



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

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# **PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE**

## ***STATE REPORT: CONNECTICUT***

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### 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 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 greatly across U.S. jurisdictions. One goal is to inform state governments how they may deliberately adjust their laws and practices of prison-release authority to achieve desired policy goals, such as reductions of prison populations in a manner consistent with public safety

### *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. Our five tiers are based on the variations we observe in current American sentencing systems, not any absolute or theoretical conceptions of degrees of indeterminacy that could be imagined in hypothetical systems.

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”*

<b>Ranking</b>	<b>Alternative terminology</b>	
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

## Prison-Release Discretion and Prison Population Size

### State Report: Connecticut<sup>1</sup>

#### *Executive Summary*

Overall, we place Connecticut's prison-sentencing system in the category of *low indeterminacy*, but this is a judgment that splits the difference between two very different prison-release sub-systems. For nonviolent offenders the system operates with a *moderate degree of indeterminacy*. Judges and back-end officials with prison-release discretion enjoy roughly comparable amounts of control over time actually served in individual cases. In contrast, for violent offenders, the system is one of *extremely low indeterminacy* (or, by our alternative terminology, *extremely high determinacy*). Judicial sentences in cases of violent crime are very strong predictors of actual time served.

For nonviolent offenders, the parole board holds significantly more back-end discretion over time served than the department of corrections, although both have nontrivial powers. For violent offenders, the parole board and department of corrections hold nearly identical and overlapping authorities, but the quantum of release discretion that they share is small.

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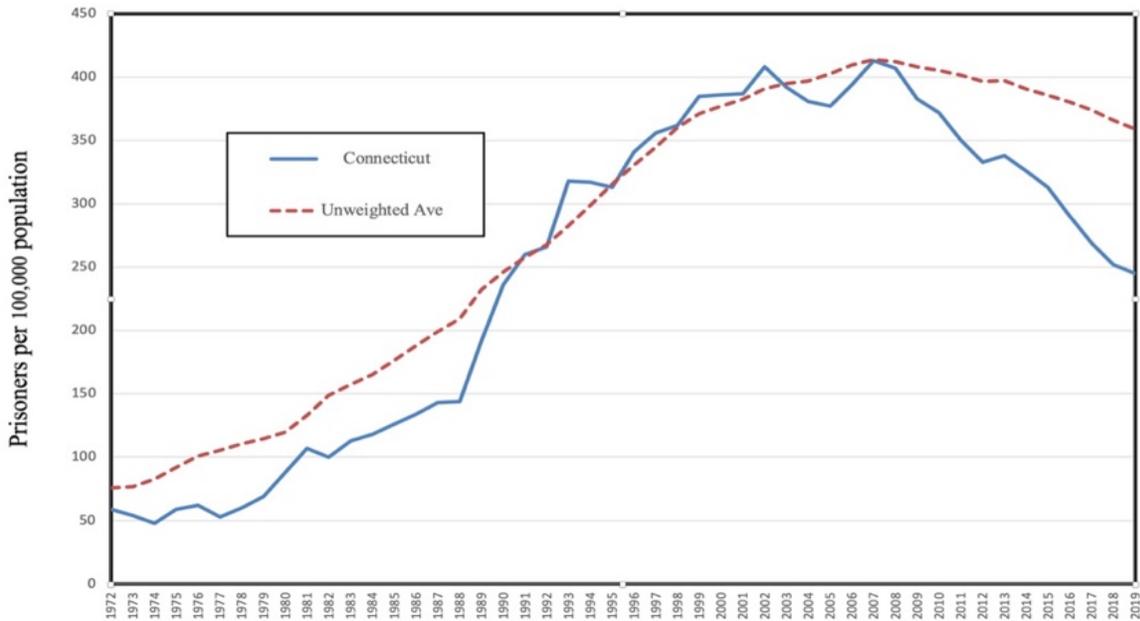
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures. We thank Richard Sparaco, Leigh Floody, and Vilmaris Diaz for their comments on an earlier draft.

**Introduction**

*Connecticut’s prison-rate history, 1972 to 2019*

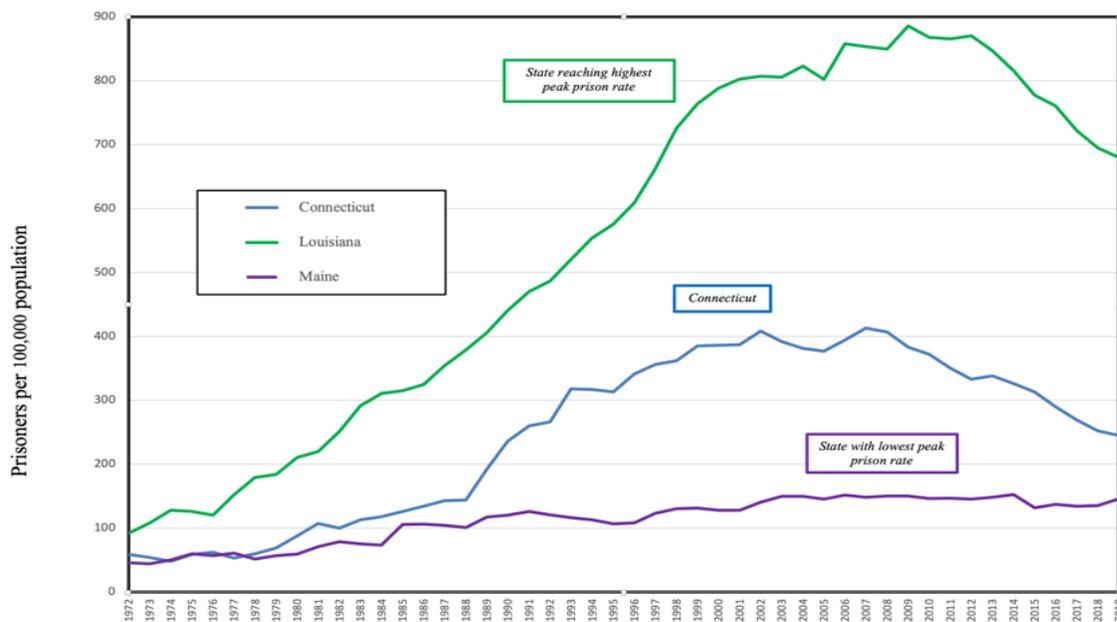
In 2019, Connecticut’s prison rate was 245 per 100,000 general population, with a yearend prison population of 8,751.<sup>2</sup> Connecticut’s prison rate was 38<sup>th</sup> highest among all states, or 13<sup>th</sup> lowest.

