



ROBINA INSTITUTE
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PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: KANSAS

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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.

Executive Summary

Overall, we rank Kansas’s prison-sentencing system as having an *extremely low degree of indeterminacy* (which may also be phrased as an *extremely high degree of determinacy*) (see pp. iii-iv). This judgment is a combined assessment of two major sentence classes in Kansas. At their most indeterminate, general-rules sentences in Kansas are more than 75-percent determinate. Many prisoners convicted of higher-severity offenses are serving sentences that are 85-percent determinate. Accordingly, back-end officials have relatively limited ability to affect overall prison population size through use of their discretionary release powers.

For the vast majority of prisoners, there is no opportunity for discretionary parole release. The department of corrections is the only official agency with prison-release discretion through its administration of good-time and program credits. Most life sentences, in contrast, provide for parole release following lengthy minimum terms. Release discretion for parolable life sentences is concentrated entirely in the parole board; good-time discounts play no role in release eligibility determinations.

Terminology note

This report will refer to the Kansas Prisoner Review Board as the “parole board.” The Kansas Department of Corrections will be referred to as the “department of corrections.”

Introduction

Kansas’s prison-rate history, 1972 to 2020

At yearend 2020, Kansas’s prison rate was 298 per 100,000 general population, with a prison population of 8,677.¹ Kansas’s prison rate was 28th highest among all states.

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

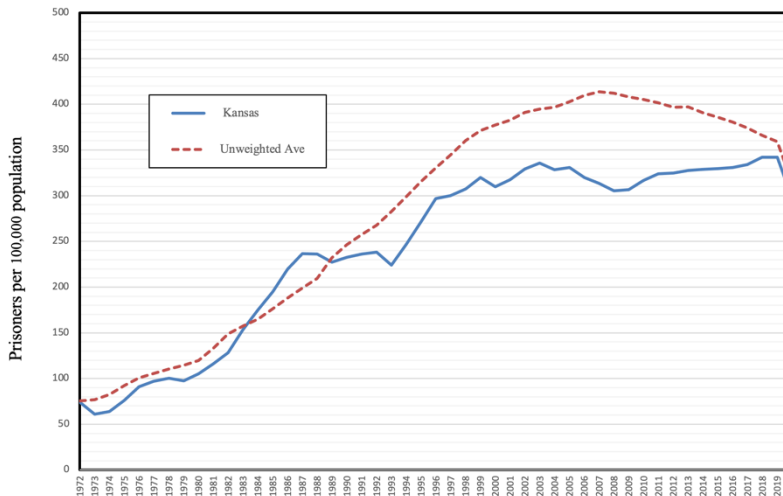
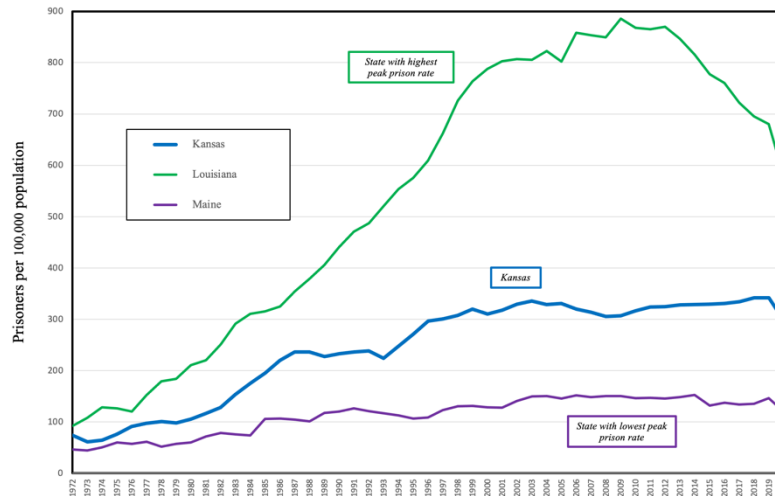


Figure 2. Prison Rate Change in Kansas, Louisiana, and Maine, 1972 to 2020



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

¹ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7. Preliminary information about changes in Kansas’ imprisonment rates after 2020 is presented below in the section on “The COVID period in Kansas.”

