



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: LOUISIANA

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Prison-Release Discretion and Prison Population Size

State Report: Louisiana

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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.

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Overall, we classify Louisiana’s prison-sentencing system as operating with a *moderate degree of indeterminacy* on the scale developed for this project (see pp. iii-iv). This is a rough “averaging out” of the major sentence classes in the state. The general rules of prison release for nonviolent offenders are in our *high indeterminacy* range; those for violent offenders are in the *low indeterminacy* range; and sentences for sex offenders and repeat violent offenders are *low or extremely low in indeterminacy*.

Authority over time served in individual cases translates into the power to determine the prisoner population size for people serving each class of sentence. For nonviolent offenders, the population multiplier potential (PMP) of decisions taken at the back end of the system is 4:1 (see p. v). That is, depending on how the parole board and department of corrections exercise their discretionary powers, the subpopulation of prisoners convicted of nonviolent crimes would reach a size four times larger under a sustained *longest-time-served scenario* than the same subpopulation under a *shortest-time-served scenario*. For this sentence class, prison population policy is executed largely at the back end of the system. For violent and repeat offenders, PMPs are much lower—usually in the realm of 1.54:1 or 1.33:1. Here, authority to control prison population size is mostly concentrated in front-end actors such as judges and prosecutors, who have roughly twice or three times as much power over prison population size as back-end actors (e.g., the parole board and department of corrections).

One peculiarity of the Louisiana system is that, in recent years, only a tiny percentage of all prison releases have been through discretionary parole release. However, the department of corrections holds significant power to reduce many prisoners’ maximum terms through the administration of good time credits. From prisoners’ perspective, it makes little sense to place bets on the prospect of parole release and greater sense to focus on high credit earnings.

Terminology note

This report will refer to the Louisiana Board of Pardons and Committee on Parole as the “parole board.” The Louisiana Department of Public Safety & Corrections will be referred to as the “department of corrections.”

¹ This report was prepared with support from Arnold Ventures. For a broad overview of the law of parole release and supervision in Louisiana, see Alexis Lee Watts, Julia Barlow, Eric Arch, & Kevin R. Reitz, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Louisiana* (Robina Institute of Criminal Law and Criminal Justice, 2018).

Introduction

Louisiana's prison-rate history, 1972 to 2020

At yearend 2020, Louisiana's prison rate was 581 per 100,000 general population, with a prison population of 26,964.² Louisiana's prison rate was second highest among all states.

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

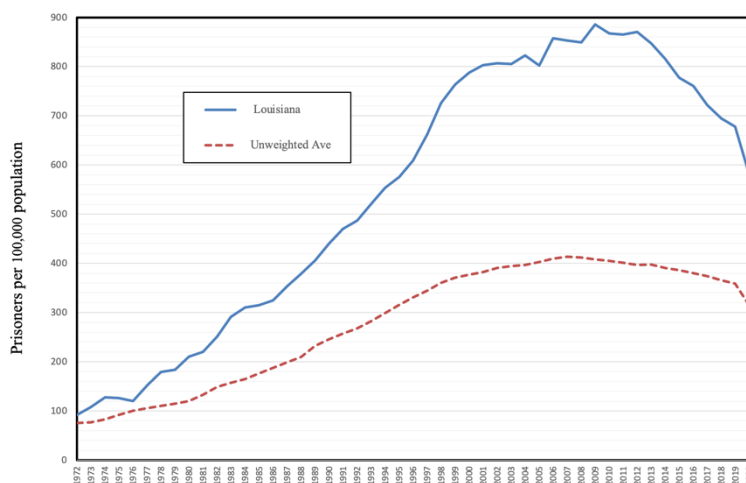
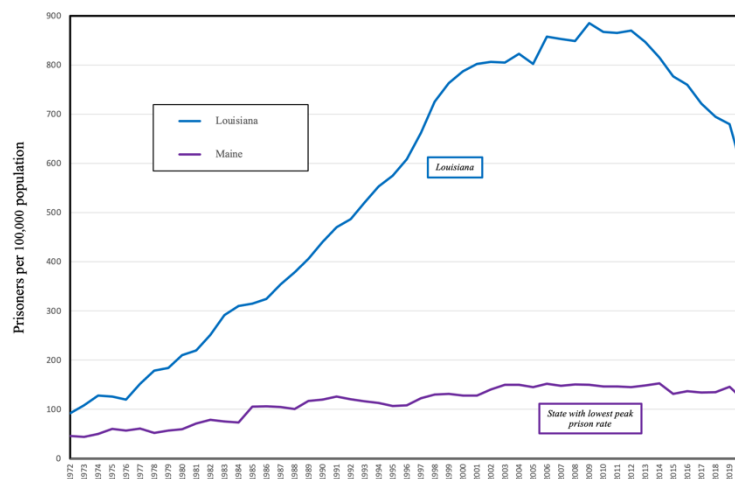


Figure 2. Prison Rate Change in Louisiana and Maine, 1972 to 2020



Sources: Timothy J. Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under*

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

the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016 (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15-16 table 7 (for 2019-2020).

Louisiana reached its peak prison rate in 2009 at 886 per 100,000, which fell to 581 per 100,000 in 2020. This is a net difference of -305 per 100,000, which was the largest prison-rate drop among all states from their peak positions (in various years) through 2020. Despite the size of this drop, Louisiana remained in the “top two” among all states for high imprisonment rates at yearend 2020, where it has ranked since 1990 (more often in first position than in second).

