



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

REPORT: DISTRICT OF COLUMBIA

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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

Report: District of Columbia¹

Executive Summary

The District of Columbia’s prison-sentencing system operates with an *extremely low degree of indeterminacy* on the scale developed for this project (see pp. iii-iv), which may also be called an *extremely high degree of determinacy*. Most prisoners must serve a minimum of 87 percent of their judicial maximum terms before reaching their earliest possible release dates. Our ranking is qualified by the existence of one-year credits for nonviolent offenders who complete substance abuse treatment programs. Their sentences carry a higher degree of indeterminacy than those for general-rules prisoners. We posit that this is not a large percentage of the total DC prisoner population—not enough so to alter the basic operation of the prison-sentencing system as a whole.

There is no discretionary parole release available for the vast majority of DC prisoners under current law. The dominant back-end agency with release discretion is the Bureau of Prisons, exercised at the prison level by corrections officials who administer good-time and program credits.

Because the Bureau of Prisons’ authority to affect time served is quite modest, the size of the prison population serving felony sentences in DC is determined largely by front-end decisionmakers including the sentencing commission, prosecutors, and judges.

Terminology note

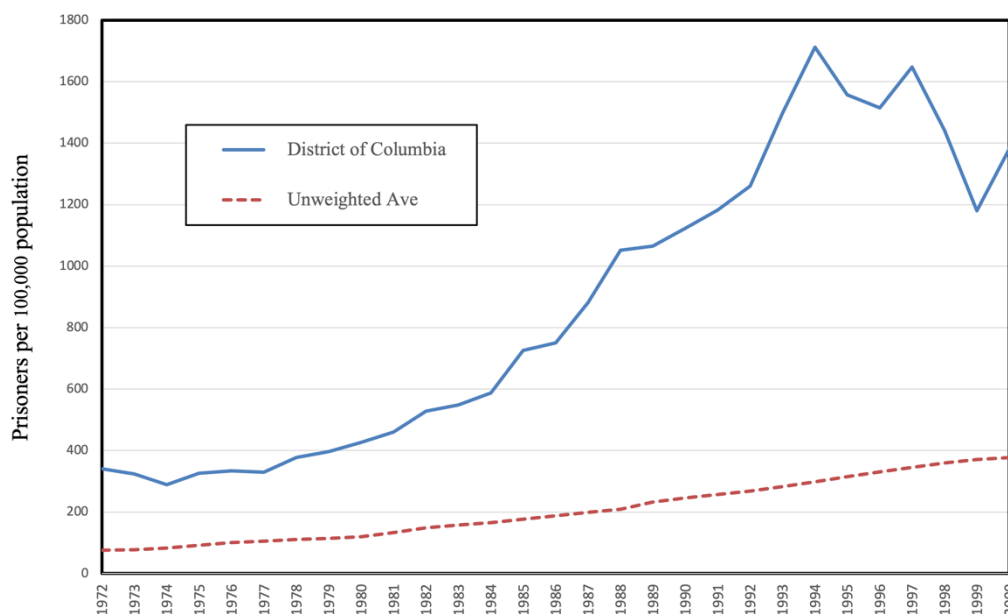
This report will refer to the United States Parole Commission as the “parole board.” The United States Bureau of Prisons will be referred to as the “Bureau of Prisons.”

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.

Introduction

Figure 1 reproduces the District of Columbia's prison-rate history from yearend 1972 through 2000. The time period stops well short of other reports in this project, which span the years 1972 to 2020 due to the unavailability of relevant data. At yearend 2001, with the closing of DC's Lorton Prison Complex, DC prisoners became the responsibility of the Bureau of Federal Prisons. Since then, prison counts and rates for DC have not been reported by the Bureau of Justice Statistics.² As of this writing, there was no readily accessible source from which the statistical equivalent of a state imprisonment rate could be derived.³

Figure 1. Prison Rate Change in District of Columbia and (Unweighted) Average Among All States, 1972 to 2000



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 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)

² See Prison Policy Initiative, *District of Columbia profile*, at <https://www.prisonpolicy.org/profiles/DC.html> (last visited May 30, 2023).

³ Rates of confinement in DC equivalent to “jail confinement” in the states continue to be reported annually, but the focus of this study is on prison rates and the rules of release within prison-sentencing systems.

(for 1978-2000), at <https://bjs.ojp.gov/data-collection/national-prisoner-statistics-nps-program> (last visited May 30, 2023).

