



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: SOUTH CAROLINA

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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://robina.institute.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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We classify South Carolina’s prison-sentencing system as operating with a *high degree of indeterminacy* overall on the scale developed for this project (see pp. iii-iv). Most prisoners become eligible for discretionary parole release at the 25- or 33-percent marks of their judicial maximum sentences, with the possibility of somewhat earlier eligibility through credit earnings.

The department of corrections is especially powerful in South Carolina because of the existence of movable mandatory release dates (MRDs) for nonviolent and many violent offenders. These can potentially cut off 60 percent of prisoners’ judicial maximum terms. The 60 percent discount is only available to high-achieving prisoners, but ordinary good time credits by themselves can yield 40-percent discounts against maximum sentences. Compared to most other states, South Carolina makes especially generous use of movable MRDs in determinations of actual time served.

Movable MRDs are not nearly as generous for those convicted of “no-parole” offenses (especially serious violent offenses as designated in statute). In these cases, the highest achieving prisoner could win as much as a 23 percent reduction from the judicial maximum sentence.

For most classes of sentence in South Carolina, the parole board’s release discretion spans a small fraction of the total prison-release timeline if movable MRDs are granted at fullest extension. Parole release discretion remains an important factor for prisoners who earn credits at lower levels, or who forfeit a significant share of their credits.

Terminology note

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

¹ This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures. We thank Rhys Hester for his review of an earlier draft. For a broad overview of the law of parole release and supervision in South Carolina, see Alexis Lee Watts, Julie L. Matucheski, Cecelia Klingele, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: South Carolina* (Robina Institute of Criminal Law and Criminal Justice, 2019).

Introduction

South Carolina's prison-rate history, 1972 to 2020

In 2020, South Carolina's prison rate was 304 per 100,000 general population, with a yearend prison population of 15,984.² South Carolina's prison rate was 26th among all states.

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

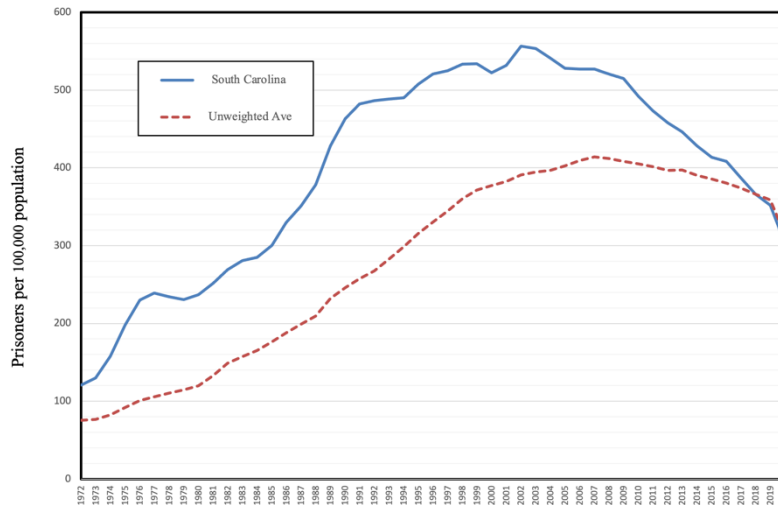
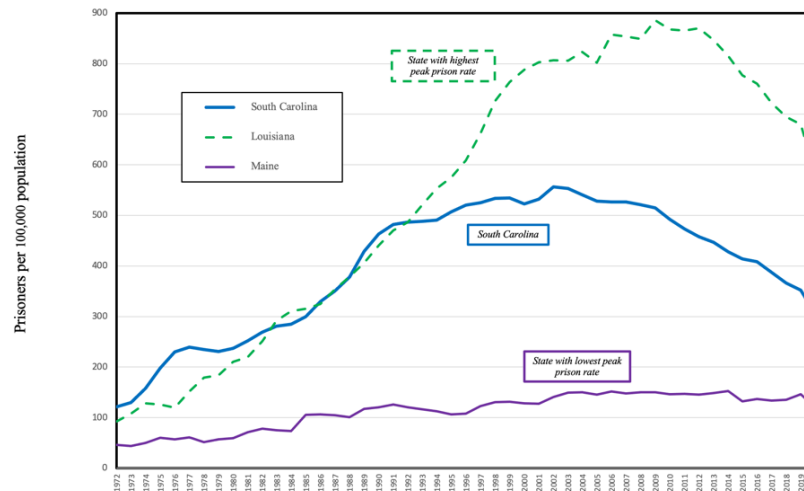


Figure 2. Prison Rate Change in South Carolina, Louisiana, and Maine, 1972 to 2020



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

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

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 15-16 table 7 (for 2019-2020).

South Carolina reached its peak prison rate in 2002 at 556 per 100,000, which dropped to 304 per 100,000 in 2020. This is a net difference of -252 per 100,000, which was the 4th largest prison-rate drop of all states from their peak positions (in various years) through 2020.