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

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

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.

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 Louisiana

In a separate study, the Robina Institute found a total of only 68 releases in Louisiana that were accelerated in response to the pandemic. This number was the equivalent of about 0.2 percent of Louisiana's pre-COVID prison population (at yearend 2019). The COVID releases all occurred through the state's medical furlough process in April through June 2020.⁹

In calendar year 2020, Louisiana's prison rate fell from 678 to 581 per 100,000—a one-year decline of -97 per 100,000. This was the second largest one-year drop reported among all 50 states for that year.¹⁰ Measured in percentage terms, it was a 14.3 percent reduction in the state's prison rate. The state's total prison population fell by 4,620 people, from 31,584 to 26,964.¹¹

Accelerated COVID releases were responsible for less than two percent of the state's reduction in prison population in 2020. Falling admissions were a far more important factor than releases. The number of prison admissions in the state dropped by 40.2 percent in 2020 compared with

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 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.

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 34 Appendix A, 70 Appendix E.

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 15 table 7.

¹¹ *Id.*, at 11 table 4.

the previous year (from 16,040 to 9,593). Total releases in 2020 fell by 16.9 percent over 2019 (from 16,868 to 14,019).¹²

Louisiana's prison population drop slowed significantly in 2021. From yearend 2020 to December 2021, the Vera Institute reported that Louisiana saw a decrease in its prison population from 26,770 to 26,340—or 1.6 percent.¹³ The Louisiana department of corrections projects a total prison population of 29,944 prisoners at yearend 2022.¹⁴

1. General rules of prison release in Louisiana

Actual time served under most Louisiana prison sentences is a function of the parole board's release discretion and the accrual of good time credits administered by the department of corrections.¹⁵

Since the late 1990s, the timing of the vast majority of releases from Louisiana has been a function of good time reductions from prisoners' maximum terms. Only a small percentage of prisoners have been released through the discretion of the state's parole board. For example, during the period from 2016 through 2021, on average, the dates of 87 percent of all releases were determined by good time earnings credited against judicial maximum terms. Fewer than three percent of releasees exited through the discretionary action of the parole board.¹⁶

Reported statistics over the same years (2016-2021) also show that prisoners on average had served 36 percent of their judicial maximum terms.¹⁷ “Early” releases by parole boards were much too infrequent to account for this statistic. Rather, it suggests that credit awards in Louisiana are powerful determinants of time served. They drive what appear to be substantial reductions through the advancement of prisoners' mandatory release dates (MRDs). Factors other than good time could also play a role in reducing average time served, however, particularly credits for time served prior to trial (for which we have no data).

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

¹³ See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2.

¹⁴ Louisiana Department of Public Safety and Corrections, *Population Trends - Raw Data: 1989 – Present* (December 31, 2021), at 9, <https://s32082.pcdn.co/wp-content/uploads/2022/03/0a-Population-Trends.pdf>.

¹⁵ In Louisiana, prisoners' dates of parole-release eligibility are calculated by the department of corrections, not the parole board. Louisiana Board of Pardons & Parole, *Parole in Louisiana*, at 2, <https://s32082.pcdn.co/wp-content/uploads/2019/08/PAROLE-IN-LOUISIANA.pdf> (last visited Aug. 22, 2022). This is not exactly a form of release discretion, but it is an important responsibility that carries the risk of error.

¹⁶ See Louisiana Department of Public Safety and Corrections, *Briefing Book: January 2022 Update* (2022), at 97-98 (PDF 60-61), <https://s32082.pcdn.co/wp-content/uploads/2022/03/0m-Full-Briefing-Book.pdf>.

¹⁷ *Id.*

Parole release eligibility

Most people sentenced to prison in Louisiana become eligible for discretionary parole release at some point during their terms, but the timing of release eligibility varies depending on their offenses of conviction and criminal histories. There are four tiers of eligibility formulas in Louisiana for different sentence classes, with the bottom tier being “none.”

A first offender whose offense is not a crime of violence¹⁸ or sex offense¹⁹ is parole eligible after serving 25 percent of the judicially imposed sentence.²⁰ A person convicted of a crime of violence without prior felony convictions for a crime of violence or sex offense becomes parole eligible after serving 65 percent of their sentence.²¹ A person convicted of a second crime of

¹⁸ In Louisiana, the term “crime of violence” refers to crimes that have an element of use, attempted use, or threatened use of physical force against another person or another person’s property and involves a substantial risk that physical force may be used while committing the offense or an offense that involves use or possession of a dangerous weapon. The following crimes and attempted are included as crimes of violence: solicitation for murder, first degree murder, second degree murder, manslaughter, aggravated battery, second degree battery, aggravated assault, aggravated or first degree rape, forcible or second degree rape, simple or third degree rape, sexual battery, second degree sexual battery, intentional exposure to AIDS virus, aggravated kidnapping, second degree kidnapping, simple kidnapping, aggravated arson, aggravated criminal damage to property, aggravated burglary, armed robbery, first degree robbery, simple robbery, purse snatching, false imprisonment while armed with a dangerous weapon, assault by drive-by shooting, aggravated crime against nature, carjacking, terrorism, aggravated second degree battery, aggravated assault upon a peace officer, aggravated assault with a firearm, armed robbery, second degree robbery, disarming a peace officer, stalking, second degree cruelty to juveniles, aggravated flight from an officer, battery of a police officer, trafficking of children for sexual purposes, home invasion, human trafficking, domestic abuse aggravated assault, vehicular homicide when the operator’s BAC exceeds .20%, aggravated assault upon a dating partner, domestic abuse battery, battery of dating partner, violation of a protective order if the violation involves a battery or crime of violence, criminal abortion, first degree feticide, second degree feticide, third degree feticide, and aggravated criminal abortion by dismemberment. La. Stat. § 14:2(B).

