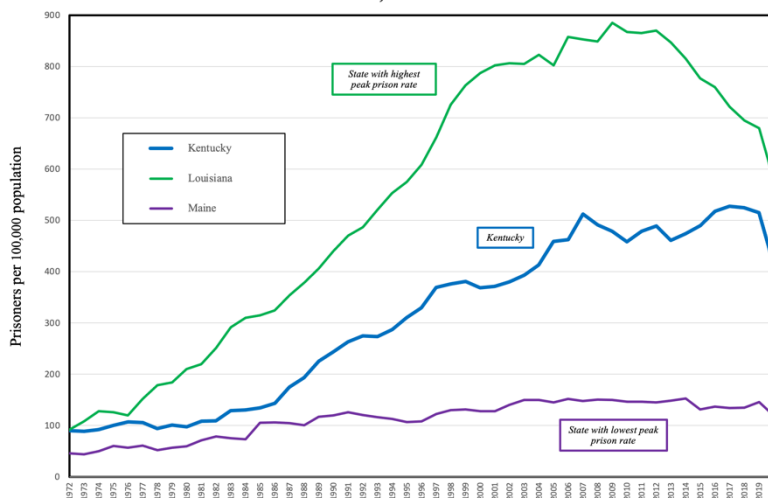
### *Kentucky's prison-rate history, 1972 to 2020*

At yearend 2020, Kentucky's prison rate was 414 per 100,000 general population, with a prison population of 18,552.<sup>2</sup> Kentucky's prison rate was 8<sup>th</sup> highest among all states.

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



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



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

<sup>2</sup> E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7.



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).

Kentucky reached its peak prison rate in 2017 at 528 per 100,000, which dropped to 414 per 100,000 in 2020. This is a net difference of -114 per 100,000, which was the 25<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.

In the 21<sup>st</sup> century, Kentucky's position relative to other states has changed considerably. As recently as yearend 2002, Kentucky's prison rate was 26<sup>th</sup> highest in the U.S. Something changed after 2002, however. By 2016, Kentucky had joined the "top ten" states with the highest prison rates in the country and has remained among that group through 2020.

### *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 Kentucky*

In a separate study, the Robina Institute found 190 releases in Kentucky that were accelerated in response to the pandemic. This number was the equivalent of about one percent of Kentucky's pre-COVID prison population (at yearend 2019). The COVID releases all occurred through a series of group sentence commutations by Governor Andy Beshear in April through August 2020.<sup>9</sup>

In calendar year 2020, Kentucky's prison rate fell from 515 to 414 per 100,000—a one-year decline of -101 per 100,000. This was the largest one-year drop reported among all 50 states for that year.<sup>10</sup> Measured in percentage terms, it was a 19.6 percent reduction in the state's prison rate. The state's total prison population fell by 4,530 people, from 23,082 to 18,552.<sup>11</sup>

Accelerated COVID releases were responsible for less than five percent of the state's reduction in prison population in 2020. Falling admissions were a far more important factor than annual releases. The number of prison admissions in the state dropped by 36.1 percent in 2020

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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, 70 Appendix E.

<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.

compared with the previous year (from 19,407 to 12,402). Total releases in 2020 fell by 15.4 percent over 2019 (from 19,545 to 16,531).<sup>12</sup>

Kentucky's prison population drop reversed in 2021 to a pattern of growth. From yearend 2020 to December 2021, the Vera Institute reported that Kentucky saw an increase in its prison population from 18,806 to 18,846—or 0.2 percent.<sup>13</sup> The Kentucky Department of Corrections reported a total of 19,720 prisoners as of November 7, 2022.<sup>14</sup>

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<sup>12</sup> E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8, 19 table 9.

<sup>13</sup> 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.

<sup>14</sup> Kentucky Department of Corrections, *Statewide Population Report for: 11/07/2022*, at <https://corrections.ky.gov/About/researchandstats/Documents/Daily%20Population/2022/11/11-07-22.pdf>.