South Carolina's relative ranking among the 50 states has been dropping for three decades, with an especially steep decline from 2002 forward. This amounts to a change in the state's basic profile in the national context. From 1990 through 1992, South Carolina had the highest prison rate of all 50 states. It now falls slightly below the median. A detailed analysis of these long-term trends could be enormously useful to other states and students of mass incarceration.³

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

³ In 2010, South Carolina passed the Omnibus Crime Reduction and Sentencing Reform Act, which reduced penalties for people convicted of low-level drug offenses. Between 2009 and 2016, South Carolina closed six prisons and saw its prison rate fall 16-percent, while the percentage of the prison population incarcerated for violent offenses rose from 52-percent to 66-percent. *Data Trends: South Carolina Criminal Justice Reform*, PEW (Sept. 6, 2017), at <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/09/data-trends-south-carolina-criminal-justice-reform>; see also *Criminal Justice Law Reform in South Carolina: Front End Reforms, Substantial Savings*, ACLU, at https://www.aclu.org/sites/default/files/field_document/south_carolina_2010_reforms_one_pager.pdf.

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.⁴

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 general population, for an average incremental downturn of -51 per 100,000.⁵ We believe this was the largest one-year decline in state prison rates in American history.⁶

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.⁷

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

⁴ 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).

⁵ 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.

⁶ 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).

⁷ 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).

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.⁸

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court commitments, fewer revocations from community supervision, and some prisons’ embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.⁹

The COVID period in South Carolina

In a separate study, the Robina Institute found no (zero) releases in South Carolina from March 2020 through December 2021 that were deliberately accelerated in response to the pandemic. South Carolina is one of 16 states that made no such releases.¹⁰

⁸ 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.

⁹ 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.

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 35 Appendix A.

In calendar year 2020, South Carolina's prison rate fell from 352 to 304 per 100,000—a one-year decline of -48 per 100,000. This was the 29th largest one-year drop reported among all 50 states for that year.¹¹ Measured in percentage terms, it was a 13.6-percent reduction in the state's prison rate. The state's total prison population fell by 2,311 people, from 18,295 to 15,984.¹²

Falling admissions were the dominant factor in South Carolina's 2020 prison rate drop. The number of prison admissions in the state dropped by 42.9 percent in 2020 compared with the previous year (from 5,859 to 3,347). Total releases in 2020 fell by 9.8 percent over 2019 (from 6,276 to 5,659).¹³

South Carolina's prison-rate drop slowed after calendar year 2020. From yearend 2020 to December 2021, the Vera Institute reported that South Carolina saw a decrease in its prison population, from 16,111 to 15,802—or 1.9 percent.¹⁴

1. General rules of prison release in South Carolina

Most felonies in South Carolina are grouped by seriousness into Classes A through F. Class A felonies carry a maximum prison term of 30 years; Class B felonies a maximum of 25 years; Class C felonies a maximum of 20 years; Class D felonies a maximum of 15 years; Class E felonies a maximum of 10 years; and Class F felonies a maximum of 5 years.¹⁵ Other felonies are exempt from the classification system and carry penalties as provided in specific statutes.¹⁶

¹¹ The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 16 table 7.

¹² *Id.*, at 12 table 4.

¹³ *Id.*, at 18 table 8, 20 table 9.

¹⁴ See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2. As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁵ S.C. Code Ann. § 16-1-20(A)(1)-(6).

¹⁶ S.C. Code Ann. § 16-1-10(D).

Parole release

A person imprisoned for a nonviolent crime is generally eligible for parole-release after serving one-fourth of their judicial maximum sentence.¹⁷ Those convicted of “violent crimes”¹⁸ must typically serve one-third of the judicial sentence or the mandatory minimum, whichever is longer, before becoming parole eligible.¹⁹

Prisoners convicted of “no parole” crimes are not eligible for parole until they have served 85 percent of the judicial sentence.²⁰ Generally, these are offenses with authorized maximum penalties of 20 years or more. “No parole” crimes are: (1) all Class A, B, and C felonies, and (2) all unclassified offenses that carry a maximum penalty of twenty years or more.²¹

Certain crimes, generally those involving sexual, drug, or violent offenses, are subject to specific periods of parole ineligibility. For example, sexual exploitation of a minor is subject to a two- or three-year period of parole ineligibility.²²

A second or subsequent conviction for a violent offense precludes a prisoner from becoming eligible for parole-release; the entire judicial maximum sentence must be served.²³

¹⁷ S.C. Code Ann. § 24-21-610. For a survey of parole release formulas and exceptions in South Carolina—but one that takes no account of the effects of conduct-based credits—see Deborah Drucker Deutschmann & Stephen K. Benjamin, *Accurately Advising Clients on Parole Eligibility*, 12 South Carolina Lawyer 27 (Sept./Oct. 2000).