¹⁹ In Louisiana, the term “sex offense” refers to the following crimes: perpetration or conspiracy to commit human trafficking when the services include commercial sexual activity or any sexual conduct, trafficking of children for sexual purposes, crime against nature, aggravated crime against nature, crime against nature by solicitation, felony carnal knowledge of a juvenile, indecent behavior with a juvenile, pornography involving juveniles, molestation of a juvenile or a person with a physical or mental disability, computer-aided solicitation of a minor, prohibited sexual conduct between an educator and student, prostitution involving persons under eighteen, purchase of commercial sexual activity, contributing to the delinquency of juveniles, sexual battery of persons with infirmities, obscenity by solicitation of a person under the age of seventeen, video voyeurism, rape, aggravated or first degree rape, forcible or second degree rape, simple or third degree rape, sexual battery, second degree sexual battery, oral sexual battery, intentional exposure to HIV, a second or subsequent conviction of voyeurism, and a second or subsequent conviction of sexual abuse of an animal. La. Stat. § 15:541(24)(a).

²⁰ La. Stat. § 15:574.4(A)(1)(a).

²¹ La. Stat. § 15:574.4(A)(1)(b)(ii).

violence or a first or second conviction of a sex offense becomes parole eligible after serving 75 percent of the imposed sentence.²²

There is no eligibility for discretionary parole release at any point for prisoners who were sentenced as a “serial sexual offender” and those who were under a pending indictment or information for any crime suspected of having been committed while a prisoner.²³ In addition, prisoners convicted of a third or subsequent crime of violence or a third or subsequent sex offense are not eligible for parole.²⁴

If a prisoner reaches parole release eligibility and release is denied by the parole board, there is no statutory requirement of reconsideration before the board at a later time. Unlike most other states, there are no statutorily imposed waiting periods until reconsideration (which are often one or two years in other states). Louisiana’s statutes contemplate that most prisoners may be given only one “shot” before the parole board.

The parole board has discretion to grant reconsideration to a prisoner after a release denial if they choose to do so.²⁵ Prisoners may reapply every six months, one year, or two years, depending on the seriousness of their conviction offenses.²⁶ Under current rules, the parole board will grant reconsideration only in the following circumstances: (1) there is an allegation of misconduct by a parole board member that is substantiated by the record; (2) there was significant procedural error by a parole board member, or; (3) there is significant new evidence that was not available when the initial release hearing was conducted.²⁷ Under current board policy, a prisoner who has had their rehearing request denied on multiple occasions will be given a rehearing within 10 years of their most recent parole hearing date.²⁸ Even this 10-year timeline, however, is not statutorily mandated.

We have found no data on the number of prisoners who have been granted reconsideration following a release denial by the parole board. The board’s practices probably change over time with turnover in membership and new political circumstances. On paper, because of the narrow

²² La. Stat. § 15:574.4(A)(1)(b)(i).

²³ La. Stat. § 15:574.4(B)(1).

²⁴ La. Stat. § 15:574.4(A)(1)(b)(i).

²⁵ La. Admin. Code tit. 22, pt. XI, ch. 7, § 705(D)(3).

²⁶ La. Admin. Code tit. 22, pt. XI, ch. 7, § 705(B)(3).

²⁷ La. Admin. Code tit. 22, pt. XI, ch. 7, § 705(D)(2)(c).

²⁸ Louisiana Board of Pardons & Parole, *Board Directive 07-705-A-DIR* (Oct. 26, 2020), <https://s32082.pcdn.co/wp-content/uploads/2020/12/07-705-A-DIR-REHEARING-GUIDELINES.pdf>.

criteria for granting a rehearing, Louisiana’s approach to reconsideration of discretionary parole release may be the most restrictive in the nation.²⁹

Conduct-based credits

In Louisiana, prisoners earn conduct-based credits, known as “good time,” which are applied as reductions against judicial maximum sentences to establish earlier mandatory release dates (MRDs). In this project, we have used the term “movable MRDs” to describe sentence discounts on this model.³⁰ Credit earnings have no effect on dates of first eligibility for discretionary parole release in Louisiana.

Good time credits are awarded for “good behavior and performance of work or self-improvement activities, or both.” The credits can only be earned “in lieu of incentive wages.”³¹ This requires prisoners to forego monetary earnings as a prerequisite for the receipt of good time credits—a provision we have not seen in any other state.