## 1. General rules of prison release in Kentucky

### *Minimum and maximum terms*

Felonies in Kentucky are divided into five classes: Capital offenses and Classes A through D felonies (as shown in Table 1 below). When imposing prison sentences, sentencing courts have discretion to select judicial maximum terms within authorized ranges set forth in statute.<sup>15</sup>

**Table 1. Authorized Judicial Maximum Sentences in Kentucky by Felony Grade**

<i>Felony Class</i>	<i>Authorized judicial maximum sentences</i>
Capital offenses	For cases in which the death penalty is not imposed: life without parole, life with parole eligibility after 25 years, or judicial maximum term of not less than 20 years and not more than 50 years
Class A	Not less than 20 years and not more than 50 years, or life
Class B	Not less than 10 years and not more than 20 years
Class C	Not less than 5 years and not more than 10 years
Class D	Not less than 1 year and not more than 5 years

### *Parole board regulations governing parole release eligibility*

If not otherwise provided by statute, parole release formulas in Kentucky are established in administrative regulations promulgated by the parole board.<sup>16</sup> For purposes of this report, we will treat the parole board's current regulations as structural features of Kentucky's system. We note, however, that it is within the parole board's power to revise the basic rules of parole-release eligibility for many prisoners. One could argue that the parole board's rulemaking authority is in itself an important form of release discretion.

Regulatory formulas for calculation of minimum terms vary with the lengths of judicial maximum sentences in individual cases. For most maximum sentences—those between two and 39 years in length—release eligibility occurs at the 20-percent mark of prisoners'

<sup>15</sup> Ky. Rev. Stat. § 532.060(2) (Class A to D felonies); Ky. Rev. Stat. § 532.030(1) ("When a person is convicted of a capital offense, he shall have his punishment fixed at death, or at a term of imprisonment for life without benefit of probation or parole, or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years nor more than fifty (50) years.").

<sup>16</sup> Ky. Rev. Stat. § 439.340(3)(b) ("Except as provided in this section, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole ....").

maximum sentences.<sup>17</sup> For shorter or longer maximum terms, the board has laid down uniform minimum terms of four months or eight years, respectively. See Table 2 below.

**Table 2. Administrative Formulas for Parole Release Eligibility in Kentucky  
(Unless Otherwise Provided by Statute)**

<i>Length of judicial maximum sentence</i>	<i>Minimum term to parole release eligibility</i>
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of judicial maximum sentence
More than 39 years, up to and including life	8 years

*The largest general-rules sentence classes*

*The 20-percent group.* The largest single class of sentences in Kentucky appears to be those with judicial maximum terms of two to 39 years, which are covered by the general rule in Table 2 that parole release eligibility occurs at the 20-percent mark of the maximum term. The “20-percent group” potentially includes felony sentences spread across Classes B through D. The group includes the vast majority of people sentenced for a nonviolent offense and a number of violent and sex offenses.<sup>18</sup>

*Sentences under two years.* The time to parole release eligibility for sentences of one year and up to but not including two years is fixed at 4 months. Stated as a percentage of the maximum term, parole eligibility occurs at the 33-percent mark for sentences of one year and the 17-percent mark for sentences just under two years. For other maximum terms, the percentage value of the minimum slides between 17 and 33 percent.<sup>19</sup>

<sup>17</sup> 501 Ky. Admin. Regs. 1:030, Section 3(1)(c) (stating the initial parole review eligibility for most nonviolent felony offenders); Ky. Rev. Stat. § 439.3401 (defining “violent offender”).

<sup>18</sup> The most serious violent and sex offenses, including capital offenses, Class A felonies, and many Class B felonies, are carved out of the 20-percent rule (see discussion below).

<sup>19</sup> We do not discuss the rule that sets the minimum term for sentences of more than 39 years at eight years. In our judgment, nearly all such cases would fall within the category of violent offenses discussed below, which are subject to much longer minimum terms by statute.

### *Statutory rules of parole release eligibility*

The formulas in Table 2 are superseded by statute for some classes of prison sentences, including the following:

#### *Nonviolent Class D felonies*

*The “15 percent group.”* By statute, prisoners convicted of Class D nonviolent offenses become eligible for discretionary parole release after serving 15 percent or two months of their judicial maximum sentences, whichever is longer.<sup>20</sup>

Class D felonies for offenses that do not qualify as “nonviolent” fall into the 20-percent group described earlier.