¹⁸ “Violent crimes” are defined by statute and include murder, first- or second-degree criminal sexual conduct, assault and battery with intent to kill or “of a high and aggravated nature,” kidnapping, armed robbery, carjacking, drug trafficking, first- or second-degree arson, first- and second-degree burglary, first-degree domestic violence or “of a high and aggravated nature,” taking of a hostage by an inmate, spousal sexual battery, first- or second-degree sexual exploitation of a minor, and certain transportation offenses resulting in death, among others. See S.C. Code Ann. § 16-1-60.

¹⁹ S.C. Code Ann. § 24-21-610. These general rules apply to crimes committed on and after June 3, 1986. Crimes committed prior to that date are subject to different parole-release eligibility requirements. See S.C. Board of Pardons & Paroles, *Policy and Procedure Manual* (Nov. 2019), at 23-24, <https://www.dppps.sc.gov/content/download/209320/4885043/file/Board+of+Paroles+and+Pardons+11062019.pdf> (detailing the parole eligibility rules for crimes committed before June 3, 1986).

²⁰ S.C. Code Ann. § 24-13-150(A).

²¹ S.C. Code Ann. § 24-13-100. Currently, the unclassified offenses that are “no parole” crimes not specifically listed under the statute are: murder; first-degree sexual exploitation of a minor; promoting prostitution of a minor; armed robbery; third offense of manufacturing, distributing, or possession with intent to distribute; and certain drug trafficking offenses. See S.C. Board of Pardons & Paroles, *supra* note 19, at 24-25.

²² S.C. Code Ann. §§ 16-15-395(D), 16-15-405(D).

²³ S.C. Code Ann. § 24-21-640 (“The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.”).

If parole-release is denied for a person imprisoned for a nonviolent offense, a subsequent parole hearing must occur within one year after the date of the previous hearing.²⁴ Those serving sentences for violent crimes are entitled to a subsequent parole-release hearing within two years.²⁵

Conduct-based credits

Good-time credits are available at various rates depending on the offense. The general accrual rate is 20 days for each month served, as long as the inmate “has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior.”²⁶ Those serving sentences for “no parole” offenses may earn good-time credits of only three days per month served.²⁷

Prisoners may earn “work credit” and “education credit” if they are “assigned to a productive duty assignment” or “regularly enrolled and actively participating in an academic, technical, or vocational training program,” respectively. The credits are generally calculated as “zero to one day for every two days he is employed or enrolled,” up to a maximum of 180 days of work and education credits combined per year.²⁸

Those convicted of “no parole” crimes may earn up to six days per month of “work credit” and “education credit,” up to a maximum combined total of 72 days per year.²⁹ Those convicted of statutorily defined “violent crimes” are not eligible to earn education credits at all, but are allowed to earn work credits.³⁰

People serving a life sentence or a mandatory minimum of 30 years for murder are not eligible to earn good-time, work, or education credits.³¹

²⁴ S.C. Code Ann. § 24-21-620.

²⁵ S.C. Code Ann. § 24-21-645(D). However, inmates serving sentences for an offense against a household member are entitled to annual parole review if there was credible evidence that the inmate suffered domestic violence by that household member. S.C. Code Ann. §§ 24-21-645(D), 16-25-90; *see also infra* Part 3.a.

²⁶ S.C. Code Ann. § 24-13-210(A).

²⁷ S.C. Code Ann. § 24-13-210(B).

²⁸ S.C. Code Ann. § 24-13-230(A).

²⁹ S.C. Code Ann. § 24-13-230(B).

³⁰ S.C. Code Ann. § 24-13-230(F)(2); *see* S.C. Code Ann. § 16-1-60 (defining “violent crime”).

³¹ S.C. Code Ann. § 24-13-210(B) (good-time credits); S.C. Code Ann. § 24-13-230(B) (work and education credits).

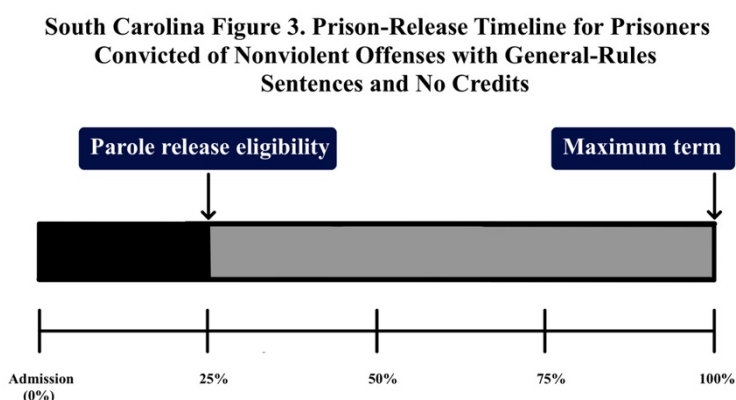
Work credits are the only type of credit that may affect dates of first parole eligibility,³² though they do not affect parole eligibility for “no parole” crimes.³³

Good conduct credits and work and education credits are subtracted from the judicial maximum term to provide an earlier mandatory release date (MRD),³⁴ though they do not reduce any part of a minimum sentence for “no parole” offenders.³⁵

If an inmate “commits an offense or violates one of the rules of the facility during his term of imprisonment,” any good conduct, work, and education credits earned may be forfeited.³⁶ There is no statutory mechanism for restoration of credits after they are forfeited.

