



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: TENNESSEE

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Prison-Release Discretion and Prison Population Size

State Report: Tennessee

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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: Tennessee¹

Executive Summary

We classify Tennessee’s prison-sentencing system as operating with a *high degree of indeterminacy* overall (see pp. v-vi). Prison sentences in Tennessee run the gamut from *extremely high indeterminacy* to *extremely low indeterminacy*. Looking across all common sentence classes, we think the center of gravity falls solidly into the zone of *high indeterminacy*.

It is notable that, for most sentence classes in Tennessee, the department of corrections administers movable mandatory release dates (MRDs) through credit awards that can subtract as much as 42 percent from judicial maximum terms. Compared with most other states, we classify this as a “generous” formula for movable MRD reductions although we also surmise that the necessary credits are “difficult” to earn in Tennessee compared with other states.

Terminology note

This report will refer to the Tennessee Board of Parole as the “parole board.” The Tennessee 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 Tennessee, see Alexis Lee Watts, Julia Barlow & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Tennessee* (Robina Institute of Criminal Law and Criminal Justice, 2019) (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

Tennessee's prison-rate history, 1972 to 2020

In 2020, Tennessee's prison rate was 328 per 100,000 general population, with a yearend prison population of 22,685.² Tennessee's prison rate was 22nd among all states.

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

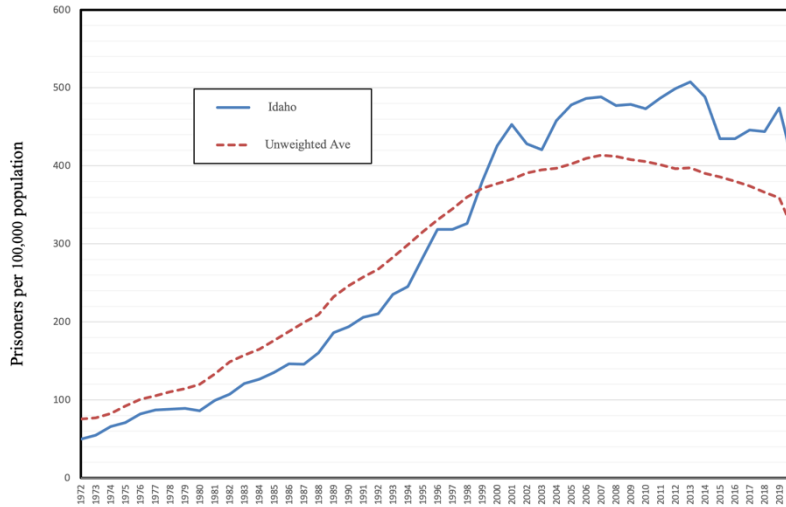
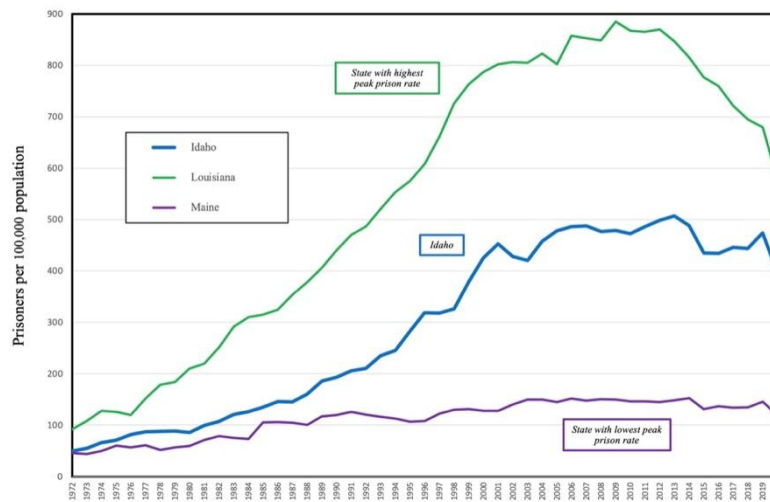


Figure 2. Prison Rate Change in Idaho, Louisiana, and Maine, 1972 to 2020



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

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

sentenced prisoners under jurisdiction of State and Federal correctional authorities on 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 12 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 12 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020-Statistical Tables* (Bureau of Justice Statistics, 2021), at 16 table 7 (for 2019-2020).

Tennessee reached its peak prison rate in 2011 at 443 per 100,000, which dropped to 328 per 100,000 in 2020. This is a net difference of -115 per 100,000, which was the 24th largest prison-rate drop of all states.

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

The COVID period

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

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

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

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

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

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

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

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

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

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

⁷ For a survey of state releasing practices in response to COVID, see Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 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.

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

The COVID period in Tennessee

In a separate study, the Robina Institute found no releases in Tennessee from March 2020 through December 2021 that were accelerated in response to the pandemic.⁹

In calendar year 2020, Tennessee's prison rate fell from 384 to 328 per 100,000—a one-year decline of -56 per 100,000. This was the 20th largest one-year drop reported among all 50 states for that year (tied with Arkansas).¹⁰ Measured in percentage terms, it was a 14.6-percent reduction in the state's prison rate. The state's total prison population fell by 3,664 people, from 26,349 to 22,685.¹¹

Falling admissions were an important cause of Tennessee's prison drop from 2019-20. The number of prison admissions in the state dropped by 33.7 percent in 2020 compared with the

⁸ See E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17, 17 table 8 (admissions fell from 530,905 to 319,346). There was no comparable upswing in prison releases. Total releases from state prisons actually fell in 2020, dropping 9.8 percent from the previous year. *Id.* at 19 table 9 (nationwide releases fell from 557,309 to 502,723). Only five states released five percent or more of prisoners in 2020 than they had released in 2019: Arizona (6.9 percent), Maine (30.9 percent), Nebraska (5.9 percent), New Jersey (19.7 percent), and Wyoming (8.0 percent). For a focus on patterns of parole release in 2020, see Tiana Herring, *Parole boards approved fewer releases in 2020 than in 2019, despite the raging pandemic* (Prison Policy Initiative, February 3, 2021), at <https://www.prisonpolicy.org/blog/2021/02/03/parolegrants/> (surveying data from 13 states; finding that total numbers of parole releases fell in nine states; among all 13 states, the average drop in numbers of parole releases from yearend 2019 to yearend 2020 was 11.3 percent). See also Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 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 41,070 “non-routine COVID releases” from state prisons nationwide. Over a similar period (January 2020 to December 2021), Vera Institute of Justice (Vera) reported a drop in the aggregate state prison population of 217,989 people, from 1,259,977 to 1,041,988. Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2.