Most nonviolent offenders earn good time credits at a generous rate of 13 days for every seven days in custody, which could yield MRDs as early as the 29-percent mark of the judicial maximum term.³² That is, full good time credit earnings (without forfeiture) would result in a 71-percent reduction of time served measured against the judicial maximum sentence. This is among the most generous credit-earnings rates in the country for any class of sentence (although restricted in Louisiana to nonviolent crimes). The generosity in accrual rate is amplified by the fact that credits are easy to earn; the main criterion for their award is that prisoners stay out of serious trouble.³³

Prisoners convicted of violent crimes are eligible for good time credits only if they have no prior conviction for a violent or sex offense. They may earn good time at a modest rate of one day for every three days in custody.³⁴ If earned continuously across a prison term, and there is

²⁹ For a discussion of different approaches across the states, 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 35; 36-43 table 6, column 4; 45.

³⁰ For a discussion of movable MRDs in 40 states, see id., Ch. 7 (“Highlighted topic: Movable mandatory release dates”).

³¹ La. Stat. § 15:571.3(B)(1)(a).

³² La. Stat. § 15:571.3(B)(1)(a). All state prisoners in Louisiana are subject to the rules for earning good time credits outlined in La. Stat. § 15:571.3(B).

³³ 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 89-93 table 9. As discussed below, good time credits are available only at modest levels, or not at all, for violent and repeat offenders.

³⁴ La. Stat. § 15:571.3(B)(2).

no forfeiture of credits, prisoners could reach MRDs at the 75-mark of their maximum sentences. In other words, full good time credit earnings would result in a 25-percent reduction of time served measured against the judicial maximum sentence.

Life prisoners may accumulate good time credits, but they are applied only if a prisoner's life sentence is commuted to a term of years.³⁵ Prisoners wholly ineligible for good time credits include: those convicted of a second crime of violence,³⁶ those convicted of a sex offense,³⁷ and those sentenced as a habitual offender.³⁸ In addition, sentencing courts have discretion to prohibit the earning of good time credits on a case-by-case basis for defendants convicted of the crime of stalking.³⁹

“Overdetention”

For more than a decade, Louisiana has had a serious problem of “overdetention,” meaning that substantial percentages of prisoners are not released on their mandatory release dates (MRDs). Many people are held for weeks or months beyond their MRDs. A 2023 report by the U.S. Department of Justice described the scope of the problem:

[Louisiana Department of Public Safety and Corrections (“LDOC”)] violates the constitutional rights of people in its custody by detaining them for weeks and often months past their release dates. According to the most recent available data, of the 4,135 people released from LDOC’s custody between January and April 2022, 1,108 (or 26.8 percent) were held past their release dates. The median number of days an overdetained individual was held past their release date was 29; 31 percent were held over for at least 60 days; and 24 percent were held over for at least 90 days. In just this four-month period, LDOC had to pay parish jails an estimated \$850,000, at a minimum, in fees for the days those individuals were incarcerated beyond their lawful

³⁵ La. Stat. § 15:571.3(B)(1)(a).

³⁶ La. Stat. § 15:571.3(B)(1)(a),(D)(1).

³⁷ La. Stat. § 15:571.3(D)(2).

³⁸ La. Stat. § 15:571.3(C)(1).

³⁹ La. Stat. § 15:571.3(C)(2). Prisoners sentenced to “parish prisons” administered by local jurisdictions (the equivalent of jail inmates in most other states) are subject to separate statutory schedules of good time credits with significantly lower earning formulas than state prisoners. *See* La. Stat. § 15:571.3(A)(1). About 50 percent of state prisoners in Louisiana are held in parish prisons but are legally considered to be in the custody of the department of corrections; they are eligible for the same good time earnings rates as people held in state prisons (as discussed in text above). *See* La. Atty. Gen. Op. No. 78-932, 1978 WL 32175 (July. 25, 1978); La. Stat. § 15:571.3(B). Louisiana’s department of corrections reimburses local facilities at a per diem rate for the housing of state prisoners. *See* U.S. Department of Justice, Civil Rights Division, *Investigation of the Louisiana Department of Public Safety and Corrections* (2023), at 4 (“Approximately 13,000 people serving state sentences in LDOC’s custody [out of a total of approximately 26,000 people] are housed in 104 local parish jails, at a cost of approximately \$350,000 per day.”).

sentences. At that rate, this unconstitutional practice costs Louisiana over \$2.5 million a year.⁴⁰

The Justice Department found that most overdetections were the product of administrative delays in the classification of new prisoners, frequent errors in the classification process (and a slow process for their correction), outdated information systems, inadequate communications protocols across institutions, and delays in the computation of release dates. The Justice Department found that the overdetection problem dated back at least 2012 and that “LDOC has persisted with these unconstitutional practices despite at least a decade of notice and clear recommendations for fixing the problem.”⁴¹

Overdetention has significantly affected the realities of prison release in Louisiana for many years: Actual time served for many prisoners is extended without legal justification, taxpayers must pay the excess prison costs (or per diem payments for state prisoners held in local parish prisons), and Louisiana’s total prison population size has been artificially inflated.⁴² One would think that state policymakers have multiple incentives to eliminate overdetection. However, at different levels of state government, incentives do not always align.⁴³ As the Justice Department’s report noted, “Parish jails have no financial incentive to take affirmative measures to help decrease overdetections because LDOC pays the jail for each day of overdetection.”⁴⁴

Timeline Diagrams

⁴⁰ U.S. Department of Justice, Civil Rights Division, *Investigation of the Louisiana Department of Public Safety and Corrections* (2023), at 1.