Timeline Diagrams

South Carolina Figure 3 shows the prison-release timeline for nonviolent offenders who have earned no credits of any kind. Parole eligibility for this group occurs at the 25-percent mark of their maximum terms.



³² S.C. Code Ann. § 24-21-610 (“In computing parole eligibility, no deduction of time may be allowed in any case for good behavior, but after June 30, 1981, there must be deductions of time in all cases for earned work credits . . .”); S.C. Code Ann. § 24-21-635 (“For the purpose of determining the time required to be served by a prisoner before he shall be eligible to be considered for parole, . . . all prisoners shall be given benefit of earned work credits awarded pursuant to § 24-13-230.”).

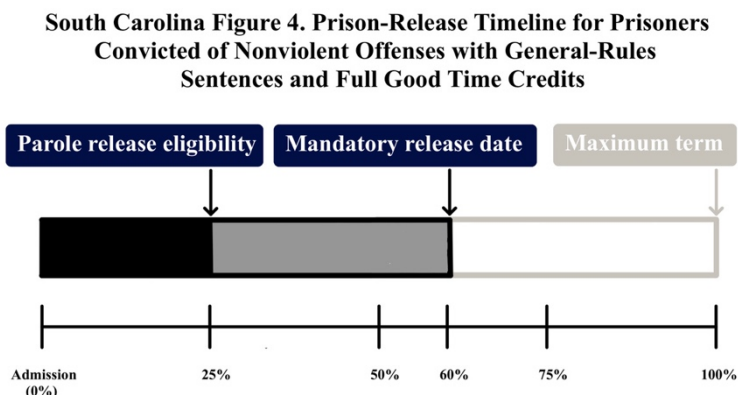
³³ S.C. Code Ann. § 24-13-150(A) (“This [85 percent] must be calculated without the application of earned work credits, education credits, or good conduct credits . . .”). An inmate’s parole eligibility period is also reduced by time served in prison while awaiting trial that is longer than three months. S.C. Code Ann. § 24-21-630.

³⁴ S.C. Code Ann. § 24-13-210(E) (“Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed for good conduct is considered upon release to have served the entire term for which he was sentenced . . .”); S.C. Code Ann. § 24-13-230(A) (“The Director of the Department of Corrections may allow an inmate . . . a reduction from the term of his sentence . . .” (emphasis added)).

³⁵ S.C. Code Ann. §§ 24-13-210(B), 24-13-230(B).

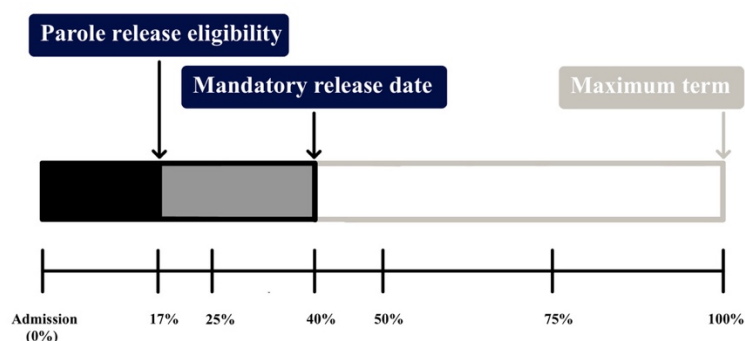
³⁶ S.C. Code Ann. §§ 24-13-210(D), 24-13-230(D).

Figure 4 then displays the timeline for nonviolent offenders who earn full *good time credits* of 20 days per month throughout their time in confinement (and have not forfeited any of those credits). These credits are applied against the judicial maximum term *but not the prisoner's parole eligibility date*. Thus, Figure 4 shows parole eligibility at the 25-percent mark of the judicial term, just as in Figure 3, but full credit earnings of 20 days per month subtract 40 percent of potential time served so that the mandatory release date (MRD) now occurs at the 60-percent mark of the judicial maximum term.



South Carolina Figure 5 supplements Figure 4 by adding earnings of the most possible “*work*” and “*education*” credits, which are statutorily capped in combination at 180 days per year. These credits are applied against both the judicial maximum term *and* the prisoner’s parole eligibility date. Prorated across a whole year, this amounts to 15 days of credit per month—or an additional 33 percent across the entire life of the sentence. In the case of Figure 5, the parole

**South Carolina Figure 5. Prison-Release Timeline for Prisoners
Convicted of Nonviolent Offenses with General-Rules
Sentences and Full Good Time Credits and Work and/or
Education Credits up to Annual Cap**



eligibility date is advanced to the 16.67-percent mark of the judicial maximum term (shown as 17-percent in the figure) and the MRD is advanced to the 40-percent mark.³⁷

It should be noted that Figure 5 represents the timeline that could be available to a high-achieving prisoner, not necessarily an average or low-achieving prisoner. Total credits earned in South Carolina will depend to some extent on discretionary decisions by corrections officials to award or forfeit credits, as well as the availability of work or education program slots within the prisons that are needed for prisoners to acquire credits. In times of severe shortages of work and program slots, for example, the best timeline a prisoner could hope to gain would be that shown in Figure 4 (driven by good time credits alone) as opposed to the more generous timeline in Figure 5.