#### *Violent offenders*

*The “85-percent group.”* Kentucky law classifies people convicted of certain serious violent and sex offenses as “violent offenders.”<sup>21</sup> By statute, “violent offenders” convicted of capital offenses or Class A felonies that are not sentenced to life or Class B felonies are not eligible for parole release until they have served 85 percent of their judicial maximum sentences. “Violent offenders” with parolable life sentences for capital offenses or Class A felonies must serve at least 20 years (if they have not been sentenced to a minimum term of 25 years or life without parole).<sup>22</sup> The statutory list of offenses that render defendants “violent offenders” includes:

Capital offenses; Class A felonies; Class B felonies involving the death of the victim or serious physical injury; manslaughter in the second degree or reckless homicide where

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<sup>20</sup> Ky. Rev. Stat. § 439.340(3)(a). Judicial maximum terms for Class D felonies may be as short as one year. A two-month minimum term for such a sentence would expire just short of the 17-percent mark of the maximum term. The two-month floor in § 439.340(3)(a) only affects sentences of 13 months or shorter.

<sup>21</sup> Ky. Rev. Stat. § 439.3401(1)(a)-(o) lists offenses of conviction that trigger classification of the defendant as a “violent offender.”

<sup>22</sup> Ky. Rev. Stat. § 439.3401(2), (3)(a). In addition, the 85-percent formula applies to “A violent offender who has been convicted of [second degree manslaughter] where the victim of the offense was clearly identifiable as a peace officer, a firefighter, or emergency medical services personnel, and the victim was acting in the line of duty” even though second degree manslaughter is only a Class C felony. Ky. Rev. Stat. § 439.3401(3)(b); see Ky. Rev. Stat., § 507.040(2) (grading of manslaughter in the second degree as a Class C felony). The parole-release formulas in § 439.3401 are reproduced in 501 Ky. Admin. Regs. 1:030, Section 3(1)(e)(4).

The Kansas legislature has also selected out two circumstances in which sentences must carry parole release eligibility after 50 percent of the judicial maximum term. These are cases in which a defendant has been convicted of (1) manslaughter in the second degree or reckless homicide where the victim of the offense was a peace officer, a firefighter, or emergency medical services personnel, and the victim was acting in the line of duty; and (2) a homicide or fetal homicide offense ... in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance. Ky. Rev. Stat. § 439.3401(3)(c), (d). This “50-percent group” is too small to count as an important sentence class in our analysis.



the offense involves the killing of a peace officer, firefighter, or emergency medical services personnel while the peace officer, firefighter, or emergency medical services personnel was acting in the line of duty; a Class B felony involving criminal attempt to commit murder if the victim of the offense is a clearly identifiable peace officer, firefighter, or emergency medical services personnel acting in the line of duty, regardless of whether an injury results; actual or attempted commission of a sexual offense; use of a minor in a sexual performance; promoting a sexual performance by a minor; unlawful transaction with a minor in the first degree; human trafficking of a minor; criminal abuse in the first degree; burglary in the first degree with actual or attempted assault; burglary in the first degree with actual or attempted kidnapping; robbery in the first degree; and incest if a Class A or B felony.<sup>23</sup>

Classification as a “violent offender” does not automatically place someone into the 85-percent group. In addition, the conviction offense must be graded as a Class B felony or higher. A “violent offender” with a Class C or D conviction would generally fall into the 20-percent group for purposes of parole release eligibility (although such a person would be ineligible for some sentence-reduction credits, as explained below).

### *Sex offenders*

“A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of sentencing credit, parole, or other form of early release.”<sup>24</sup>

### *Recurring parole eligibility after denial of release*

Prisoners convicted of nonviolent and nonsexual Class C or D felonies must be reconsidered within two years after a denial of parole release. All others must be reconsidered within 10 years, although any deferment longer than five years must be approved by a majority vote of the board.<sup>25</sup>

### *Good time and earned time credits*

Prisoners may earn “credit on sentence” of several kinds. Credits earned and not forfeited are deducted from judicial maximum terms to create earlier mandatory release dates (MRDs). In

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<sup>23</sup> Ky. Rev. Stat. § 439.3401(1)(a)-(o).

<sup>24</sup> Ky. Rev. Stat. § 197.045(4).