⁴¹ *Id.*

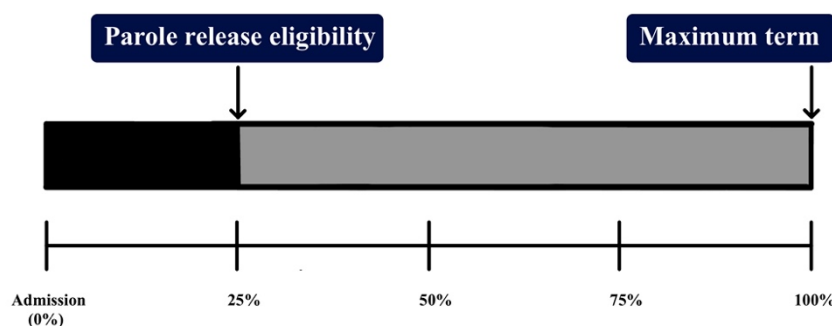
⁴² We think overdetection in Louisiana is an extreme example of a broader phenomenon found in many prison-sentencing systems: From a wide variety of causes, actual time served for prisoners can be increased by administrative delays, inefficiencies, miscommunications, and errors.

⁴³ For a classic statement of this phenomenon, see FRANKLIN E. ZIMRING AND GORDON HAWKINS, *THE SCALE OF IMPRISONMENT* (1991) (identifying a problem they named “the correctional free lunch,” when county prosecutors and judges send convicted offenders to state prisons that are paid for at the state level, rendering prison sentences “cost free” to county officials).

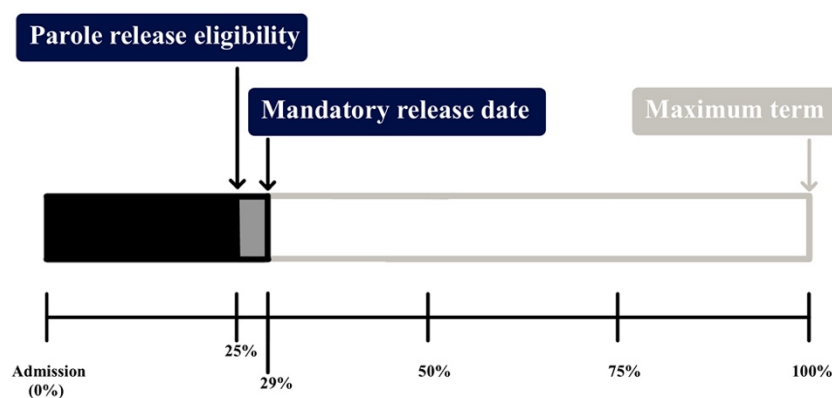
⁴⁴ *Id.* at 13 n. 39 (“There are few incentives for rushing an inmate out the door, especially if the state is picking up the tab: Reimbursement rates for state prisoners are a significant source of income in the parishes”). In addition, parish prisons often benefit from the free labor performed by state prisoners. See Glenn Thrush, *Some Prisoners Remain Behind Bars in Louisiana Despite Being Deemed Free*, New York Times, December 11, 2022 (“In October 2017, Sheriff Steve Prator of Caddo Parish ... told reporters he was concerned that a recent criminal justice effort in the state was bad for parish governments. Not only would it result in higher crime rates among the “bad” former prisoners, but it would also deprive his staff of free labor provided by the ‘good ones.’ ‘They’re releasing some good ones that we use every day to wash cars, to change oil in our cars, to cook in the kitchen, to do all that, where we save money,’ Sheriff Prator said.”).

Figures 3 and 4 cover general-rules sentences for nonviolent offenders with no prior convictions of serious offenses. Figure 3 focuses only on parole release eligibility. Figure 4 adds in the effect of full earnings of good time credits at the generous rate of 13 days for every seven days in custody. Even if Louisiana’s parole board continuously exercises its release-denial discretion, prisoners may still win MRDs at the 29-percent mark based on good time credits, not so far from first parole release eligibility (at 25 percent). We call this an example of “overlapping release discretions” held by two back-end decisionmakers.

**Louisiana Figure 3. Prison-Release Timeline for Prisoners
Convicted of Nonviolent Offenses with General-Rules
Sentences and No Good Time Credits**



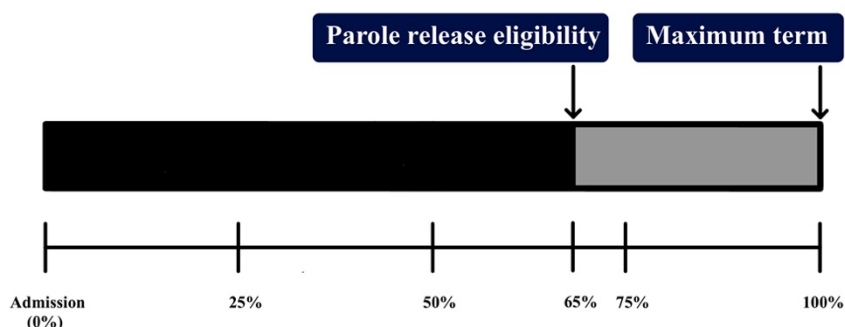
**Louisiana Figure 4. Prison-Release Timeline for Prisoners
Convicted of Nonviolent Offenses with General-Rules
Sentences and Full Good Time Credits**