Figure 5 also illustrates a phenomenon that we have named “movable MRDs” in this project. More than three-quarters of all states employ movable MRDs to some extent in their prison-release systems, but few states allow for deductions as large as 60 percent as shown in Figure 5 (and in Figure 8 below). As a tool for comparison across states, we have ranked movable MRD reductions that are above 40 percent as “generous” (20-39 percent as “average” and 0-19 percent as “minimal”). South Carolina stands as one of the most generous states in the country when combining the full complement of good-time and earned-time credits.³⁸

The population multiplier potential (PMP) under the general rules of actual time served for nonviolent offenders is 5.9:1 (see p. v). That is, if all prisoners with this class of sentence were held as long as possible under the *longest-time-served scenario* their numbers would eventually stabilize at 5.9 times the number that would be reached if they were consistently released in accord with the *shortest-time-served* scenario allowable by law.³⁹ On the scale developed for this project (see pp. iii-iv), we rank this sentence class as having an *extremely high degree of indeterminacy*. The discretion to determine actual length of time served under a judicial sentence is overwhelmingly located at the back end of the prison-sentencing system, with the judicial sentence governing only a small fraction of time that must be served within the maximum. Similarly, power to determine the size of the prisoner subpopulation with this class of sentence is very heavily tilted toward the back end of South Carolina’s prison-sentencing system.

³⁷ Only work credits work to advance parole eligibility dates, so the movement of the PED all the way back to the 17-percent mark in Figure 5 would require a prisoner to reach the statutory cap of 180 days entirely with work credits. If we assume that half of the 180 days per year have come from education credits and half from work credits, then the PED would be moved back to 21 percent, not 17 percent.

³⁸ 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), chapter 7 (“Highlighted topic: Movable mandatory release dates”). General comparisons among all states that make use of movable MRDs are set out at *id.*, at 89-93 table 9.

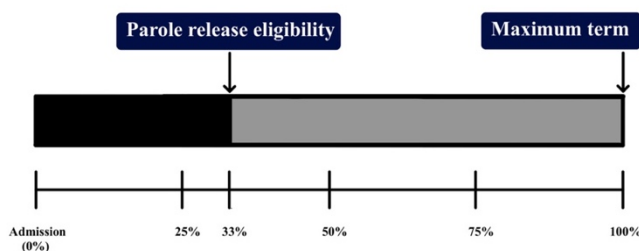
³⁹ This calculation assumes everything else in the system is held equal.

Figures 6, 7, and 8 perform operations similar to those in Figures 3, 4, and 5, although here the focus is on people imprisoned for “violent offenses” that are not defined as “no-parole offenses” under South Carolina law. In other words, Figures 6, 7, and 8 deal with crimes that are classified as violent but not in the highest tier of offense severity in the judgment of the legislature.⁴⁰

Figures 6, 7, and 8 are visually quite similar to the sequence of Figures 3, 4, and 5. The only difference is that initial parole release eligibility for this group is set at the 33-percent mark of the judicial maximum term (as shown in Figures 6 and 7). Thus, reduced by the most possible credits, the earliest possible date of parole release eligibility comes at the 22-percent mark (as shown in Figure 8). Notably, the movable MRD mechanism for this class of violent conviction is just as generous on paper as for nonviolent offenses in South Carolina. This stands in contrast

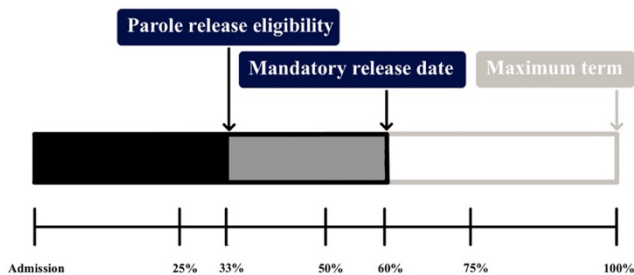
⁴⁰ Sentences for the most severe offenses are addressed in Figures 9, 10, and 11—and through life and death sentences not covered in our diagrams.