December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7 (for 2019-2020).

Kansas reached its peak prison rate in 2018 and 2019 at 342 per 100,000, which dropped to 298 per 100,000 in 2020. This is a net difference of -44 per 100,000, which was the 47th largest (fourth smallest) prison-rate drop of all states from their peak positions (in various years) through 2020.

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

The COVID period

We view American prison rates following the arrival of the COVID pandemic in March 2020 as discontinuous with earlier rates and trends. Whatever factors were at work to determine state prison rates in the “before times,” the pandemic introduced a major new causal force that, at least temporarily, diverted the course of prison-rate change nationwide.²

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

² 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 100,000.³ We believe this was the largest one-year decline in state prison rates in American history.⁴

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.⁵

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.⁶

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

³ 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.

⁴ 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).

⁵ 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).

⁶ 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 2020.⁷

The COVID period in Kansas

Kansas made almost no special uses of prison-release processes in the early COVID period.

In calendar year 2020, Kansas' prison rate fell from 342 to 298 per 100,000—a one-year decline of -44 per 100,000. This was the 35th largest (tied with Michigan) one-year drop reported among all 50 states for that year.⁸ Measured in percentage terms, it was a 12.9 percent reduction in the state's prison rate. The state's total prison population fell by 1,288 people, from 9,965 to 8,677.⁹

COVID releases contributed almost nothing to this drop. In a separate study, the Robina Institute found only six COVID-influenced releases in Kansas from March 2020 through December 2021.¹⁰ The Institute reported as follows:

In early April 2020, Kansas Governor Laura Kelly announced that officials were reviewing a list of people in prison with short amounts of time left on their sentences and “viable plans” for reentry. More than 500 cases were reviewed through this

⁷ 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.

⁸ 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.

⁹ *Id.*, at 11 table 4.

¹⁰ Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 34 Appendix A.

process, but the Department of Corrections only released 6 people from prison to serve the rest of their sentences on house arrest. After that, on May 1, 2020, Governor Kelly announced that the releases would stop. She cited an outbreak in one correctional facility (none of the six released individuals had been incarcerated in that specific facility) as the reason--officials did not want to risk spreading the virus by releasing people infected with COVID-19 into the community. There are no reports of additional releases thereafter.¹¹

Falling admissions were the overwhelming factor in Kansas' loss of prison population in 2020. The number of prison admissions in the state dropped by 44.7 percent in 2020 compared with the previous year (from 5,871 to 3,244).¹² Total numbers of releases did not increase in COVID's first year, but fell by 22 percent (from 6,018 in 2019 to 4,693 in 2020).¹³

From yearend 2020 to December 2021, the Vera Institute reported that Kansas saw a continued decrease in its prison population, from 8,660 to 8,337—or 3.7 percent.¹⁴ As of May 31, 2023, the Kansas Department of Corrections reported a total prison population of 8,835.¹⁵

1. General rules of prison release

Kansas abolished parole release discretion for most sentences and adopted presumptive judicial sentencing guidelines, effective July 1, 1993.¹⁶ Judicial prison sentences under the guidelines must include a statement of the judicial maximum prison term, the “maximum potential

¹¹ 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 69-70 Appendix E (footnote omitted).

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

¹³ *Id.*, at 19 table 9.

¹⁴ 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.

¹⁵ Kansas Department of Corrections, *Population: Adult Correctional Facilities* (updated May 31, 2023), at <https://www.doc.ks.gov>.