⁹ 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 35 Appendix A.

¹⁰ The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 16 table 7.

¹¹ *Id.*, at 12 table 4.

previous year (from 12,965 to 8,598). Total releases in 2020 fell by 4.8 percent over 2019 (from 14,165 to 13,484).¹²

Tennessee's prison-rate drop continued at a much slower pace after calendar year 2020. From yearend 2020 to December 2021, the Vera Institute reported that Tennessee saw a decrease in its prison population, from 23,128 to 22,323—or 3.5 percent.¹³ As of April 30, 2023, the Tennessee Department of Correction reported a total prison population of 21,441.¹⁴

1. General rules of prison release in Tennessee

Maximum sentence length and parole release eligibility

In Tennessee, felonies are separated into five grades ranging from Classes A to E. Under the state's statutory sentencing guidelines, each felony grade is partitioned at sentencing into one of five subcategories:

- “Especially Mitigated Offenders”
- Range I (“Standard Offenders”)
- Range II (“Multiple Offenders”)
- Range III (“Persistent Offenders”)
- “Career Offenders”

The felony grade is fixed by the offense of conviction; sentencing courts determine the applicable “range” for each case with reference to the statutory sentencing guidelines; sentencing courts also have discretion to select a judicial maximum sentence within allowable statutory parameters. For the most part, applicable guidelines ranges are defined with

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

¹³ 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.

¹⁴ Tenn. Dep't of Corr., *Tennessee Bed Space and Operating Capacity Report* (April 2023), <https://www.tn.gov/correction/statistics-and-information/bed-space---capacity-reports.html>.

reference to defendants' prior convictions.¹⁵ Table 1 summarizes judicial sentencing options and sentence characteristics broken down by felony class and range.¹⁶

Table 1. Tennessee Felony Sentencing Options and Characteristics

	Especially Mitigated Offenders	Range I	Range II	Range III	Career Offenders
MAX for Class A	At sentencing court's discretion: Reduce the Range I maximum sentence options by 10%; reduce parole eligibility to 20% of MAX, or both. ¹⁷	15-25 years	25-40 years	40-60 years	60 years
MAX for Class B		8-12 years	12-20 years	20-30 years	30 years
MAX for Class C		3-6 years	6-10 years	10-15 years	15 years
MAX for Class D		2-4 years	4-8 years	8-12 years	12 years
MAX for Class E		1-2 years	2-4 years	4-6 years	6 years
Parole eligibility		30% of MAX	35% of MAX	45% of MAX	60% of MAX

Most importantly for present purposes, Table 1 shows staggered percentage formulas for parole release eligibility, which in Tennessee are differentiated by sentencing “range” rather than the nature of the offense of conviction. For the most part, release eligibility formulas in Tennessee vary with defendants' prior convictions, because that is the dominant factor for placement of a case in one range versus another.

The parole release decisionmaking process is dramatically different for prisoners with short sentences and those with longer terms. Prisoners with maximum sentences of two years or less are released automatically on their earliest parole release eligibility dates.¹⁸ The release

¹⁵ See Tenn. Code Ann. §§ 40-35-105 through 40-35-112. Classification as an “especially mitigated offender” requires that the defendant have no prior felony convictions *and* a discretionary judicial finding that the case includes “mitigating, but no enhancement factors” (terms that are not defined in statute). Tenn. Code Ann. § 40-35-109(a). All other classifications turn on defendants' records of prior convictions. For example, in order to be classified as a Range II “Multiple Offender,” the judge must find beyond a reasonable doubt at sentencing that the defendant has: “(1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; or ... (2) One (1) Class A prior felony conviction if the defendant's conviction offense is a Class A or B felony.” Tenn. Code Ann. § 40-35-106(a)(1)-(2),(c).

¹⁶ A version of this table was first developed by Alexis Lee Watts, Julie Barlow, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Tennessee* (Robina Institute of Criminal Law and Criminal Justice, 2019), at 4.

¹⁷ Tenn. Code Ann. § 40-35-109.

¹⁸ Tenn. Code Ann. § 40-35-501(a)(3) (“Notwithstanding any other law, inmates with felony sentences of two (2) years or less shall have the remainder of their original sentence suspended upon reaching their release eligibility date.”). However, this is not applicable to “...sentences of two (2) years or less when the sentences are part of a consecutive sentence whose term is greater than two (2) years.” *Id.* Additionally, “[t]he trial judge shall possess the power, at any time within the maximum time that was directed and ordered by the court for the suspension, in accordance with § 40-35-311, to revoke the suspension.” Tenn. Code Ann. § 40-35-310(a). The trial judge may revoke probation, and thus the suspension of the sentence, if the sentenced person is convicted or arrested of a new crime or violates any specific conditions imposed when probation was granted. See *id.*; *Practy v. State*, 525

eligibility date can be deferred based on violation(s) of prison disciplinary rules.¹⁹ Those with longer sentences must appear before the parole board for consideration for discretionary release.²⁰

If the parole board denies release to a prisoner, it has discretion in most cases to set a waiting period until reconsideration of up to six years.²¹

3.4 Contract sentencing program

Most prisoners are eligible to participate in Tennessee's "contract sentencing program,"²² under which a prisoner enters into a non-binding agreement with the Department and the Board for a sentence agreement which includes a prisoner's promise to complete certain objectives or programs in return for:

- (1) The Board's assurance of a definite, specified named date or a specific date in relation to the release eligibility date of the eligible prisoner; and ...
- (2) The Department's promise to provide access to the programs and services necessary for the prisoner to fulfill their part of the agreement²³

S.W.2d 677 (Tenn. Crim. App. 1974) (holding trial judges possess the sole power to revoke suspension of sentences and probation under Tennessee law and the relevant procedures do not violate due process); *Roberts v. State*, 546 S.W.2d 264 (Tenn. Crim. App. 1977) (holding that a defendant's conviction puts them "on notice" that they are not to engage in unlawful activity under the terms of their probation); *State v. Beard*, 189 S.W.3d 730, 734-35 (Tenn. Crim. App. 2005) (holding that after sentencing a defendant to a term of split confinement in jail, the trial court lacked authority to order execution of the original sentence absent a new probation violation). The district attorney general may also file a petition with the sentencing court requesting a denial of suspension of the sentence based on "disciplinary violations during time served in the institution." Tenn. Code Ann. § 40-35-501(a)(6)(A); *see also State v. Hill*, No. 01C01-9802-CC-00072, 1999 WL 92948, at *1 n.4 (Tenn. Crim. App. Feb. 25, 1999) (stating that Tenn. Code Ann. § 40-35-501(a)(6)(A) allows district attorneys to file a petition requesting a denial of suspension of sentence for prisoners sentenced to two or less years).

¹⁹ Tenn. Code Ann. § 40-35-501(n). The Commissioner of Correction has the ability to defer a prisoner's release eligibility date for violation of any of the rules of the Department of Correction. *See Smith v. Hesson*, 63 S.W.3d 725 (Tenn. Ct. App. 2001); *Taylor v. Reynolds*, 914 S.W.2d 516 (Tenn. Ct. App. 1995).

²⁰ Tenn. Code Ann. §§ 40-35-501(a)(2); 40-35-503. For nonviolent offenders convicted of Class D or E felonies who meet other eligibility criteria, there is an unenforceable "presumption" of release at first eligibility except for "good cause shown." Among other criteria, the prisoner must be evaluated as "low risk to reoffend" using a "validated risk and needs assessment" instrument. The prisoner must also complete all programming recommended by the department of corrections, either before release or when on supervision. *See* Tenn. Code Ann. § 40-35-503(h),(i).

²¹ Tenn. Code Ann. § 40-28-115(i). For certain prisoners convicted of repeat murder offenses, the limit is 10 years.

²² Prisoners convicted as habitual offenders or who have been convicted of a crime against a person, first-degree murder, or a sexual offense, are ineligible for the contract sentencing program. Tenn. Code § 40-34-103(c).

²³ Tenn. Code Ann. § 40-34-103(b).

Sentence contracts are limited to a reduction in the amount of time a prisoner must serve before parole eligibility of no more than 30%—undiminished by sentence credits.²⁴

Within the broader scheme of this project, we classify Tennessee’s contract sentencing program as an “administrative parole release” (APR) program. As explained in the Final Report for this project:

We define administrative parole release as a routinized path to release that requires fewer procedural stages and less case-by-case discretion than the traditional parole-release process. APR is fundamentally built on a contract model: Prisoners are assigned a correctional plan early in their terms; if they follow the plan, the state extends them a credible promise that they will be released on an established date. To give such contracts credibility, denials of release or “derailment” from the APR track are permitted only under defined circumstances.²⁵

Credit-based reductions from sentence milestones

Most prisoners may win reductions of their minimum terms to parole release eligibility through credit earnings of various kinds. They may also win reductions of their judicial maximum terms to establish earlier mandatory release dates (MRDs) for credits earned and not forfeited.²⁶ In this project, we have named mechanisms of this type “movable MRDs.”²⁷ Total credit earnings against minimum terms are capped at 30 percent, but there is no equivalent statutory cap on credit earnings toward movable MRDs.²⁸

²⁴ Tenn. Code Ann. § 40-34-108 (This limitation does not apply when the Board utilizes its powers to reduce prison overcrowding.)

²⁵ 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 47. Chapter 5 of the Final Report is devoted entirely to APR programs, which currently exist in at least a dozen states nationwide.

²⁶ Tenn. Code § 41-21-236(b). Previously awarded sentence credits may be forfeited for the commission of a Class A disciplinary offense or by refusal to participate in any assigned work, education, or vocational training program. Tenn. Code § 41-21-236(a)(5),(6).

²⁷ 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 78 (“MRDs are particularly important instruments of time-served policy when state laws make credit allotments “generous” in amount. We define “generous” earning levels as those that can deduct 40 percent or more from judicial maximum terms.”). Chapter 7 of the Final Report is devoted entirely to APR programs, which currently exist in at least a dozen states nationwide.

²⁸ Tenn. Code Ann. § 41-21-236(i).

A prisoner will not be awarded credits for any month in which they are found guilty of committing a Class A disciplinary offense.²⁹ Previously awarded sentence credits may also be forfeited for the commission of a Class A disciplinary offense.³⁰ The refusal to participate in any assigned work, education, or vocational training program constitutes a disciplinary offense for which the prisoner may lose previously awarded sentence credits.³¹

Prisoners are also eligible for “time credits” for “good institutional behavior” of up to eight days of per month and up to an additional eight days per month for “satisfactory program performance.”³² We will refer to these two types of time credits as *good-conduct credits* and *program-performance credits*, respectively.

In addition, prisoners may earn a one-time “educational good time” credit of 60 days for receiving their high school diploma or high school equivalency credential, a two- or four-year college degree, a two- or four-year certification in applied sciences, or a vocational education diploma.³³

Finally, prisoners may earn a one-time credit of 60 days for the successful completion of an “evidence-based, intensive residential substance use disorder treatment therapeutic community program” of at least nine months.³⁴ Prisoners not in need of this particular type of treatment have no opportunity to earn these program completion credits.