**South Carolina Figure 6. Prison-Release Timeline for Prisoners
Convicted of Violent Offenses* with General-Rules
Sentences and No Credits**

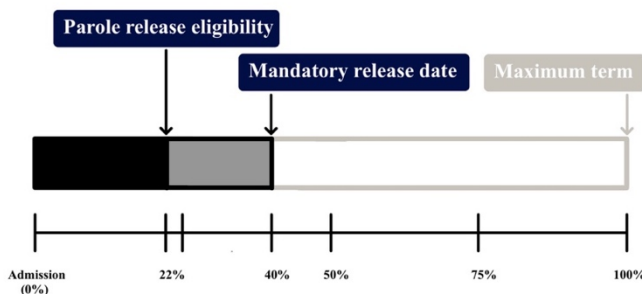


*As statutorily defined, excluding offenses with statutory maximum penalties of 20 years or more.

**South Carolina Figure 7. Prison-Release Timeline for Prisoners
Convicted of Violent Offenses with General-Rules
Sentences and Full Good Time Credits**



**South Carolina Figure 8. Prison-Release Timeline for Prisoners
Convicted of Violent Offenses with General-Rules Sentences
and Full Good Time Credits and Work Credits*
up to Annual Cap**



*Prisoners convicted of violent offenses are ineligible for education credits

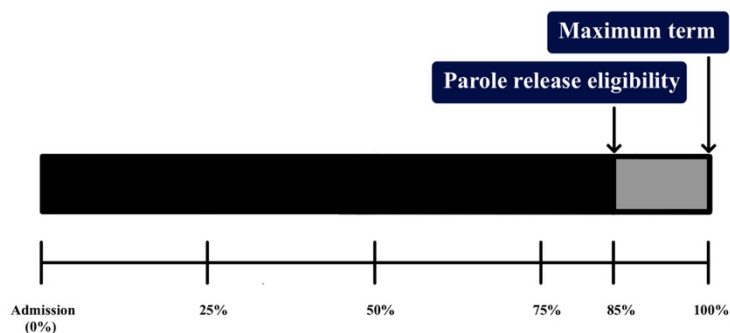
with a number of other states that limit the most generous credits toward movable MRDs to nonviolent offenders only.⁴¹

⁴¹ This raises the question of whether South Carolina's scheme of generous and widely available movable MRDs has contributed to the above-average drop in the state's prison rates.

The PMP for violent offenders subject to general rules is thus 4.5:1. On the scale developed for this project, we rate this as a *high degree of indeterminacy*. The discretion to determine actual length of time served under a judicial sentence is largely located at the back end of the prison-sentencing system, with the judicial sentence governing less than one-quarter of time-that-could-actually-be-served. Power to determine the size of the prisoner subpopulation who have received this class of sentence is heavily tilted toward the back end of South Carolina's prison-sentencing system.

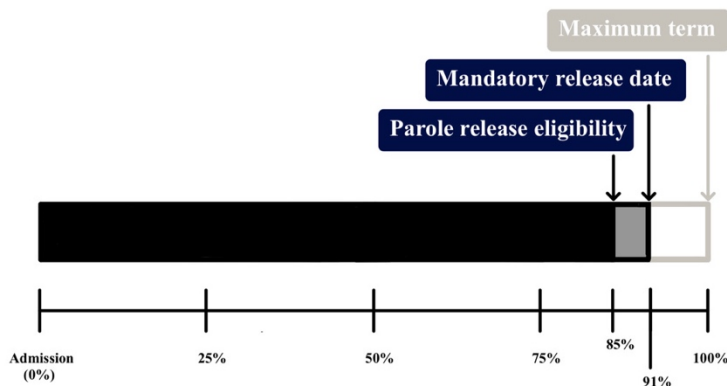
Finally, Figures 9, 10, and 11 consider the prison-release timeline for people imprisoned for "no-parole" offenses. As shown in Figure 9, such people are eligible for parole, but not until they have served 85 percent of their judicial maximum terms. For the no-parole group, no credits against the date of parole release eligibility are available.

**South Carolina Figure 9. Prison-Release Timeline for Prisoners
Convicted of “No-Parole Offenses”* with No Credits**

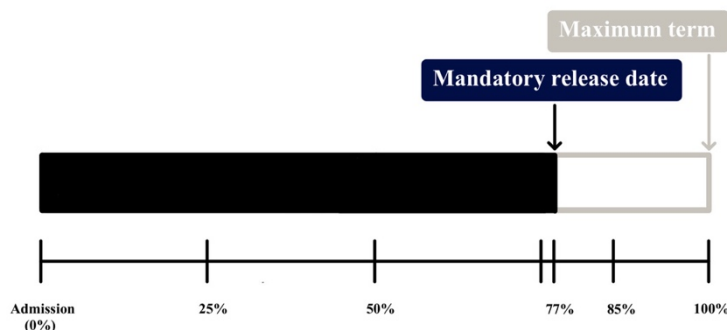


*As statutorily defined, excluding offenses with statutory maximum penalties of 20 years or more.