¹⁶ Kan. Stat. Ann. §§ 21-6802(c); 22-3717(d)(1). “Presumptive” guidelines are invested with a degree of legal force, subject to sentencing courts' legal authority to “depart” from the guidelines for allowable reasons.

reduction in sentence as a result of good time,” and an additional period of “postrelease supervision.”¹⁷

As a general rule, prisoners with sentences imposed under the guidelines can earn good-time and program credits that are deducted from their judicial maximum terms to create earlier mandatory dates of release (MRDs). Credits may be forfeited after they are earned.¹⁸

Credit-earning formulas vary by offense of conviction. Generally, prisoners convicted of lower-severity felonies may earn 20-percent good-time reductions of their maximum terms while prisoners convicted of higher-severity felonies can earn 15 percent.¹⁹ Many lower-level offenders are also eligible to earn a one-time program completion credit.²⁰ Present department of corrections rules cap the program credit at 60 days per sentence although the relevant statute allows for credits of up to 120 days.²¹

Figures 3 and 4 illustrate the prison-release timelines for prisoners with the higher good-time earning rate of 20 percent (Figure 3) and those with the lower rate of 15 percent (Figure 4). Both figures posit cases in which prisoners have also earned a 60-day credit for program

¹⁷ Kan. Stat. Ann. § 21-6804 (e)(1),(2). Prisoners’ time-served exposure in Kansas does not end once their prison sentences have been discharged. For most, postrelease supervision terms vary in length from 12 to 36 months according to the nature of their offenses. Kan. Stat. Ann. § 22-3717(d)(1)(A)-(C). During their supervision terms, releasees face further prison time for sentence revocations. Kan. Admin. Regs. § 44-9-503(a)(3) (prescribing penalty of six months of confinement for revocations based on technical violations).

¹⁸ Kan. Stat. Ann. § 21-6821(a); Kan. Admin. Regs. § 44-6-115a(g). In addition, credits may be withheld based on a court’s finding that the prisoner filed a false or malicious action or claim with the court; brought an action or claim with the court solely or primarily for delay or harassment; testified falsely or otherwise submitted false evidence or information to the court; attempted to create or obtain a false affidavit, testimony, or evidence; or abused the discovery process in any judicial action or proceeding. Kan. Stat. Ann. § 21-6821(d).

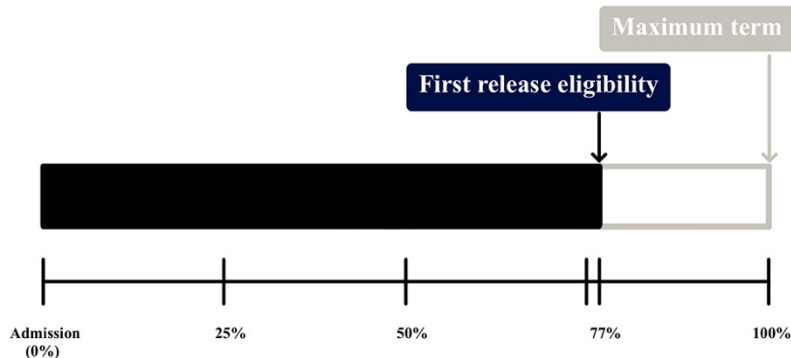
¹⁹ Kan. Stat. Ann. § 21-6821(b)(2). Felonies are classified in the statute according to their severity levels on Kansas’s sentencing guidelines grids. The criteria for earning good-time credits are not set out in statute but are left to rulemaking by the department of corrections. Kan. Stat. Ann. § 21-6821(a).

²⁰ Kan. Stat. Ann. § 21-6821(e)(1)(A). Such credits are available “for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program, or any other program designated by the secretary of corrections which has been shown to reduce offenders’ risk after release.” *Id.*