Offenses outside the general rules of prison release

A significant number of statutorily designated offenses are not covered by the general rules of prison release summarized above. Sentences for these crimes are subject to a jumble of different formulas and restrictions. Some have extended minimum terms to parole release eligibility that may stretch to the 70, 75, 85, or 100 percent mark of judicial maximum terms.³⁵ Some have

²⁹ Tenn Code Ann. § (a)(4).

³⁰ Tenn Code Ann. § (a)(5) (Class A disciplinary offenses include, but are not limited to, rape, arson, riot, escape, assault with a deadly weapon, or refusal to participate in an assignment).

³¹ Tenn Code Ann. § (a)(6).

³² Tenn. Code Ann. § 41-21-236(a)(2)(A) (Prisoners classified as maximum security or who are being held in punitive segregation are ineligible to earn sentence credits).

³³ Tenn. Code Ann. § 41-21-236(a)(2)(B)(i). (Prisoners must have the Department’s prior approval for educational good time credit, and may only receive such award once, regardless of the number of programs completed) Prisoners convicted of certain violent or sexual offenses are ineligible for educational credits. Tenn. Code Ann. § (a)(2)(B)(iii).

³⁴ Tenn Code Ann. § (a)(2)(C)(i). Prisoners convicted of certain violent or sexual offenses are ineligible for these credits. Tenn Code Ann. § (a)(2)(C)(iii).

³⁵ This is also dependent on when the offense was committed. For example, if the offense was committed on or after July 1, 2013, and before July 1, 2022, those convicted of attempted first-degree murder where the victim suffered serious bodily injury must serve 85% of their sentence before becoming eligible for parole consideration,

mandatory minimum terms before parole release eligibility that are stated as periods of years, such as 3, 5, 6, or ten years.³⁶ Some carry no parole release eligibility at all.³⁷ Some have low ceilings on deductions that may be earned against maximum terms to create movable MRDs: a common ceiling across many offense categories is a reduction of 15 percent.³⁸ Some sentence classes offer no credit-based deductions at all against maximum terms, so no movable MRDs.³⁹

The largest combined group of offense-based exceptions are for 13 selected violent and sex offenses that carry no parole release eligibility and offer only 15 percent reductions from maximum terms through credit earnings. These are:

First-degree murder; second-degree murder; especially aggravated kidnapping; aggravated kidnapping; especially aggravated robbery; aggravated rape; rape; aggravated sexual battery; rape of a child; aggravated arson; aggravated child abuse; sexual exploitation of a minor involving more than 100 images; sexual exploitation of

or as low as 75% with sentence credits. Tenn. Code Ann. § 40-35-501(k)(5). However, the Tennessee legislature passed a bill in 2022 that changed the parole release eligibility for certain offenses. 2022 Tennessee Laws Pub. Ch. 988 (S.B. 2248). If convicted of certain aggravated felonies committed on or after July 1, 2022, an individual must serve 100 percent of the sentence imposed undiminished by sentence reduction credits. Tenn. Code Ann. § 40-35-501(bb). Additionally, if convicted of other certain aggravated felonies committed on or after July 1, 2022, an individual must serve 100 percent of the sentence imposed provided, but earned credits may reduce the sentence of imprisonment by up to 15 percent. The sentence expiration date for these offenses shall not be altered. Tenn. Code Ann. § 40-35-501(cc)(1)(A).

³⁶ Prisoners convicted with the possession of a firearm or antique firearm with the intent to be armed during the commission or attempted commission of a dangerous felony must serve a mandatory minimum three-year sentence, or five years if they had a prior felony conviction. Tenn. Code Ann. § 39-17-1324(g)(1)-(2). Prisoners convicted of employing a firearm or antique firearm during the commission or attempted commission of a dangerous felony, or in the flight or escape thereof, must serve a mandatory minimum six-year sentence, or 10 years if they had a prior felony conviction. Tenn. Code Ann. § 39-17-1324(h)(1)-(2) (Dangerous felonies include: attempted first- or second-degree murder, voluntary manslaughter, carjacking, especially aggravated kidnapping, aggravated kidnapping, especially aggravated burglary, aggravated burglary, especially aggravated stalking, aggravated stalking, initiating the process to manufacture methamphetamine, or any felony involving the sale, manufacture, distribution, or possession with intent to sell, manufacture, or distribute a controlled substance or controlled substance analogue, or any attempt to commit a dangerous felony. Tenn. Code Ann. § 39-17-1324(i)(1)). Additionally, any prisoner convicted of a sex crime may not be released on parole unless they have been examined and evaluated by a psychiatrist or licensed psychologist. Tenn. Code Ann. § 40-35-503(c).

³⁷ Prisoners convicted of certain dangerous felonies or attempted dangerous felonies while armed are not eligible for parole and must serve a mandatory minimum sentence, though they may be able to reduce their sentence up to 15% with sentence credits. Tenn. Code Ann. § 39-17-1324. Those convicted of continuous sexual abuse of a child, attempted first degree murder, second degree murder, vehicular homicide, aggravated vehicular homicide, especially aggravated kidnapping, especially aggravated robbery, carjacking, and especially aggravated burglary are not eligible for parole and may not reduce their sentence by sentence credits. Tenn. Code Ann. § 40-35-501(l)(1), (bb)(2). (These are also subject to prior versions of this law if they are committed before July 2022).

³⁸ Tenn. Code Ann. § 40-35-501(i)(1)-(2),(k)(2).