**South Carolina Figure 10. Prison-Release Timeline for Prisoners
Convicted of “No-Parole Offenses” with
Full Good Time Credits**



**South Carolina Figure 11. Prison-Release Timeline for Prisoners
Convicted of “No-Parole Offenses” with Full Good Time
Credits and Work and/or Education Credits up to Annual Cap**



However, no-parole prisoners are eligible to earn good-time credits against their maximum terms, albeit at a much lower rate than other prisoners (three rather than 20 days per month).

This allows for a reduction of only nine percent in total sentence length, as shown in Figure 10.

In addition, no-parole prisoners may earn work and education credits subject to a statutory cap of 72 days per year—or six days per month. With the most possible earnings, this would move a prisoner’s MRD back to the 77-percent mark of the judicial maximum term. This instance of the movable MRD mechanism in South Carolina is far less generous than we saw for other classes of sentences in Figures 5 and 8. Unusually, however, the highest possible credit earnings would move the MRD to a position earlier than a prisoner’s date of first parole-release eligibility. We have not found this relationship in any other state, but we can think of no rule or policy that would foreclose such a formula.

The PMP for this class of sentence is 1.3:1. On the scale developed for this project, such sentences carry a *low degree of indeterminacy*, bordering on *extremely low*. The judicial sentence determines time actually served to a much greater extent than any exercise of discretion at the back end of the prison-sentencing system. Likewise, the size of the prison subpopulation who have received no-parole sentences is dictated largely by the aggregate patterns of judicial sentences—not by the parole board or department of corrections.

2. Life sentences in South Carolina

a. Adults

A sentence of life without parole (LWOP) is an authorized alternative in cases where the death penalty may be imposed.⁴² Defendants are also subject to LWOP for either a second or a third conviction if the convictions are for “most serious offenses” or “serious offenses.”⁴³ If the current conviction is for a most serious offense, the offender may be sentenced to LWOP if the person had either one prior conviction for a most serious offense or two or more prior convictions for serious offenses.⁴⁴ If the current conviction is for a serious offense, the offender may be sentenced to LWOP if the person had two or more prior convictions for either serious or most serious offenses.⁴⁵

⁴² See S.C. Code Ann. § 16-3-20 (“If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt . . . and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, ‘life’ or ‘life imprisonment’ means until death of the offender without the possibility of parole . . .”).

⁴³ “A most serious offense” includes murder, voluntary manslaughter, first- and second-degree criminal sexual conduct, kidnapping, carjacking, human trafficking, first-degree arson, first-degree burglary, and armed robbery, among others. S.C. Code Ann. § 17-25-45(C)(1). “Serious offenses” include assault and battery “of a high and aggravated nature,” second-degree arson, second-degree burglary, embezzling public funds, first-degree domestic violence, insurance fraud, drug trafficking, and any offense with a maximum term of imprisonment of 30 years or more that is not a “most serious offense,” among others. S.C. Code Ann. § 17-25-45(C)(2).

⁴⁴ S.C. Code Ann. § 17-25-45(A).

⁴⁵ S.C. Code Ann. § 17-25-45(B).

Crimes that carry parolable life sentences include first-degree burglary⁴⁶ and homicide by child abuse.⁴⁷ Prisoners sentenced to life imprisonment (or any term longer than 40 years) are not eligible for parole until they have served at least 10 years.⁴⁸

b. Juvenile life sentences

After the U.S. Supreme Court's decision in *Miller v. Alabama*, the South Carolina Supreme Court allowed resentencing for all juveniles then serving LWOP sentences. In all such pre-*Miller* cases, mitigating factors associated with the defendants' youth had not been fully considered at the time of sentencing as required in *Miller*.⁴⁹ However, juveniles may (and have⁵⁰) received LWOP sentences if the *Miller* principles are satisfied, that is, "an individualized hearing where the mitigating hallmark features of youth are fully explored."⁵¹

3. Infrequently used forms of prison release in South Carolina

a. Compassionate release

Inmates who are "terminally ill," "geriatric," or "permanently incapacitated" may be released on medical parole if they are not threats to society or themselves.⁵²

⁴⁶ S.C. Code Ann. § 16-11-311(B).

⁴⁷ S.C. Code Ann. § 16-3-85(C)(1).

⁴⁸ S.C. Code Ann. § 24-21-610.

⁴⁹ See *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."); *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); *Aiken v. Byars*, 765 S.E.2d 572 (S.C. 2014) (affirming *Miller*'s retroactivity and ordering resentencing for all youth offenders sentenced to life without the possibility of parole).

⁵⁰ See, e.g., Theresa Waldrop & Rebekah Riess, *South Carolina School Shooter Sentenced to Life in Prison*, CNN (Nov. 15, 2019), <https://www.cnn.com/2019/11/15/us/south-carolina-school-shooter-jesse-osborne-life-sentence/index.html>.

⁵¹ *Aiken*, 765 S.E.2d at 578.

⁵² S.C. Code Ann. § 24-21-715(B)-(C). "Terminally ill" is defined as "an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk." S.C. Code Ann. § 24-21-715(A)(1).