Figure 1 shows that the DC prison rate was much higher than that of the average state throughout the years 1972 through 2000. However, DC as a jurisdiction is not directly comparable to any American state. DC is entirely composed of a single urban area, with no suburban or rural regions. Further, DC has no state government per se and limited representation in Congress.⁴ For purposes of statistical comparison, it might make sense to place DC alongside other distressed cities of similar size such as Baltimore or Detroit, but it is unique among the jurisdictions included in this study.

1. General rules of prison release

DC has a permanent sentencing commission (the District of Columbia Commission on Sentencing) that produces advisory judicial sentencing guidelines for felony offenses.⁵ Sentences for felonies committed on or after August 5, 2000 are expressed as judicial maximum terms,⁶ which are usually reducible by good-time credits.⁷ Judicial maximum sentences must

⁴ For a discussion of the limits of DC's political capabilities and its effects on criminal justice policy, see JAMES JR. FORMAN, *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (New York: Farrar, Straus and Giroux, 2017).

⁵ 1998 D.C. Laws 12-167 (Act 12-410) (establishing the commission); D.C. Code § 3-101 (2021); D.C. Sentencing and Criminal Code Revision Commission, *District of Columbia Sentencing Commission History and Timeline*, <https://scdc.dc.gov/page/district-columbia-sentencing-commission-history-and-timeline> (last visited May 30, 2023). The current judicial sentencing guidelines are found in The District of Columbia Sentencing Commission, *2022 Voluntary Sentencing Guidelines Manual, August 15, 2022*, at: <https://scdc.dc.gov/node/1609281>.

⁶ D.C. Code § 24-403.01(c)(1) (2021) (“[A] sentence under this section of imprisonment . . . shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law.”). Sentences for offenses committed on or before August 5, 1998 are indeterminate, and inmates serving these sentences are under the purview of the U.S. Parole Commission; there is no separate parole board for the District. *Id.* § 24-131(a)(1). The National Capital Revitalization and Self-Government Improvement Act of 1997 abolished the D.C. Board of Parole and transferred custody of D.C. offenders to the Federal Bureau of Prisons. Pub. L. 105-33, §§ 11201(b), 11231(a)(1), 111 Stat. 251, 734, 745 (1997). Prisoners subject to that prior law are eligible for parole consideration after their minimum sentences have been served. D.C. Code § 24-403(a). The board may petition the court to reduce a judicial minimum sentence for an otherwise-eligible inmate, though a prisoner must serve any applicable mandatory minimum sentence. *Id.* § 24-401c. If a D.C. inmate is denied parole under prior law, a reconsideration hearing will be scheduled within five years. The specific time between hearings is governed by whichever parole guidelines apply to the particular offender. See JESSICA STEINBERG & KATHRYN RAMSEY, *GEO. WASH. UNIV. L. SCH., 2018 PAROLE PRACTICE MANUAL FOR THE DISTRICT OF COLUMBIA 23* (2018) (stating that a presumption applies for those subject to 1972 and 1987 guidelines that a rehearing will be scheduled one year after a denial, and those subject to 2000 guidelines will have a three-year period between hearings unless the offense resulted in death and the offender is at least three years from serving the minimum, in which case the rehearing is scheduled for five years following the denial).

⁷ 18 U.S.C. § 3624(b)(1); see D.C. Code § 24-403.01(d) (“Notwithstanding any other law, a person sentenced to imprisonment . . . under this section for any offense may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).”).

fall within the ceilings of statutory maximum penalties for particular crimes. In most cases, judicial maximum terms are further limited by the need to leave room for “back up time,” which is the maximum period of reincarceration that may be imposed if postrelease supervision is revoked.⁸ A judge may not impose a sentence longer than the statutory maximum term minus the offense’s “back up time” unless the offense is a Class A felony or subject to a maximum of life imprisonment.⁹ For those two categories, judges can impose sentences up to the statutory maximum.¹⁰

Good-time credits are awarded to DC prisoners at the same earning rate as for federal inmates: 54 days per year provided “the prisoner has displayed exemplary compliance with institutional disciplinary regulations.”¹¹ The Bureau of Prisons has discretion to grant all, some, or no good-time credits for a particular year.¹² Those serving life sentences are not eligible to earn good-time credits.¹³

Good-time credits, if earned and not forfeited, are deducted from prisoners’ judicial maximum sentences to produce earlier mandatory release dates (MRD).¹⁴ For prisoners who earn full good-time credits of 54 days per year throughout their terms, and no credits are forfeited, MRDs occur at the 87 percent of their judicial maximum terms. Figure 2 sets out the prison-release timeline for such sentences. On the subjective scale created for this project, these are sentences with an *extremely low degree of indeterminacy*, which is the same as saying they carry an extremely high degree of determinacy (see pp. iii-iv).