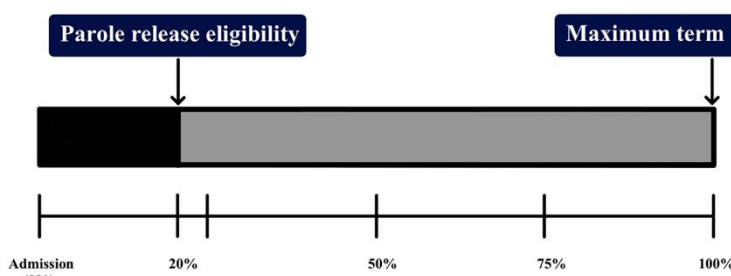
³⁹ Child sexual predators, aggravated rapists, child rapists, and repeat rapists must serve their entire sentence without parole release eligibility or any reduction for sentence credits. Tenn. Code Ann. § 39-13-523.

a minor involving more than 25 images; especially aggravated sexual exploitation of a minor; driving under the influence with six or more prior convictions for driving under the influence; and facilitation of rape of a child.⁴⁰

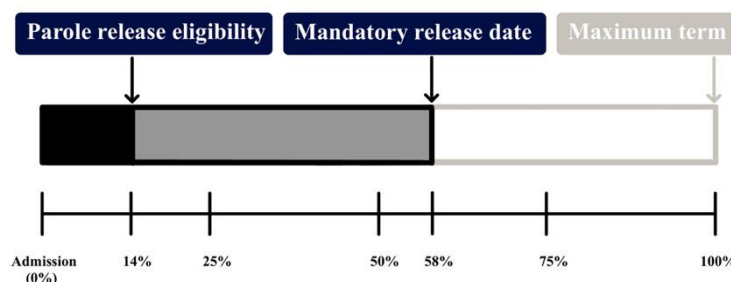
One notable feature of the above release restrictions is that they are based almost entirely on the nature of the offense of conviction. This breaks the pattern for general-rules sentences in Tennessee, where differences in opportunities for release are based almost exclusively on prior convictions.

Tennessee Figures 3 and 4 illustrate the prison-release timelines for “Especially Mitigated Offenders” convicted of any of the general-rules felony grades A through E, with no credits (Figure 3) and with full available credits (Figure 4). Classification as an “especially mitigated offender” depends on no (zero) prior convictions *and a judicial finding of mitigating circumstances not outweighed by aggravating circumstances*.⁴¹

Tennessee Figure 3. Prison-Release Timeline for “Especially Mitigated Offenders” with General-Rules Sentences for Felony Classes A through E and No Credits



Tennessee Figure 4. Prison-Release Timeline for “Especially Mitigated Offenders” with General-Rules Sentences for Felony Classes A through E and Full Credit Earnings (Assumes 5-Year Maximum Term)



⁴⁰ Tenn. Code Ann. § 40-35-501(h)(2),(i)(1)-(2),(v),(z). In addition, prisoners convicted of aggravated robbery with at least one prior conviction of aggravated or especially aggravated robbery are not eligible for parole, but may reduce their sentence by up to 15% with sentence credits. Tenn. Code Ann. § 40-35-501(k)(2).

⁴¹ We assume in Figures 3 & 4 that the sentencing court has exercised its statutory discretion to reduce the parole release eligibility date to 20 percent of the judicial maximum term before any credits are applied to further reduce the minimum term, see Tenn. Code § 40-35-109.

Applicable credits include 16 days per month of *good-conduct credits* and *program-performance credits*. These credits alone can give 35 percent reductions. In addition, prisoners can earn as much as 120 days for educational achievement and completion of a drug treatment program. When a state makes bulk credit awards such as this, the percentage measure in our timeline diagrams requires that we assume a specific judicial maximum term. (That is, a bulk award of 120 days is a smaller percentage of a seven-year sentence than a five-year sentence.) Throughout this report, and for all states in this project with bulk-award credit formulas, we consistently assume a five-year judicial maximum term, see Figures 4, 6, 8, 10, and 12.

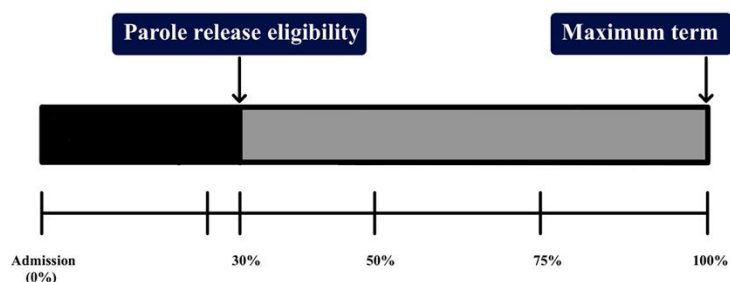
For the sentences shown in Figure 4, credit-based reductions of minimum terms are statutorily capped at 30 percent of original minimum term. This means that the shortest possible minimum term would occur at the 14-percent mark of the judicial maximum term. Under the ranking scheme developed for this project (see pp. v-vi), such sentences carry an *extremely high degree of indeterminacy*. The population multiplier potential (PMP) for Figure 4 sentences is 7.1:1.

For Figure 4's credit deductions against judicial maximum terms (movable MRDs), there is no applicable statutory cap. Assuming a 60 month maximum, a 35 percent reduction would bring the MRD back to 39 months. Bulk credit awards then subtract an additional four months, yielding an earliest-possible MRD at 35 months. This falls at the 58-percent mark of the judicial maximum sentence. This just barely qualifies as a "generous" movable MRD mechanism (defined as 40 percent reduction or more).

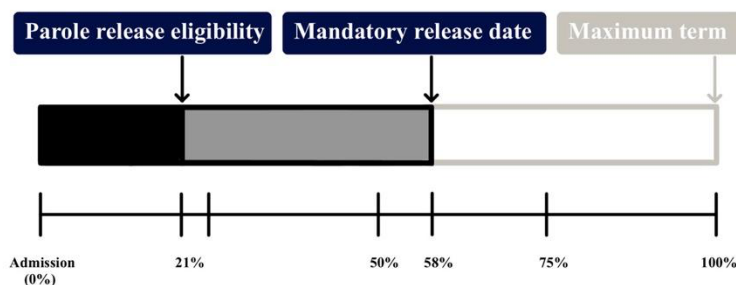
Note that the "generous" credit level is limited to prisoners who qualify for and complete substance abuse treatment. Prisoners cannot gain program completion credits for any other type of programming. For such prisoners, the earliest possible MRD for a 60-month MAX sentence is 37 months, or 62 percent of the MAX. We define this as an *average earning level* for mandatory MRDs.