<sup>25</sup> Ky. Rev. Stat. § 439.340(14). Parole board regulations indicate that, in some circumstances, the board may deny release and order the prisoner “serve out” the remainder of their sentence. See 501 Ky. Admin. Regs. 1:030, Section 3(2)(b). It is not clear when such circumstances would exist. By its own terms, this regulation applies only to cases not covered by Ky. Rev. Stat. § 439.340(14)—and § 439.340(14) applies to all parole-eligible prisoners.



this project, we call these “movable MRDs.”<sup>26</sup> Credits have no effect on parole eligibility dates in Kentucky.<sup>27</sup>

The various forms of available credits are as follows:

- Most prisoners may receive up to 10 days of credit per month for “good behavior.”<sup>28</sup>
- Most prisoners may earn a lump-sum credit for “receiving a High School Equivalency Diploma or a high school diploma, a college degree, a completed vocational or technical education program, or a correspondence postsecondary education program which results in a diploma or degree.” Credit is given in the amount of 90 days per diploma, degree, or technical education program completed.<sup>29</sup>
- Most prisoners may earn a lump-sum credit for the successful completion of a “drug treatment program, evidence-based program, or any other promising practice or life skills program approved by the department.” Credit is given in the amount of “not more than” 90 days for each program completed.<sup>30</sup>
- Eligible prisoners may earn credits while working in a “governmental services program-related project” or in institutional maintenance or operations—in the amount of one day of sentencing credit for every 40 full hours of work.<sup>31</sup> (We translate this into highest possible earnings of four days per month.)
- Prisoners may also earn up to seven days per month for “exceptionally meritorious service,” “performing duties of outstanding importance in connection with institutional operations and programs,” or acts of “exceptional service during times of emergency.”<sup>32</sup>

“Violent offenders,” as defined earlier, may not earn credits for good behavior. Nor may they accumulate other types of credit earnings that would reduce their term of imprisonment to less than 85 percent of their sentence.<sup>33</sup>

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<sup>26</sup> See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”).

<sup>27</sup> See Ky. Rev. Stat. § 197.045 (not discussing credit as a way to move up the initial parole eligibility date).

<sup>28</sup> Ky. Rev. Stat. § 197.045(1)(b)(1).

<sup>29</sup> Ky. Rev. Stat. § 197.045(1)(a)(2).

<sup>30</sup> Ky. Rev. Stat. § 197.045(1)(a)(3).

<sup>31</sup> Ky. Rev. Stat. § 197.047(1)(a), (8) (Note that prisoners who have been sentenced to life without the possibility of parole, violent offenses, sex crimes, or escape or attempted escape are not eligible to earn this type of credit.)

<sup>32</sup> Ky. Rev. Stat. § 197.045(b)(2), (3).

<sup>33</sup> Ky. Rev. Stat. § 439.3401(4).

Sex offenders may earn sentencing credits, but they may not be applied until after completion of the sex offender treatment program.<sup>34</sup>

## Timeline Diagrams

### *The 20-percent group*

Kentucky Figure 3 illustrates the prison-release timeline for the largest class of general-rules sentences in the state: those with judicial maximum terms between two and 39 years. Per parole board regulations, parole-release eligibility for such sentences occurs after prisoners have served 20 percent of their maximum sentences. Kentucky Figure 3 assumes cases in which no sentence credits of any kind have been earned.

Kentucky Figure 4 then provides an illustration of a case in which a prisoner with this class of sentence has achieved very high sentence credit earnings. The figure posits a sentence with a five-year maximum in order to calculate the effects of lump-sum credits for program completion.<sup>35</sup> The figure also posits a hypothetical high-achieving prisoner, that is, someone who has earned all available credits for good behavior and prison work, and who has completed three programs (two rehabilitative programs and one educational program). In our estimation, this represents a realistically-possible level of achievement, but one that would be reached by few prisoners.<sup>36</sup>

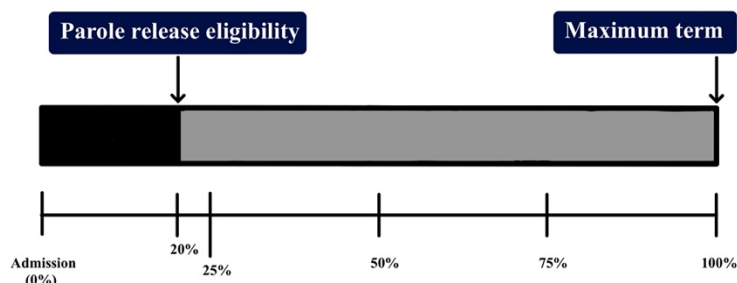
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<sup>34</sup> Ky. Rev. Stat. § 197.045(4).