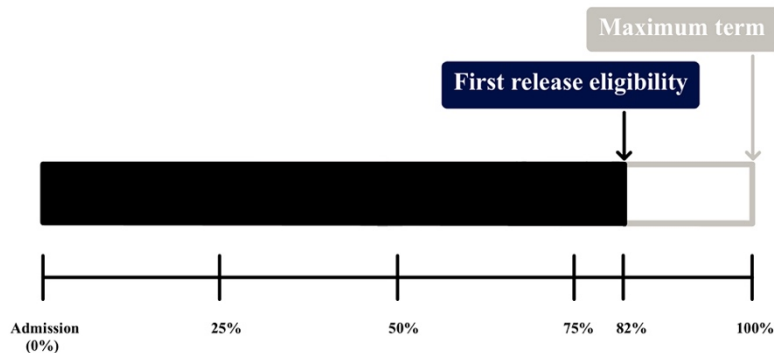
²¹ Kan. Stat. Ann. § 21-6821(e)(1)(B) (“[T]he amount of time which can be earned and retained by an inmate for the successful completion of programs and subtracted from any sentence is limited to not more than 120 days.”); Kan. Admin. Regs. § 44-6-127(d) (“Program credits shall not exceed 60 days on any one eligible controlling sentence, regardless of the number of programs completed.”). This is the only instance we have seen across all states of DOC regulations that undercut statutory credit-earning rules. This is an exercise of back-end release discretion in the form of “rulemaking discretion.”

completion.²² In order to compute the location of sentence milestones, both figures assume sentences with five-year judicial maximum terms.²³

Kansas Figure 3. Prison-Release Timeline for Five-Year Sentence with Full Good-Time and Program Credits



Kansas Figure 4. Prison-Release Timeline for Five-Year Sentence with Lower Good-Time and Program Credits



The sentences described in Figure 3 are 77 percent determinate and 23 percent indeterminate. That is, the judicial sentence “determines” 77 percent of time-to-be-served by the prisoner and the remaining 23 percent of potential time served has not been “determined” by the court. Prisoners’ lengths of stay within the last 23-percent segment of the timeline are governed by discretionary decisions of back-end officials, in this case prison officials in their administration of credits granted and forfeited.

²² We should note that most of the prisoners who are classified for the good-time earning rate of 15 rather than 20 percent are not eligible to receive program credits. For them, Figure 4 would look somewhat different, with an earliest possible mandatory release date at the 85-percent mark of their maximum terms.

²³ Sentences with maximum terms longer than five years will be even less indeterminate (more determinate) than those shown in the figures above because the 60-month discount for program completion would make up a lower percentage of such sentences.

For a five-year (or 60 month) sentence under the assumptions of Figure 3, the earliest MRD would fall at around three years and ten months (46 months). We might also say that 46 months of time served is “determined” by the judicial sentence, with 14 months remaining indeterminate subject to later back-end decisionmaking.

The sentences captured in Figure 4 are 82 percent determinate and 18 percent indeterminate. If the Figure 4 sentence is for a term of five years, the earliest MRD would come at about four years one month (49 months), with 11 months of time served determined at the back end of the sentence chronology.

For the 20-percent earners in Figure 3, the population multiplier potential (PMP) is 1.3:1. That is, the subpopulation of prisoners with this type of sentence would be 30 percent larger under a *longest-time-served scenario* than under a *shortest-time-served scenario* (see p. v). For the 15-percent earners in Figure 4, the PMP is 1.22:1. The subpopulation of such prisoners with this type of sentence would be 22 percent larger under a never-release regime than under an always-release regime.

Under the ranking scale developed for this project (see pp. iii-iv), we classify the sentences in Figure 3 as *low in indeterminacy* but close to the borderline of *extremely-low* indeterminacy. Sentences portrayed in Figure 4 are *extremely low in indeterminacy* or—it is probably more natural to say—*extremely high in determinacy*.²⁴ While it is a close call, we classify the Kansas prison-sentencing system overall as *extremely low in indeterminacy*. The sentences with the lowest degree of indeterminacy will tend to be significantly longer than others, so prisoners with this class of sentence will tend to “stack up” in the standing prison population.

We estimate that general-rules cases of the kind depicted in Figures 3 and 4 make up the great majority of all Kansas prisoners. Subtracting the 12 percent of Kansas prisoners serving life sentences (see next section), the general-rules population could make up as much as 88 percent of the total.