For Figures 8, 10, and 12, the computation of movable MRDs is exactly the same for Figure 4. We will not repeat the explanation above for those Figures. However, for Figures 8, 10, and 12, minimum terms grow in length with higher offender classifications.

**Tennessee Figure 5. Prison-Release Timeline for Range I
“Standard Offenders” with General-Rules Sentences
for Felony Classes A through E and No Credits**



**Tennessee Figure 6. Prison-Release Timeline for Range I
“Standard Offenders” with General-Rules Sentences
for Felony Classes A through E and Full Credit Earnings
(Assumes 5-Year Maximum Term)**

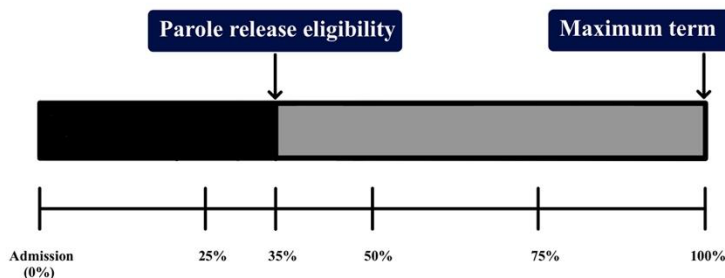


Tennessee Figures 5 and 6 illustrate the prison-release timelines for Range I “Standard Offenders” convicted of any of the general-rules felony grades A through E, with no credits (Figure 5) and with full available credits (Figure 6).

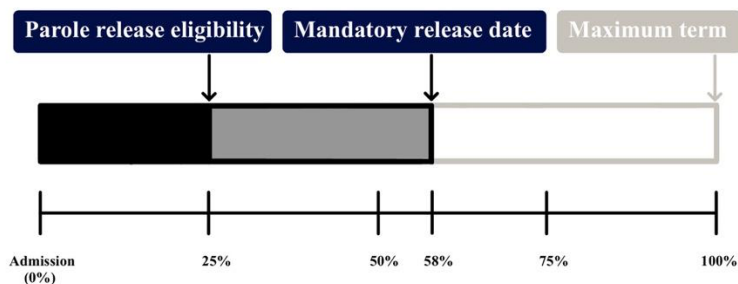
Because of the statutory cap of 30 percent on reduction of minimum terms, the shortest possible minimum term shown in Figure 6 is 21 percent. Under the ranking scheme developed for this project (see pp. v-vi), such sentences carry a *high degree of indeterminacy*. The population multiplier potential (PMP) for Figure 4 sentences is 4.8:1.

Tennessee Figures 7 and 8 illustrate the prison-release timelines for Range II “Multiple Offenders” convicted of any of the general-rules felony grades A through E, with no credits (Figure 7) and with full available credits (Figure 8).

Tennessee Figure 7. Prison-Release Timeline for Range II “Multiple Offenders” with General-Rules Sentences for Felony Classes A through E and No Credits



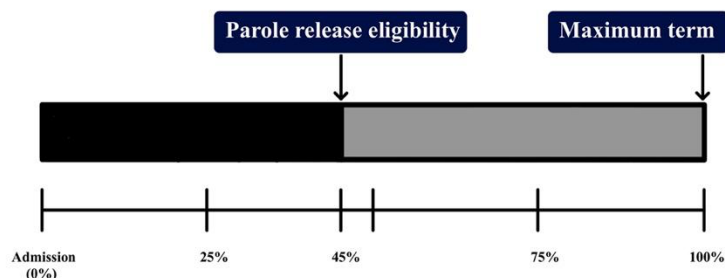
Tennessee Figure 8. Prison-Release Timeline for Range II “Multiple Offenders” with General-Rules Sentences for Felony Classes A through E and Full Credit Earnings (Assumes 5-Year Maximum Term)



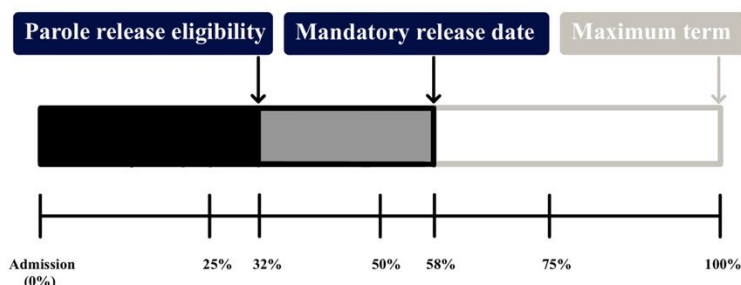
Because of the statutory cap of 30 percent on reduction of minimum terms, the shortest possible minimum term shown in Figure 8 is 25 percent. Under the ranking scheme developed for this project (see pp. v-vi), such sentences carry a *high degree of indeterminacy*. The population multiplier potential (PMP) for Figure 4 sentences is 4:1.

Tennessee Figures 9 and 10 illustrate the prison-release timelines for Range III “Persistent Offenders” convicted of any of the general-rules felony grades A through E, with no credits (Figure 9) and with full available credits (Figure 10).