The parole board may also grant release up to one year before an inmate's ordinary parole eligibility date if "the physical condition of the prisoner concerned is so serious that he would not be reasonably expected to live for more than one year." If the inmate has been imprisoned for 10 or more consecutive years, the board must also receive a report of the inmate's mental condition "and his ability to adjust to life outside the prison."⁵³

The parole board may release a two-strike or three-strike offender sentenced to life without the possibility of parole if requested by the department of corrections and "due to the person's health or age he is no longer a threat to society," and one of the following also applies: (1) the person is at least 65 years old and has served at least 30 years of this sentence, (2) the person is at least 70 years old and has served at least 20 years of this sentence, (3) the person has a terminal illness and is expected to live for only one year or less, or (4) "the person can produce evidence comprising the most extraordinary circumstances."⁵⁴

If a veteran who is otherwise eligible for parole may not be released because of a mental condition, the parole board may release the inmate to the custody of the Veterans Administration for psychiatric treatment. After such a releasee is deemed to be in suitable mental condition, they may be transitioned to parole under regular community supervision.⁵⁵

Any inmate—even those convicted of "no parole" crimes—may be eligible for parole after serving one-fourth of their sentence if the offense was against a household member and the prisoner presented credible evidence at the time of conviction or sentencing that she or he was a victim of domestic violence by that household member.⁵⁶

b. Clemency

The governor has the exclusive power to commute sentences in South Carolina, but this authority is restricted to commuting death sentences to life imprisonment.⁵⁷ The governor may

An inmate is "geriatric" if they are "seventy years of age or older and suffer[] from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk." S.C. Code Ann. § 24-21-715(A)(2).

"Permanently incapacitated" is defined as "an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a licensed physician and which requires immediate and long term residential care." S.C. Code Ann. § 24-21-715(A)(3).

⁵³ S.C. Code Ann. § 24-21-610.

⁵⁴ S.C. Code Ann. § 17-25-45(E)(2).

⁵⁵ S.C. Code Ann. § 24-21-700.

⁵⁶ S.C. Code Ann. § 16-25-90. "Household members" are defined as spouses, former spouses, "persons who have a child in common," and male and female couples who are cohabiting or formerly cohabited. S.C. Code Ann. § 16-25-10(3).

⁵⁷ S.C. CONST. art. IV, § 14.

request an opinion on a particular case from the Board of Probation, Parole, and Pardon Services but is not bound by the Board's recommendation.⁵⁸ In all other cases, The Board of Probation, Parole, and Pardon Services has the right to grant clemency in all other cases.⁵⁹

c. Release during overcrowding emergencies

South Carolina's governor historically had the power to declare a prison overcrowding emergency, allowing the Board to release certain nonviolent offenders, but that authority was revoked in 1992 with the adoption of an "offender management system" that focuses on community placements for nonviolent offenders when the prison population nears facility limits.⁶⁰

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

We classify South Carolina's prison-sentencing system as operating with a *high degree of indeterminacy* overall on the scale developed for this project (see pp. iii-iv). An argument might be made for extremely high indeterminacy, but we think it is weak. It takes a truly high-achieving prisoner to gain release through credits plus discretionary parole before the 20 percent mark, and only nonviolent offenders have the theoretical ability to do so.

The department of corrections is especially powerful in South Carolina because of the authorization of movable MRDs for nonviolent and many violent offenders that can potentially cut off 60 percent of judicial maximum terms. The 60 percent discount is only available to high-achieving prisoners, but ordinary good time credits by themselves can yield 40-percent reductions. Compared to most other states, South Carolina makes especially generous use of movable MRDs in determinations of actual time served.

Movable MRDs in South Carolina are not nearly as important for those convicted of "no-parole" offenses (especially serious violent offenses as designated in statute). In such cases, the highest achieving prisoner can win no more than a 23 percent reduction from the judicial maximum sentence. For this sentence class, however, a movable MRD with the most possible credits offers release earlier than a prisoner's first eligibility for parole release, which occurs at the 85-percent mark of the judicial maximum term. To our knowledge, the use of a movable MRD with the possibility of predating parole release eligibility is unique to South Carolina.

⁵⁸ S.C. Code Ann. § 24-21-910.

⁵⁹ S.C. Code Ann. § 24-21-920.

⁶⁰ See 1992 S.C. Acts 461 (repealing the Prison Overcrowding Powers Act); see also S.C. Code Ann. § 24-22-40 ("[T]he board shall enroll qualified offenders monthly into the offender management system to prevent the prison system population from exceeding one hundred percent of capacity at high count. No offender shall be issued an offender management system certificate and released from prison if the release of the offender will reduce the prison system population below ninety-five percent of capacity at high count.").

For most classes of sentence in South Carolina, the parole board's unilateral release discretion (and its unilateral release-*denial* discretion) spans a small fraction of the total prison-release timeline if movable MRDs are granted at fullest extension. Parole release discretion remains an important factor for prisoners who earn credits at lower levels, or who forfeit a significant share of their credits.