2. Life sentences

a. Adults

Crimes with life maximum terms are called “off-grid offenses” in Kansas law—a term indicating that the judicial sentencing guidelines grids do not apply.²⁵ With the exception of

²⁴ Kansas’s DOI is comparable to other states we have ranked as extremely high in determinacy such as North Carolina, Oregon, and Virginia. It is lower than states we have classified as high in determinacy such as Minnesota and Washington.

²⁵ Off-grid offenses include capital murder, murder in the first degree, terrorism, illegal use of weapons of mass destruction, and treason. Kan. Stat. Ann. § 21-6806(c). The following are also off-grid offenses if the offender was 18 or older at the time of the crime and the victim was under age 14: human trafficking, rape, criminal or aggravated criminal sodomy, indecent liberties or aggravated indecent liberties with a child, sexual exploitation

defendants sentenced to death or life without parole (LWOP), all life sentences carry parole release eligibility after their minimum terms have been served.²⁶ Minimum terms for off-grid offenses cannot be shortened by good-time or other credits.²⁷

Defendants convicted of capital murder are eligible to receive the death penalty or LWOP when certain statutory procedures are satisfied.²⁸ Otherwise, they receive sentences of life with parole release eligibility after 25 years with no deductions for good-time credits. Defendants convicted of first-degree murder receive life sentences with irreducible 25-year minimum terms.²⁹

Defendants convicted of certain sexual offenses involving children must be sentenced to life imprisonment with minimum terms of at least 25 years. Minimum terms must be at least 40 years for repeat offenders.³⁰ Minimum terms imposed by the courts may not be shortened by good time credits.³¹

b. Juvenile life sentences

Kansas forbids juveniles who were under age 18 at the time of their offenses to be sentenced to death or LWOP. The relevant statute does not specify an alternative sentence to be imposed on juvenile offenders in lieu of LWOP, leaving the question of permissible alternatives to the courts.³²

of a child, internet trading or aggravated internet trading in child pornography, or commercial sexual exploitation of a child. Kan. Stat. Ann. § 21-6806(d).

²⁶ Except for legacy cases involving crimes committed before July 1, 1993, parolable life sentences for off-grid offenses are the only sentence category in Kansas with the possibility of parole release.

²⁷ Kan. Admin. Regs. § 44-6-114e(a)-(c).

²⁸ Kan. Stat. Ann. § 21-6617.

²⁹ Kan. Stat. Ann. § 22-3717(b)(2).

³⁰ Kan. Stat. Ann. § 21-6627(a),(b).

³¹ Kan. Stat. Ann. § 21-6627(c).

³² Kan. Stat. Ann. § 21-6618. In 2021, the Kansas Supreme Court ruled that a “hard” sentence of life with possibility of parole after 50 years (a minimum term not subject to reduction for good time credits) without considering certain factors about the defendant's age did not violate the Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 480 (2012) (holding mandatory sentences of life without parole unconstitutional when applied to defendants who were under age 18 at the time of their crimes; stating further that, “[a]lthough we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”). This overturned a Kansas Court of Appeals decision holding the sentence unconstitutional. *See Williams v. State*, 500 P.3d 1182 (Kan. 2021).

3. Infrequently used forms of prison release

a. Compassionate release

The parole board has authority to release to prisoners found to be “functionally incapacitated” or who are suffering “a terminal medical condition likely to cause death within 30 days.” In either case, the board must find no “future risk to public safety.”³³ Prisoners sentenced for off-grid offenses are not eligible for either form of compassionate release.³⁴

b. Clemency

Kansas’s governor has the power to grant pardons or commute the sentences of (almost) any person convicted of a crime.³⁵ The governor cannot commute LWOP sentences.³⁶

Pardons and commutations have been a minimal factor in determination of prison population size in Kansas. From 2015 to 2018, the parole board received 84 clemency applications and favorably recommended only eight for approval.³⁷ From 2018-2019, Governor Colyer granted two pardons and one commutation of sentence.³⁸ In 2021, Governor Kelly granted clemency to eight people.³⁹

c. Release during overcrowding emergencies

Kansas has adopted the following process to respond to circumstances of overcrowding in its prison system:

The secretary of corrections shall notify the [Kansas Sentencing Commission] at any time when it is determined that prisons in the state have been filled to 90% or more of their overall capacity. The commission shall then propose modifications which amend the sentencing guidelines grid, including severity levels, criminal history scores

³³ Kan. Stat. Ann. §§ 22-3728(a)(1); 22-3729 (a)(1).