⁸ An offense’s back up time is five years if the maximum term is life imprisonment or the offense is a Class A felony; three years if the maximum term is 25 years or more but less than life; two years if the maximum term is five years or more but less than 25; or one year if the maximum term is less than five years. D.C. Code § 24-403.01(b)(7).

⁹ D.C. Code § 24-403.01(b-1).

¹⁰ *Id.* Class A felonies are: first- and second-degree murder; third or subsequent felony; third or subsequent crime of violence; armed carjacking; first-degree sexual abuse; first-degree child sexual abuse; obstruction of justice; and kidnapping. D.C. Code §§ 22-2104, 22-1804a(a)(3), 22-2803(b)(2), 22-3002(b), 22-3008, 22-722(b), 22-2001.

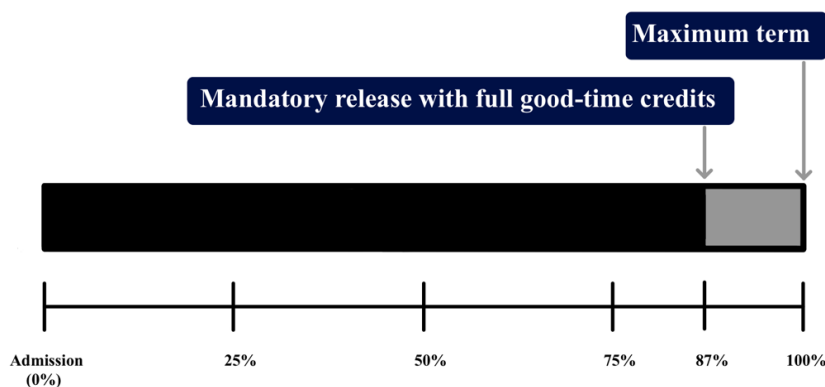
¹¹ 18 U.S.C. § 3624(b)(1); see D.C. Code § 24-403.01(d) (“Notwithstanding any other law, a person sentenced to imprisonment . . . under this section for any offense may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).”).

¹² 18 U.S.C. § 3624(b)(1) (“In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree.”).

¹³ 18 U.S.C. § 3624(b)(1).

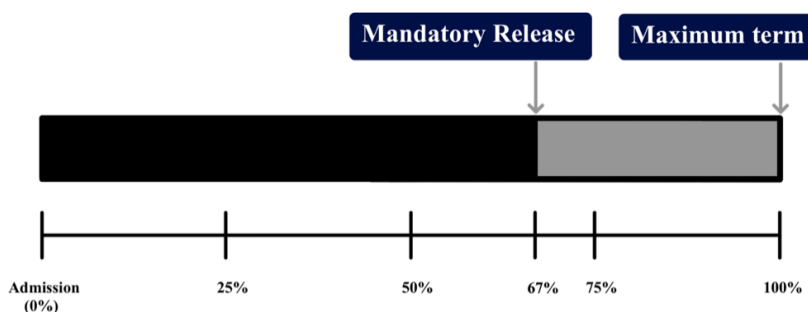
¹⁴ D.C. Code § 24-403.01(c-1) (“A person sentenced under this section to imprisonment . . . shall serve the term of imprisonment . . . specified in the sentence, less any time credited toward service of the sentence under [the federal good-time statute] . . .”). All good-time credits are potentially forfeitable, because they do not vest until the inmate has been released from custody. 18 U.S.C. § 3624(b)(2) (“Notwithstanding any other law, credit awarded under this subsection after [1996] shall vest on the date the prisoner is released from custody.”).

DC Figure 2. Prison-Release Timeline for General-Rules Cases With Full Good-Time Credits



In addition, prisoners serving sentences for “nonviolent offenses” may receive a credit of up to one year for completing a substance abuse treatment program.¹⁵ For eligible prisoners, this could change their prison-release timelines appreciably. Figure 3 illustrates the case of a nonviolent offender with a five-year judicial maximum term who earns full good-time credits and one year of additional credit for completion of a substance abuse program. Without program credits, such a prisoner’s earliest MRD would be at about the 52-month mark of the 60-month maximum term. Subtracting an additional year would produce an MRD at about 40 months. In percentage terms, this creates a realistic prospect for release at 67 percent of the judicial maximum term.