**Tennessee Figure 9. Prison-Release Timeline for Range III
“Persistent Offenders” with General-Rules Sentences
for Felony Classes A through E and No Credits**



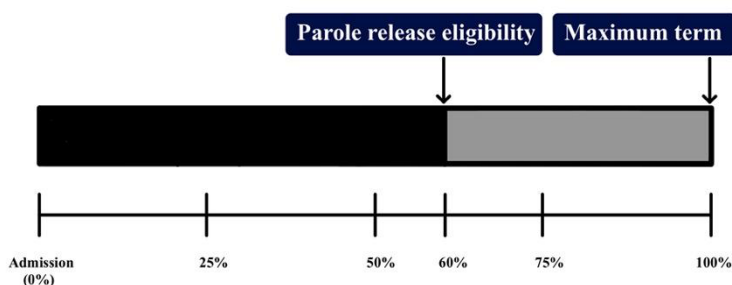
**Tennessee Figure 10. Prison-Release Timeline for Range III
“Persistent Offenders” with General-Rules Sentences for
Felony Classes A through E and Full Credit Earnings
(Assumes 5-Year Maximum Term)**



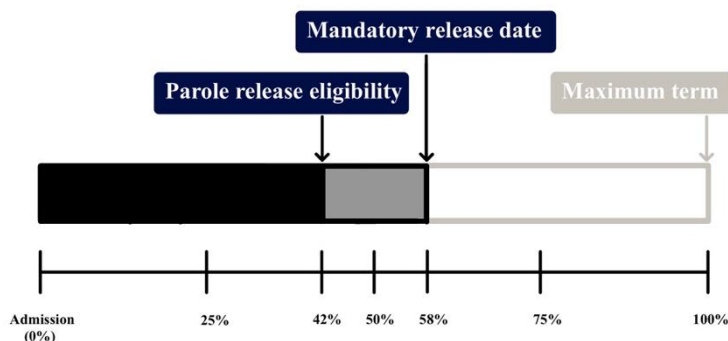
Because of the statutory cap of 30 percent on reduction of minimum terms, the shortest possible minimum term shown in Figure 10 is 32 percent. Under the ranking scheme developed for this project (see pp. v-vi), such sentences carry a *high degree of indeterminacy*. The population multiplier potential (PMP) for Figure 4 sentences is 3.1:1.

Tennessee Figures 11 and 12 illustrate the prison-release timelines for “Career Offenders” convicted of any of the general-rules felony grades A through E, with no credits (Figure 11) and with full available credits (Figure 12).

Tennessee Figure 11. Prison-Release Timeline for “Career Offenders” with General-Rules Sentences for Felony Classes A through E and No Credits

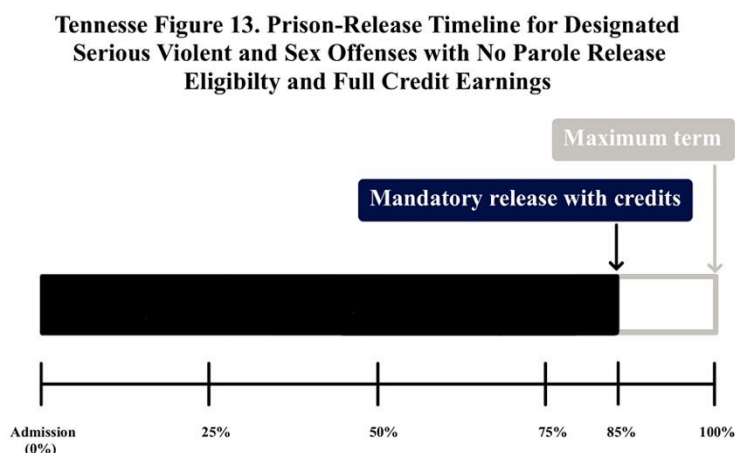


Tennessee Figure 12. Prison-Release Timeline for “Career Offenders” with General-Rules Sentences for Felony Classes A through E and Full Credit Earnings (Assumes 5-Year Maximum Term)



Because of the statutory cap of 30 percent on reduction of minimum terms, the shortest possible minimum term shown in Figure 12 is 42 percent. Under the ranking scheme developed for this project (see pp. v-vi), such sentences carry a *moderate degree of indeterminacy*. The population multiplier potential (PMP) for Figure 4 sentences is 2.4:1.

Tennessee Figure 13 illustrates the prison-release timeline for statutorily-designated serious violent and sex offenses with no parole release eligibility and full credit earnings.⁴² With no possible reductions of time served for discretionary parole, people with this type of sentence are limited to the statutorily limited credit deductions of 15 percent, as shown below. On the scale developed in this project (see pp. v-vi), such sentences are *extremely low in indeterminacy*. They carry a PMP of 1.18:1.



2. Life sentences in Tennessee

a. Adults

Individuals convicted of first-degree murder or aggravated rape of a child may be sentenced to life without the possibility of parole.⁴³ Additionally, those convicted as repeat violent offenders are subject to a life sentence without the possibility of parole.⁴⁴

A sentence of “imprisonment for life” in Tennessee law (as opposed to a sentence of “life without possibility of parole”) carries no eligibility for parole release. Instead, an opportunity for release is created by substituting a 60-year sentence for the life term and allowing reductions from this maximum term for conduct-based credits. In the language of this project,

⁴² The offenses in this category are first-degree murder; second-degree murder; especially aggravated kidnapping; aggravated kidnapping; especially aggravated robbery; aggravated rape; rape; aggravated sexual battery; rape of a child; aggravated arson; aggravated child abuse; sexual exploitation of a minor involving more than 100 images; aggravated sexual exploitation of a minor involving more than 25 images; especially aggravated sexual exploitation of a minor; aggravated robbery with at least one prior conviction of aggravated or especially aggravated robbery; driving under the influence with six or more prior convictions for driving under the influence; and facilitation of rape of a child. See Tenn. Code Ann. § 40-35-501(h)(2),(i)(1)-(2),(k)(2),(v),(z).

⁴³ Tenn. Code Ann. § 39-13-208; Tenn. Code Ann. § 40-35-501(h)(3).