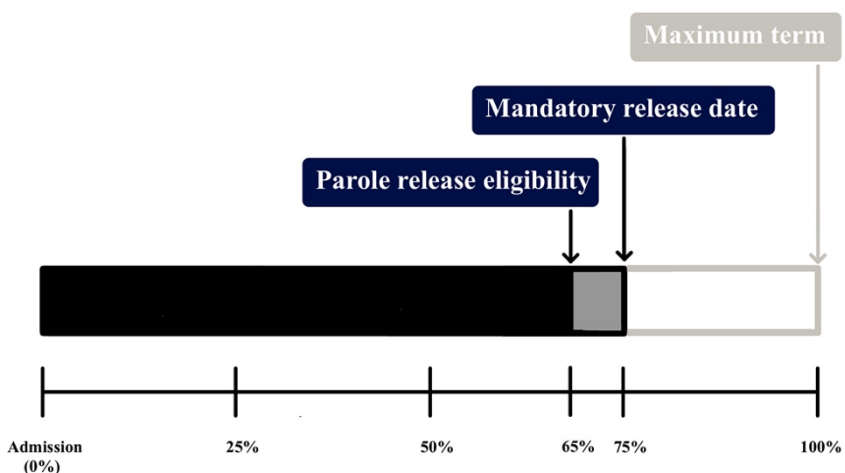
Next, Figures 5 and 6 show comparable scenarios for prisoners convicted of violent offenses with no prior convictions for serious offenses. Parole eligibility comes at the 65-percent mark of the maximum term for this group. Because credit earning rates are relatively low for this group (one day of credits for three days of good behavior), movable MRDs can amount to no more than a 25-percent discount from the maximum term. Here again, however, the movable MRD removes much of the parole board’s release denial discretion if the department of

corrections awards full good time credits. The department has unilateral release discretion after the 75-percent mark even if the parole board is frozen in release-denial mode.

**Louisiana Figure 5. Prison-Release Timeline for Prisoners
Convicted of Violent Offenses with General-Rules
Sentences and No Good Time Credits**

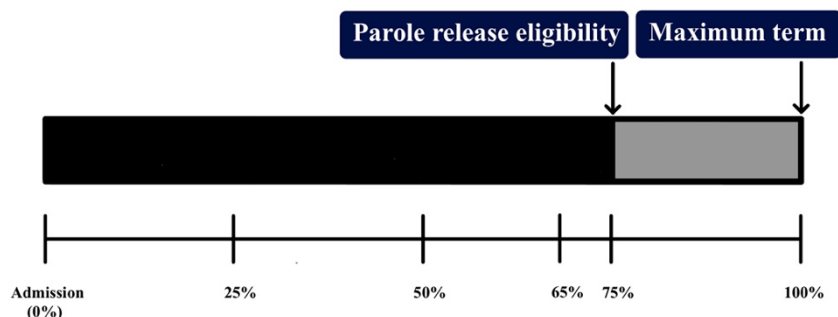


**Louisiana Figure 6. Prison-Release Timeline for Prisoners
Convicted of Violent Offenses with General-Rules
Sentences and Full Good Time Credits**



As shown in Figure 7 (next page), discretionary release eligibility is further delayed for sex offenders and many repeat offenders. The general rule of parole eligibility for this sentence class is 75 percent with no prospect of good time earnings. The parole board holds unilateral release and release-denial discretion from the 75-percent mark forward. Recent release statistics suggest that most prisoners with this class of sentence have been serving out their full maximum terms, or something close to that. Because there are no good time discounts, no checks and balances exist in the prison-release system for such prisoners: the release-denial discretion of one agency cannot be overridden by the release discretion of a separate agency.

**Louisiana Figure 7. Prison-Release Timeline for Prisoners
Convicted of Sex Offenses or Repeat Violent or Sex
Offenses (No Good Time Credits Available)**



Each of the above classes of sentences carries a different degree of indeterminacy. The population multiplier potential (PMP) (see p. v) for nonviolent offenders is 4:1 based on parole eligibility at 25 percent (Figs. 3 and 4). That is, the subpopulation size of prisoners with this class of sentence would be four times as large under a sustained *longest-time-served scenario* than under a sustained *shortest-time-served scenario*. However, if we concede the essential unavailability of parole, the PMP would be 3.4:1 based solely on the highest available credit earnings (Fig. 4). Under either assumption, this sentence class carries a *high degree of indeterminacy* on the scale created for this project (see pp. iii-iv).

The PMP for violent offenders is 1.54:1 based on parole eligibility at the 65-percent mark of the judicial maximum sentence. (Figs. 5 and 6) That is, the subpopulation size of prisoners with this class of sentence would be 54 percent larger under a sustained *longest-time-served scenario* than under a sustained *shortest-time-served scenario*. However, if we recognize the essential unavailability of parole, the PMP would be 1.33:1 based solely on the highest available credit earnings (Fig. 6). Under either assumption, this sentence class carries a *low degree of indeterminacy* on the scale created for this project.