DC Figure 3. Prison-Release Timeline for Nonviolent Offenders with Five-Year Maximums Who Earn Full Good-Time Credits and One-Year of Program Completion Credits



¹⁵ D.C. Code § 24-403.01(d-1). “Nonviolent offenses” are those not defined as “crimes of violence.” *Id.* § 24-403.01(d-1)(2); *see id.* § 23-1331(4) (defining “crime of violence” to include such offenses as assault with a dangerous weapon, first-, second-, and third-degree sexual abuse, burglary, kidnapping, manslaughter, murder, and robbery).

The sentences depicted in Figure 3 are *low in indeterminacy* (or *high in determinacy*), comparable to general-rules sentences in states such as Minnesota and Washington. We note, however, that Figure 3 is premised on a five-year sentence. For longer judicial maximum sentences, the one-year program-completion credit would subtract a smaller fraction of the maximum, resulting in sentences with a lower degree of indeterminacy than Figure 3 suggests. For example, nonviolent offenders with ten-year maximums (assuming full good-time credits plus one year of program-completion credits) would serve about 92 of 120 months before reaching their MRDs, or 77 percent of their judicial maximum terms. On our scale, these ten-year sentences fall on the borderline between low and extremely low degrees of indeterminacy.

The general-rules sentences in Figure 2 carry a population-multiplier potential (PMP) of 1.15:1 (see p. v). That is, if all such prisoners were made to serve their longest possible terms (through the stingiest possible exercise of release discretion across the board), the total population of general-rules prisoners would over time become 15 percent larger than if all prisoners were released after serving their shortest possible terms. Prison population size for this large group is overwhelmingly determined by the discretionary actions of front-end actors in DC's prison-sentencing system (e.g., the sentencing commission, prosecutors, and judges).

The five-year sentences depicted in Figure 3, for nonviolent offenders eligible for substance abuse treatment programs, carry a PMP of 1.5:1. If all prisoners in this group were made to serve their longest possible terms, the size of the "Figure 3 subgroup" of the prison population would eventually be 50 percent larger than if all members of the subgroup were released after the shortest possible amount of time served. For such sentences, back-end release discretion plays an important role in the determination of prison population size, but not a dominant role. Mathematically, front-end actors in the prison-sentencing system exert roughly twice as much influence over time actually served for this subgroup than the portion of the timeline subject to the Bureau of Prison's back-end discretion.¹⁶

2. Life sentences

a. Adults

Life imprisonment without the possibility of release is mandatory in DC for defendants convicted of murdering a law enforcement officer or public safety employee¹⁷ or first-degree murder that constitutes an act of terrorism.¹⁸ It may be imposed for first-degree murder¹⁹ or a

¹⁶ Depending on the length of their judicial maximum terms, the degrees of indeterminacy of individual sentences imposed on nonviolent offenders eligible for substance abuse treatment programs might be higher or lower than shown in Figure 3, but never lower than that in Figure 2.

¹⁷ D.C. Code § 22-2106(a).

¹⁸ *Id.* § 22-3153(a)

¹⁹ *Id.* § 22-2104(a) (except that term of years can only be longer than 60 years if aggravating factors exist).

defendant's third conviction of a crime of violence.²⁰ Judges may also sentence offenders to life without the possibility of release for first-degree sexual abuse or first-degree child sexual abuse if there are aggravating circumstances.²¹

An offender may be sentenced to life with the possibility of release for committing second-degree murder;²² manslaughter that constitutes an act of terrorism;²³ kidnapping that constitutes an act of terrorism;²⁴ or manufacture, possession, use, dissemination, or detonation of a weapon of mass destruction.²⁵

When an offender is sentenced to life imprisonment, they become eligible for parole after serving no less than 85 percent of the minimum term, which shall not exceed 15 years unless a mandatory minimum applies.²⁶

b. Juvenile life sentences

Offenders who were under age 18 at the time of their crimes may not be sentenced to life without the possibility of release.²⁷ A sentencing judge is also not required to sentence a juvenile to a minimum term that would be mandated by statute for adult offenders.²⁸

Most offenders who were under 25 at the time of the offense and have served at least 15 years in prison may file for a sentence modification. Offenders resentenced pursuant to this provision may not receive a sentence of life without the possibility of parole or release. When deciding whether to reduce the original sentence, the court will consider factors such as the age at the time of the offense, history and characteristics of the offender, any recommendation from the

²⁰ *Id.* § 22-1804a(a)(2).

²¹ *Id.* § 22-3020(a). Aggravating circumstances include the victim being under age 12, the victim being under age 18 and having a significant relationship with the offender, the victim receiving serious bodily injury, the offender having a history of committing sex offenses, or the offender being armed at the time of the offense. *Id.*

²² *Id.* § 22-2104(c) (except that term of years can only be longer than 40 years if aggravating factors).