⁴⁴ Tenn. Code Ann. § 40-35-120.

this is a movable MRD. There is a statutory cap on credit earnings of 15 percent, so the earliest possible release date is after 51 years.⁴⁵

b. Juvenile life sentences

Tennessee currently still allows juvenile life sentences without the possibility of parole. However, there is pending legislation that would amend the law to ban such sentences and further allow for flexibility of the sentencing court to assign a lower sentence.⁴⁶ Additionally, the Supreme Court of Tennessee recently struck down automatic life sentences, meaning mandatory 60-year sentences, for juveniles convicted of first-degree murder as being unconstitutional under the Eighth Amendment.⁴⁷

3. Infrequently used forms of prison release

a. Compassionate release

In Tennessee, the Commissioner of Corrections may grant a medical furlough of indeterminate duration to eligible prisoners.⁴⁸ Prisoners who are eligible are those who, due to their “chronically debilitated or incapacitated medical condition”, have a “prognosis of mortality within one year or less” or can no longer take care of themselves in a prison environment due to severe physical or psychological deterioration.⁴⁹ Indefinite medical furloughs are generally considered for prisoners who require skilled nursing care, hospitalization, or acute psychiatric care for an extended amount of time without expectation of improvement in their medical condition.⁵⁰ Recently, the Tennessee Legislature also gave the Commissioner the ability to

⁴⁵ Tenn. Code Ann. § 40-35-501(h)(2) (“There shall be no release eligibility for a person committing first degree murder, on or after July 1, 1995, and receiving a sentence of imprisonment for life. The person shall serve one hundred percent (100%) of sixty (60) years less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).”). In Tennessee law, a sentence of “imprisonment for life” is different than a sentences of “life without possibility of parole.” See Tenn. Code Ann. § 40-35-501(h)(3) (“There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life without possibility of parole . . .”).

⁴⁶ Senate Bill No. 905, 113th Gen. Assembly, First Regular Session (2023).

⁴⁷ See *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022). The court’s remedy -- for juveniles only -- was to revert the statute back to an unrepealed 1995 version that exists in Tenn. Code Ann. § 40-35-501(h)(1) (“Release eligibility for each defendant receiving a sentence of imprisonment for life for first degree murder shall occur after service of sixty percent (60%) of sixty (60) years less sentence credits earned and retained by the defendant, but in no event shall a defendant sentenced to imprisonment for life be eligible for parole until the defendant has served a minimum of twenty-five (25) full calendar years of the sentence...”).

⁴⁸ Tenn. Code Ann. § 41-21-227. (Note that prisoners sentenced to death are not eligible for medical furlough.)

⁴⁹ *Id.*

⁵⁰ Tenn. Dep’t of Corr. Policy 511.01.1, Medical Furloughs (July 1, 2019), <https://www.tn.gov/content/dam/tn/correction/documents/51101-1.pdf>.



grant parole for older inmates who are “chronically debilitated or incapacitated” and meet certain requirements.⁵¹

In a small percentage of cases, the Board considers prisoners recommended for clemency by the Department’s medical staff.⁵² Such requests are made in unusual or emergency medical situations which may require the Board’s immediate action.⁵³

b. Clemency

The Governor has the power to grant reprieves and pardons, except in cases of impeachment.⁵⁴ The Board initially reviews applications for clemency and provides nonbinding recommendations to the Governor.⁵⁵

c. Release during overcrowding emergencies

Whenever the prison population exceeds 95% capacity for 30 consecutive days, or where the Commissioner has reasonable grounds to believe that within 30 days the prison population will, for at least 30 consecutive days, exceed 95% capacity, the Commission must certify such information to the Governor.⁵⁶ Upon receiving such certification, the Governor may declare a state of overcrowding emergency.⁵⁷ At which point, the Governor may invoke one or both of the following powers:

- (1) Direct the Board to reduce the release eligibility dates of prisoners (except those convicted of escape) by a percentage sufficient to allow the Board to consider and release enough prisoners to reduce the prison population to 90% capacity;
- (2) Direct the Commission to notify all state judges and sheriffs to stay or otherwise delay the commitment of offenders who have been on bail prior to their convictions until up to 60 days after the prison population capacity has been reduced to 90%.⁵⁸

⁵¹ 2021 Tennessee Laws Pub. Ch. 282 (H.B. 72). Those eligible are at least 70 years old, have served at least 5 years, were not convicted of a violent sexual offense more than one count of first-degree murder or facilitation thereof, are not serving a sentence of life without the possibility of parole, and have two physicians attesting to their condition. Tenn. Code Ann. § 40-35-501(x).

⁵² Tenn. Code Ann. § (e).

⁵³ *Id.*

⁵⁴ Tenn. Const. art. III, § 6.

⁵⁵ Tenn. Comp. R. & Regs. 1100-01-01-.16.

⁵⁶ Tenn. Code Ann. § 41-1-503.

⁵⁷ *Id.*

⁵⁸ Tenn. Code Ann. § 41-1-504 (“There shall be no limits on the number or types of restrictions the governor may impose on early release eligibility as long as a sufficient number of inmates are eligible for consideration to reduce

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

We classify Tennessee's prison-sentencing system as operating with a *high degree of indeterminacy* overall (see pp. v-vi). Our judgment is based on the various classes of sentences depicted in Tennessee Figures 3 through 14. These run the gamut from *extremely high indeterminacy* (Figure 4) to *extremely low indeterminacy*. Our best guess is that the sentence classes described in Figures 5 through 10 describe the center of gravity of Tennessee prison-release indeterminacy. All of these sentences fall into the zone of *high indeterminacy*.

It is notable that, for most sentence classes in Tennessee, the department of corrections has greater unilateral control over actual release dates than the parole board. Across almost all general-rules sentence classes (which excludes Figure 13 above), movable MRDs can subtract as much as 42 percent from judicial maximum terms with no agreement or ratification of the parole board required. If the department of corrections exercises full discretion to award credits and reposition MRDs, the release-*denial* discretion of the parole board is canceled for that 42-percent segment of the timeline. Compared with most other states, we classify this as a "generous" formula for movable MRD reductions (with "generous" meaning a reduction of 40 percent or more). However, in our Final Report for this project, we have observed that the necessary credits for 42-percent reductions are probably "difficult" to earn in Tennessee compared with the level of difficulty in other states:

Credits reach generous level only for prisoners who qualify for and complete drug treatment and also win good conduct and work credits; otherwise credits are at average levels for general-rules sentences.⁵⁹

the in-house population of appropriate state correctional facilities to ninety percent (90%) of the relevant designated capacity." That is, except for prisoners convicted of second or subsequent rape or aggravated rape.)

⁵⁹ 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 95 table 9.