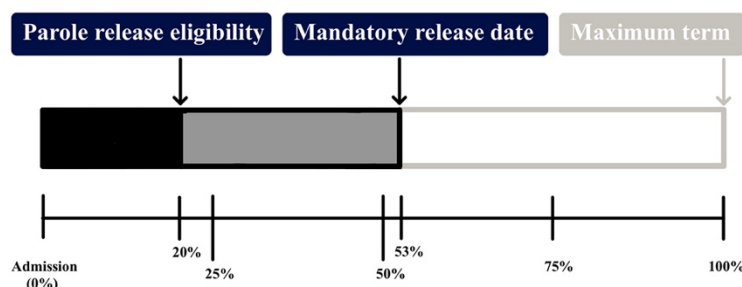
<sup>35</sup> Across all state reports in this project, we have used five-year maximum sentences as a standard for modeling the effects of credit-based sentence reductions that include lump-sum awards.

<sup>36</sup> Kentucky Figure 4 assumes the accrual of 14 days per month for good conduct and prison work, which by themselves would bring the MRD back to the 68-percent mark of the maximum sentence (or after 41 months for a maximum term of 60 months). The figure then builds in an additional 9 months of credits for program completion (three lump-sum awards of 90 days each). This results in an MRD at the 32-month or 53-percent mark of a 60-month maximum term.

**Kentucky Figure 3. Prison-Release Timeline for General-Rules Sentences with Maximum Terms of 2 to 39 Years and No Sentence Credit**

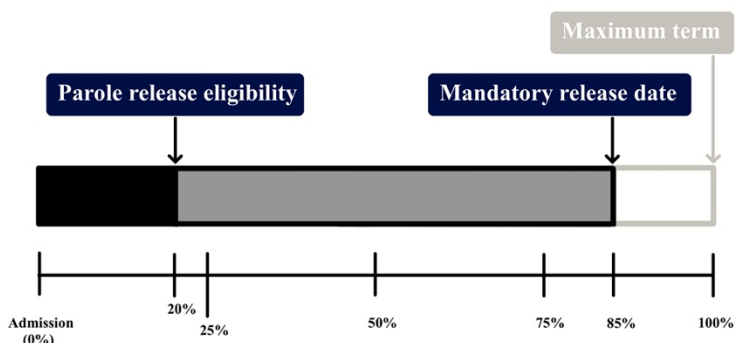


**Kentucky Figure 4. Prison-Release Timeline for General-Rules Sentence with Maximum Term of 5 Years, Full Sentence Credits for Good Behavior and Prison Work, Two Program Completion Credits, and One Educational Achievement Credit**



A small subcategory of prisoners subject to the 20-percent rule would not be eligible for credits and movable MRDs as shown in Kentucky Figure 4. These are “violent offenders” convicted of Class C or D felonies, who may earn only 15-percent reductions from their maximum terms. Kentucky Figure 5 illustrates the situation of prisoners subject to the 20-percent rule who have been designated “violent offenders.”

**Kentucky Figure 5. Prison-Release Timeline for “Violent Offenders”  
Convicted of Class C & D Felonies with with Maximum Terms of  
2 to 39 Years and Most Allowable Earned Time Credits**



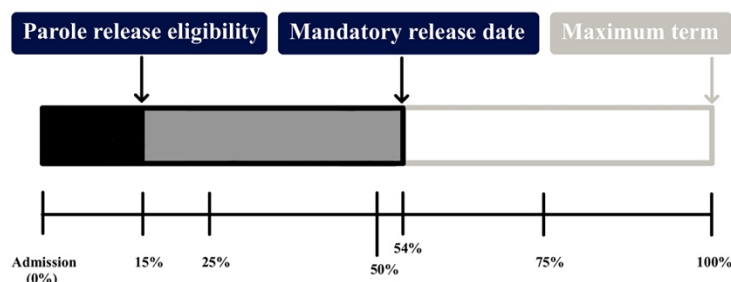
All sentences in Kentucky Figures 3 through 5 include parole release eligibility at the 20-percent mark of the timeline. Therefore, all are 20 percent determinate and 80 percent indeterminate. We classify this as an example of *high determinacy*—although 80-percent indeterminacy falls exactly on the borderline between high and extremely high indeterminacy. All sentences in the 20-percent group carry PMPs of 5:1.