The PMP for repeat offenders who fall under the 75 percent formula (with no good time) is 1.33:1, but the only avenue for release for such prisoners is discretionary parole release (Fig. 7). The subpopulation size of prisoners with this class of sentence would be 33 percent larger under a sustained *longest-time-served scenario* than under a sustained *shortest-time-served scenario*. Under the present-day reality that discretionary parole release is not available for most prisoners, the PMP is close to 1:1. That is, the judicial maximum term in each case would fully determine time-actually-served (barring rarely-bestowed forms of release discretion such as clemency, compassionate release, retroactive changes in law, etc.). If we believed prisoners had a meaningful chance of winning discretionary parole release, we would classify such sentences as carrying a *low degree of indeterminacy*; if we assume parole release is practically unavailable, the sentence class has an *extremely low degree of indeterminacy*.

For the most serious class of sentences in Louisiana, with no parole release eligibility and no good time discounts, the judicial sentence fully determines actual- time-to-be-served (again, in the absence of rarely-bestowed forms of release discretion). The PMP for this class of sentences is 1:1.

2. Life sentences in Louisiana

a. Adults

Generally, most prisoners sentenced to life are not eligible for discretionary parole release unless their life sentences have been commuted to a fixed term of years.⁴⁵ That is, most life sentences in Louisiana under current law are life without parole (LWOP) in the absence of executive clemency.⁴⁶ A small number of prisoners with life terms become eligible for parole if they have never been convicted of a crime violence or a sex offense and numerous additional conditions have been met.⁴⁷

b. Juvenile life sentences

A person serving a life sentence who was under age 18 at the time of the offense becomes eligible for parole after serving 25 years, so long as they have committed no major disciplinary offenses within one year of their eligibility date, have completed at least 100 hours of prerelease programming, have completed substance abuse treatment if applicable, have obtained a GED certification, literacy program, adult basic education, or job skills training program, have obtained a low-risk designation by a validated risk assessment instrument, and have completed

⁴⁵ La. Stat. § 15:574.4(A)(2),(B)(1).

⁴⁶ There is a narrow class of people with life prison terms who become parole eligible after serving 15 years in actual custody if they meet all of the following conditions: (1) the inmate was not eligible for parole consideration at an earlier date; (2) the inmate was sentenced to life imprisonment without parole for an offense committed between June 29, 1995 and June 15, 2001; (3) the inmate is eligible for relief under an ameliorative penalty statute; (4) the inmate has not been convicted for a third or subsequent felony when any of the felonies include a crime of violence, a sex offense when the victim is under the age of 18 years, a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or any other offense punishable by imprisonment for 12 years or more. See La. Stat. §§ 15:574.4(A)(5), 15:308.

⁴⁷ La. Stat. § 15:574.4(A)(5). Prisoners eligible for parole under this provision include: those between the ages of 18 and 25 when they were sentenced who have served at least 25 years since imposition of the sentence; those between the ages of 25 and 35 when they were sentenced who have served at least 20 years since imposition of the sentence; those who were between the ages of 35 and 50 when they were sentenced who have served at least 15 years since imposition of the sentence; and those who were 50 years of age or older at the time they were sentenced who have served at least 10 years since imposition of the sentence. In addition, prisoners must meet the following requirements: obtained a low-risk designation through a validated risk assessment instrument; have not committed any major disciplinary offenses in the year prior to the parole hearing; completed a mandatory minimum of 100 hours of pre-release program if available; have completed substance abuse training if applicable; and have obtained a GED certification or a literacy, adult basic education, or job skills training program.

a reentry program as required by the department of corrections.⁴⁸ Those convicted of first degree murder, however, are eligible for parole only after a judicial determination that the person is entitled to eligibility for parole.⁴⁹

3. Infrequently used forms of prison release in Louisiana

a. Compassionate release

After a referral by the department of corrections, the parole board may consider for medical parole any prisoner not convicted of first- or second-degree murder or awaiting execution.⁵⁰ Eligible prisoners must have an existing medical or physical condition and meet the definition of either “permanently disabled offender” or “terminally ill offender.” “Permanently disabled offender” means someone who is unable to engage in substantial gainful activity by reason of any medically determinable physical impairment that may result in death or can be expected to be permanently irreversible. “Terminally ill offender” means any person who, because of an existing medical condition, is terminally ill and has a life expectancy of less than one year.⁵¹

The board must consider a prisoner’s crime and criminal history, length of time in custody, institutional conduct, the prisoner’s risk to society, and a medical assessment of the prisoner’s condition.⁵² The medical parole term must last for the remainder of the prisoner’s sentence, without credit for good behavior.⁵³ If the person’s condition improves to the point that they are no longer permanently disabled or terminally ill, medical parole may be revoked.⁵⁴

⁴⁸ La. Stat. § 15:574.4(D)(1),(E)(1),(F)(1),(G)(1).

⁴⁹ La. Stat. § 15:574.4(E)(1). Also, those convicted of second-degree murder who were indicted prior to August 1, 2017 are only eligible for parole if a judicial determination has been made that the person is entitled to eligibility for parole. La. Stat. § 15:574.4(G)(1). For relevant federal constitutional law, see *Graham v. Florida*, 560 US 48 (2010) (robbery case; holding life without parole an unconstitutional penalty when applied to a juvenile offender for a non-homicide offense); *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.”). See also *Montgomery v. Louisiana*, 136 S.Ct. 718, 735 (2016) (stating that *Miller* required “a sentencer to consider a juvenile offender’s youth and attendant characteristics before determining that life without parole is a proportionate sentence.”); *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) (holding that sentencing courts are not required to make a factual finding of “permanent incorrigibility” before sentencing a juvenile offender to life without parole so long as court has considered the defendant’s youth before imposing the LWOP sentence).