³⁴ Kan. Stat. Ann. §§ 22-3728(d),(e); 22-3729(d).

³⁵ K.S. Const. art. 1, § 7; Kan. Stat. § 22-3701(a).

³⁶ Kan. Stat. Ann. § 22-3705(b). All applications for pardons or commutations must first be referred to the parole board, with notice to the prosecutor and victim. The governor may not act until he or she has received the board’s report or 120 days have passed since referral to the board. Kan. Stat. Ann. § 22-3701(d).

³⁷ Kans. Dept. of Corr., “Clemency,” at Clemency Applications, accessed Aug. 24, 2022, at <https://www.doc.ks.gov/prb/clemency>.

³⁸ Tim Carpenter, *Gov. Jeff Colyer issues two pardons, one commutation of sentence*, *The Topeka Capital-Journal* (Jan. 11, 2019) <https://www.cjonline.com/news/20190111/gov-jeff-colyer-issues-two-pardons-one-commutation-of-sentence>.

³⁹ Tim Carpenter, *Kansas board conceals clemency recommendation for woman who killed alleged abuser in 2014*, *The Lawrence Times* (May 23, 2023), <https://lawrencekstimes.com/2023/05/23/ksbd-sgm-clemency-rec>.

or other factors which would result in the reduction of any sentence, as deemed necessary to maintain the prison population within the reasonable management capacity of the prisons as determined after consultation with the secretary of corrections. Such proposed modifications shall be submitted to the legislature by February 1 in any year in which the commission proposes to make the change. No change will be in effect without the approval of the legislature and the governor.⁴⁰

4. Overall assessment

Overall, we rank Kansas's prison-sentencing system as *extremely low in indeterminacy* (see pp. iii-iv). At their most indeterminate, general-rules sentences in Kansas are 77-percent determinate. Many prisoners convicted of higher-severity offenses are serving sentences that are 82-percent determinate.⁴¹ Accordingly, back-end officials have limited ability to affect overall prison population size through the exercise of their discretionary release authority. We calculate the population multiplier potentials (PMPs) for the bulk of the prison population in the range of 1.22:1 to 1.3:1 (see p. v).

For the dominant general-rules subgroup, prison population size is largely determined by discretionary actors at the front end of the prison-sentencing system including courts, prosecutors, and the sentencing guidelines commission. At the back end of the system, the department of corrections is the only official agency with prison-release discretion over general-rules prisoners.

Like a majority of American states that have abolished parole release discretion for most prisoners, Kansas has retained discretionary parole release for most life sentences—a subgroup that makes up about 12 percent of the prison population as a whole. Minimum terms range from 25 to 40 years. For prisoners with parolable life sentences, release discretion is concentrated entirely in the parole board. Good-time discounts play no role in release or release eligibility determinations.

⁴⁰ Kan. Stat. Ann. § 21-6822. In addition, the Kansas Sentencing Commission has responsibility to make annual projections of future prison population size. When the commission's projections indicate that the population will exceed capacity in the next two years, it must develop options to address the anticipated problem. Kan. Stat. Ann. § 74-9101(15).

⁴¹ In comparison, we have ranked the prison-sentencing systems of Minnesota and Washington as low in indeterminacy. Most prison sentences in those states are 67 percent determinate. Other systems we have rated as extremely low in indeterminacy include Oregon (most prisoners receive sentences that are either 80-percent or 100-percent determinate), North Carolina (most sentences are 83-percent determinate), and Virginia (most sentences are 86-percent determinate).