### *The 15-percent group*

Figure 6 explores the prison release timeline for the low-level nonviolent offenses graded as Class D felonies. In most cases, parole release eligibility occurs at the 15-percent mark of such sentences. People serving such sentences are eligible to earn all forms of sentence credits, but they have limited time to amass high totals of credits. Figure 6 assumes a sentence with a maximum term of two years and a prisoner who has earned all possible credits for good behavior and prison work, and who has received one lump sum award of 90 days for completion of one program.<sup>37</sup>

<sup>37</sup> Good time and work credits at the combined rate of 14 days per month would bring the MRD back to the 68-percent mark, or after about 16 months of the 24-month maximum. An additional 90-day earned time credit would bring the MRD back to the 13-month mark—the 54-percent mark of a two-year maximum sentence.

**Kentucky Figure 6. Prison-Release Timeline for Sentence for Nonviolent Class D Felony with 2-Year Maximum Term, Full Sentence Credits for Good Behavior and Prison Work, and One Program Completion Credit**



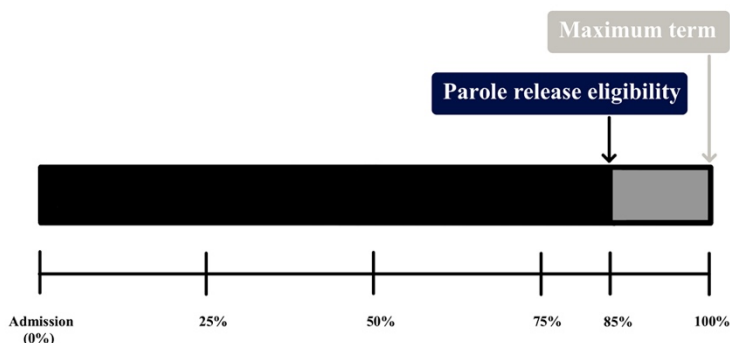
Regardless of credit earnings, this sentence class is 15-percent determinate and 85-percent indeterminate. We classify this as an example of *extremely high indeterminacy*. The PMP for such sentences is 6.7:1.

### *The 85-percent group*

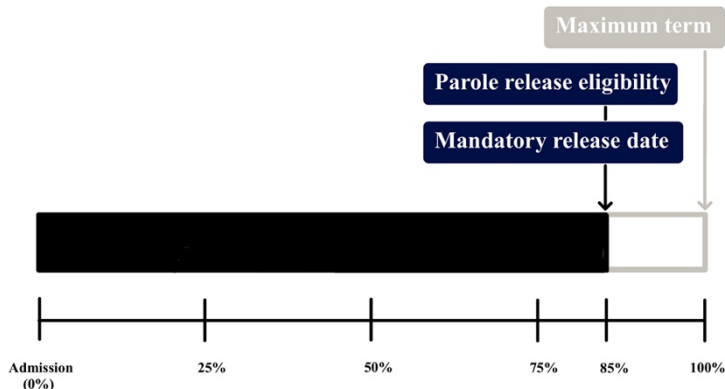
Kentucky Figures 7 and 8 show prison-release timelines for prisoners convicted of Class A and B felonies who are also classified as “violent offenders” according to Kentucky’s statutory definition (excerpted earlier). The prison release formulas for this group are dictated by statute.

Kentucky Figure 7 shows the time to parole release eligibility for this class of sentences, which comes at the 85-percent mark of judicial maximum sentences. Prisoners in this group may not earn credits for good behavior, but are eligible for other forms of sentence credits; however, deductions for all credits are capped at 15 percent of judicial maximum terms. Kentucky Figure 7 assumes no credit earnings of any kind. Kentucky Figure 8 shows the effect of full credits up to the 15-percent cap. In Kentucky Figure 8, prisoners’ MRDs move to the 85-percent mark of the timeline, which also remains the date of first parole release eligibility.

**Kentucky Figure 7. Prison-Release Timeline for “Violent Offenders”  
Convicted of Class A & B Felonies with with No  
Earned Time Credits**



**Kentucky Figure 8. Prison-Release Timeline for “Violent Offenders”  
Convicted of Class A & B Felonies with with Most Allowable  
Earned Time Credits**



This sentence class is 85-percent determinate by virtue of parole eligibility or, alternatively, through movement of prisoners’ MRDs. We classify such sentences as *extremely low in indeterminacy*, with a PMP of 1.18:1.