⁵⁰ La. Stat. § 15:574.20(A),(B)(2).

⁵¹ La. Stat. § 15:574.20(B)(1).

⁵² La. Stat. § 15:574.20(D)(1).

⁵³ La. Stat. § 15:574.20(F).

⁵⁴ La. Stat. § 15:574.20(G).

Louisiana also provides the possibility of age-related release for some prisoners. Prisoners with sentences without parole eligibility for 30 years or more become parole eligible after serving at least 20 years *and* reaching the age of 45.⁵⁵ Similarly, prisoners serving terms of imprisonment with or without benefit of parole who have served at least 10 years become parole eligible upon reaching the age of 60 so long as certain conditions are met. These conditions are: (1) the prisoner has never been convicted of a crime of violence or sex offense; (2) the prisoner has not committed any major disciplinary offenses in 12 consecutive months prior to the parole hearing date; (3) the prisoner has completed a minimum of 100 hours of prerelease programming; (4) the prisoner has completed substance abuse treatment as applicable; (5) the prisoner has obtained a GED credential or completed a literacy, adult basic education, or job-skills training program; and (6) the prisoner has obtained a low-risk level designation determined by a validated risk assessment instrument.⁵⁶

b. Clemency

The governor may grant reprieves and, upon recommendation of the parole board, commute sentences, pardon convictions, and remit fines and forfeitures.⁵⁷ A first offender never previously convicted of a felony is pardoned automatically upon completion of his sentence without a recommendation of the board or action by the governor. This extraordinary “automatic pardon” is available only to people who have paid their economic sanctions and court costs.⁵⁸

c. Release during overcrowding emergencies

There is no statutory provision in Louisiana that creates special mechanisms for release of prisoners during prison overcrowding emergencies.

4. Overall assessment of indeterminacy in Louisiana’s prison-sentencing system

Overall, we classify Louisiana’s prison-sentencing system as operating with a *moderate degree of indeterminacy* on the scale developed for this project (see pp. iii-iv). This judgment is based on an estimated weighting of the three main classes of sentences in Louisiana discussed earlier, each class carrying different degrees of indeterminacy. In essence, we must collate or “average out” the major sentence classes to produce a general assessment of the system as a whole.

⁵⁵ This provision is not applicable to offenders serving a life sentence unless the sentence has been commuted to a fixed term of years. Inmates ineligible for parole under this provision are those convicted of a crime of violence or a sex offense. La. Stat. § 15:574.4(A)(2),(B)(1).

⁵⁶ La. Stat. § 15:574.4 (A)(4)(a)-(f).

⁵⁷ La. Con. art. IV § 5(E); La. Stat. § 15:572(A).

⁵⁸ La. Con. art. IV § 5(E); La. Stat. § 15:572(B). Court costs are \$100 for felony cases. La. Stat. § 13:847(A)(1)(b).

The general rules of prison release for nonviolent offenders (Figs. 3-4) are in our *high indeterminacy* range; those for violent offenders are in the *low indeterminacy* range; and sentences for repeat offenders are *low or extremely low in indeterminacy*. If prisoners sentenced for nonviolent offenses make up roughly half of Louisiana's prison population, then the overall degree of indeterminacy for the system averages out to a *moderate degree of indeterminacy*. That means that time-actually-served, for the system as a whole, is determined in roughly equal parts by front-end actors (such as judges and prosecutors) and back-end actors (such as the parole board and department of corrections).

This allocation of authority is different for each sentence class, however. For example, for nonviolent offenders, time served within a given judicial maximum sentence is much more within the control of the parole board and department of corrections than all other front-end and back-end authorities combined.

Prisoners granted discretionary parole release in Louisiana have made up only about three percent of all releases in recent years, so credit-based discounts have been what matters most to prisoners. In many circumstances, available credit earnings could create MRDs that fall close to the time of first parole eligibility (see Figs. 4 & 6.) For the highest credit earners in such cases, it almost does not matter what the parole board does. (These observations could change dramatically with new release policies and practices by the parole board, which are highly mutable without any alteration in statute or judicial sentencing patterns.)

Authority over time served in individual cases scales up to the power to determine the prisoner (sub)population size for people serving each class of sentence. For nonviolent offenders, the PMP of release discretion at the back end of the system is as high as 4:1. For violent offenders with no prior convictions for sex or violent offenses, the PMP is 1.54:1. For sex offenders and repeat violent offenders, the PMP is 1.33:1. For prisoners with no eligibility for parole release or good time reductions, the PMP is 1:1.

For all sentence classes other than for nonviolent crimes, front-end officials such as prosecutors and judges have much more influence over prison population size than back-end decisionmakers. Front-end actors have roughly twice or three times as much power over prison population size as back-end actors according to the PMP measure. Given the longstanding tendency of the parole board to deny discretionary release, the actual control of front-end players over population counts is even greater than the PMP values suggest.