²³ *Id.* § 22-3153(d).

²⁴ *Id.* § 22-3153(e).

²⁵ *Id.* §§ 22-3154(a), 3155(a).

²⁶ *Id.* § 24-403(a) (“where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment.”); *id.* § 24-408 (“A person convicted of a crime of violence . . . shall not be paroled prior to serving of the minimum sentence imposed; provided, that any mandatory minimum sentence shall be served in its entirety.”).

²⁷ *Id.* § 24-403.01(c)(2)(B).

²⁸ *Id.* § 24-403.01(c)(2)(A).

U.S. Attorney, the offender’s family and community circumstances at the time of the offense, among others.²⁹

3. Infrequently used forms of prison release

a. Compassionate release

Inmates who are geriatric,³⁰ permanently incapacitated,³¹ or terminally ill³² may be considered for release by the parole board as long as the condition did not exist at the time of sentencing and “the inmate’s parole is not incompatible with the welfare of society.”³³ Prisoners may be eligible even if they have not yet served any required minimum sentence.³⁴ Those convicted of first-degree murder or a crime of violence or a dangerous crime while armed³⁵ are not eligible for geriatric parole.³⁶

b. Clemency

The President of the United States has the authority to commute DC prisoners’ sentences.³⁷ A clemency board within the DC mayor’s office reviews clemency applications and makes recommendations to the President.³⁸

²⁹ *Id.* § 24.403.03.

³⁰ “Geriatric” is defined as “a person 65 years of age or older . . . who suffers from a chronic infirmity, illness, or disease related to aging, and poses a low risk to the community.” *Id.* § 24-461(1).

³¹ “Permanently incapacitated” is defined as a person “who, by reason of an existing physical or medical condition which is not terminal, is permanently and irreversibly physically incapacitated, and who does not constitute a danger to himself or to society.” *Id.* § 24-461(2).

³² “Terminally ill” is defined as a person “who has an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 6 months and does not constitute a danger to himself or to society.” *Id.* § 24-461(3).

³³ *Id.* §§ 24-462, -464, -465.

³⁴ *Id.* § 24-463(b).

³⁵ A “crime of violence” and “dangerous crime” have the same definitions here as in other D.C. Code contexts. *See supra* notes 15.

³⁶ *Id.* § 24-467.

³⁷ U.S. CONST. art. II, § 2, cl. 1 (“[H]e shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”).

³⁸ D.C. Code § 24-481.03(a).

c. Release during overcrowding emergencies

DC once provided for sentence reductions during prison overcrowding emergencies as declared by the mayor, but repealed the relevant provisions in 2004.³⁹

4. Overall assessment

As a whole, the District of Columbia's prison-sentencing system operates with an *extremely low degree of indeterminacy* on the scale developed for this project (see pp. iii-iv), which might also be expressed as an *extremely high degree of determinacy*. DC ranks among the most determinate systems in the country, including the federal system (which is not surprising because DC has general rules of prison release that mirror those in federal law). This judgment is qualified by the existence of one-year program-completion credits for a subset of all prisoners in the DC system, which produce sentences that carry a higher degree of indeterminacy than those for general-rules prisoners.

We assume that the great majority of DC prisoners fall under the 87-percent formula shown earlier in Figure 2. If so, their sentences drive the overall character of the system. In contrast, the group represented in Figure 3 includes only nonviolent offenders in need of substance abuse treatment who are fortunate enough to find an available treatment slot. We posit that this is not a large percentage of the total DC prisoner population.

As with all American jurisdictions with extremely low degree of indeterminacy, there is no discretionary parole release available for the vast majority of DC prisoners under current law. The exceptions are prisoners with parolable life sentences and legacy prisoners sentences under the law in force before August 5, 2000. As a consequence, the dominant back-end agency with release discretion is the Bureau of Prisons, exercised at the prison level by corrections officials who administer the award and forfeiture of good-time and program credits.⁴⁰ For the great majority of prisoners, the BOP's prison-release powers are not shared or offset by any other agency.

Because the BOP's authority to affect time served is quite modest, the size of the prison population serving felony sentences in DC is determined largely by front-end decisionmakers including the sentencing commission, prosecutors, and judges.

³⁹ See *id.* § 24-201.42; 50 D.C. Reg. 6574, 6577 (Aug. 15, 2003) (repealing the Prison Overcrowding Emergency Powers Act of 1987).

⁴⁰ This sets aside seldom-used forms of release discretion such as compassionate release and executive clemency.