## **2. Life sentences in Kentucky**

### ***a. Adults***

Individuals convicted of a capital offense may be sentenced to death, life without parole, life with a minimum term of 25 years prior to parole eligibility, a term of at least 20 years but not

more than 50 years, or simply life in prison.<sup>38</sup> Those convicted of a Class A felony may also be sentenced to life in prison.<sup>39</sup> Prisoners serving life sentences must serve at least 20 years.<sup>40</sup>

### ***b. Juvenile life sentences***

Kentucky courts ruled in 1968 that sentencing a juvenile to life without the possibility of parole was unconstitutional as cruel and unusual punishment.<sup>41</sup> Currently, juveniles convicted of a capital offense may be sentenced to a maximum of life imprisonment without the benefit of parole for 25 years.<sup>42</sup>

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

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

Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offenders, the parole board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole, if the prisoner: has a documented terminal medical condition likely to result in death within 1 year; or has severe chronic lung disease, end-stage heart disease, severe neuromuscular disease such as multiple sclerosis; or has severely limited mobility as a result of stroke, disease, or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.<sup>43</sup>

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

Prisoners may send applications for clemency directly to the Governor, who has the power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, for all cases except impeachment.<sup>44</sup> The Governor may also request that the parole board conduct an investigation and report their findings to assist in the Governor's decision, though the

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<sup>38</sup> Ky. Rev. Stat. § 532.030(1).

<sup>39</sup> Ky. Rev. Stat. § 532.060(2)(a).

<sup>40</sup> 501 Ky. Admin. Regs. 1:030, Section 3(1)(e)(4).

<sup>41</sup> *Workman v. Commonwealth*, 429 S.W.2d 374, 377-78 (Ky. 1968).

<sup>42</sup> Ky. Rev. Stat. § 640.040(1).

<sup>43</sup> Ky. Rev. Stat. § 439.3405(1). Note that if the Board is considering a prisoner convicted of a Class A or B felony, or a Class C violent or sexual offense, the Board must hold a hearing after giving notice to any victims or deceased victims' next of kin and the Commonwealth's attorney. The Commonwealth's attorney must in turn give notice to the sheriff of every county and the chief of police of every city and county in which the prisoner committed any class A, B, or C felony for which the prisoner is imprisoned. Ky. Rev. Stat. § 439.3405(5).

<sup>44</sup> Ky. Const. § 77 (“[The Governor] shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection.”)

Governor is not bound by the Board's recommendation.<sup>45c</sup> Release during overcrowding emergencies

Kentucky has no permanent statutory provision that allows for emergency release because of prison overcrowding.

#### ***4. Overall assessment of indeterminacy in Kentucky's prison-sentencing system***

In this project's ranking system, we classify Kentucky's prison-sentencing system as operating with a *high degree of indeterminacy* overall (see pp. iv-v), but not far from the borderline of extremely high indeterminacy. We come down on the side of high indeterminacy largely because of Kentucky's sentence configuration for the most serious violent and sex offenses, which are extremely low in indeterminacy.

The Kentucky prison-sentencing system cedes a great deal of power to the parole board over actual time served by individuals and overall prison population size. The parole board has comparatively limited discretion to influence sentence lengths for the statutory group of "violent offenders."

Kentucky's corrections officials also wield considerable authority over time served and prison population size through the administration of credit-driven movable MRDs. For most general-rules prisoners, credit deductions could conceivably result in very substantial reductions of maximum terms, approaching 50-percent discounts for high-achieving prisoners. In theory, such movable MRDs could operate as a meaningful check on total sentence length and prison growth. The actual impact of Kentucky's movable MRDs may look better "on paper" than their true operation in the state's prisons. In order to achieve the highest credit-based reductions, prisoners must accrue full good time credits and must also participate in and complete multiple earned time programs. In large part, the realities of Kentucky's credit-based sentence reductions turn on the availability of program slots and the administrative efficiency of prison personnel to enroll prisoners into programs as needed. Movable MRDs may not function as important inhibitors on prison growth if they do not often result in meaningful deductions from prisoners' maximum terms.

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<sup>45</sup> Ky. Rev. Stat. § 439.450.