**Figure 1. Prison Rate Change in Connecticut and (Unweighted) Average Among All States, 1972 to 2019**



<sup>2</sup> E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020) at 7 (table 4), 11 (table 7).

Figure 2. Prison Rate Change in Connecticut, Louisiana, and Maine, 1972 to 2019



Sources: Timothy J. Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990* at 605 (table 6.56), Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), available at <https://www.bjs.gov/index.cfm?ty=nps> (last visited May 24, 2020); 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 2018-2019).

Connecticut reached its peak prison rate during the national buildup period in 2007 at 413 per 100,000, which dropped to 245 per 100,000 in 2019. This is a net difference of -168 per 100,000, which was the 7<sup>th</sup> largest prison-rate drop of all states. The comparative scale of the drop can be seen in Connecticut's prison-rate ranking among all 50 states. In 2007, Connecticut's prison rate was 25<sup>th</sup> highest in the nation, but fell to 38<sup>th</sup> by 2019.

Figures 1 and 2 span two important periods in American criminal-justice history. From 1972-2007, the United States lived through 35 years of uninterrupted growth in the nationwide prison rate. This might be called the Great Prison Buildup. Since 2007, prison rates have been dropping in the average American state, although each state has charted its own course.

### *Organization of this report*

This report is divided into four parts. Parts I through III describe the contours of Connecticut’s prison-release system in some detail, with extensive citations and statutory analysis. Part I surveys the prison-release rules that apply to most prisoners. Part II then covers a number of important subgroups of prisoners who are not subject to the general rules. Part III catalogues some additional prison-release mechanisms that exist in Connecticut but are infrequently used, such as medical release and the clemency power.

Part IV draws on the raw research in Parts I through III to analyze and model the degrees of indeterminacy that exist for the most important subgroups of prisoners who are serving different classes of sentences. Ultimately, if a large enough percentage of all prisoners are included, this allows for broad observations about the Connecticut system as a whole. The overarching goal of Part IV is to explore the relationship between the various forms of prison-release discretion in Connecticut and the size of the state’s prison population.

### *Terminology note*

This report will refer to the Connecticut Board of Pardons and Parole as the “parole board.” The board is the primary decision maker for clemency decisions as well as parole release (see section 3.2). The Connecticut Department of Correction will be referred to as the “department of corrections.”

## ***I. General Rules of Prison-Release Discretion***

Connecticut has an organized felony grading scheme, with ranges of authorized punishments that vary according to class of felony and offense type. For prison cases, unless there is a mandatory sentence, the sentencing court must select a “definite sentence” within the allowable statutory range.<sup>3</sup> A “definite sentence” in Connecticut’s terminology is a *judicial maximum sentence* within the terminology of this project.

For example, for “class B” felonies other than aggravated manslaughter, if the judge chooses to impose a prison sentence, the judicial maximum sentence must be “a term not less than one year nor more than twenty years.”<sup>4</sup> This means the court can select a judicial maximum sentence of one year, 20 years, or anything in between. For a class C felony, the judge must choose a judicial maximum sentence between one and ten years. For class D, the judicial maximum may be “a term not more than five years” (in literal terms, allowing judicial maximum terms to be as short as one day or one hour).<sup>5</sup>

### ***A. Determination of parole-release eligibility***

#### ***1.1. General rules of prison release***

##### ***a. Nonviolent offenders: 50-percent rule***

Prisoners convicted of nonviolent offenses who have received judicial maximum sentences of more than two years become eligible for discretionary parole release after serving 50 percent of their judicial maximum terms less good-time credits (called “risk-reduction credits” in Connecticut).<sup>6</sup>

Prisoners convicted of nonviolent offenses who have received judicial maximum sentences of two years or less are also eligible for discretionary parole release after serving 50 percent of their judicial maximum terms less risk-reduction credits.<sup>7</sup> For shorter sentences of this type, however, sentencing courts do not have statutory authority to cut off defendants’ later eligibility for parole release or receipt of risk-reduction credits.

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<sup>3</sup> Conn. Gen. Stat. § 54-125a(a).

<sup>4</sup> Conn. Gen. Stat. § 53a-35a(6) (“For a class B felony other than manslaughter in the first degree with a firearm . . . , a term not less than one year nor more than twenty years”). For the aggravated manslaughter charge, also a class B felony, the judicial maximum sentence must be for “a term not less than five years nor more than forty years”). *Id.*, § 53a-35a(6).

<sup>5</sup> Conn. Gen. Stat. §§ 53a-35a(7),(8).

<sup>6</sup> Conn. Gen. Stat. § 54-125a(a).

<sup>7</sup> Conn. Gen. Stat. § 18-100c. Connecticut has a unified system of prisons and jails, as opposed to the separate systems in most other states. This provision reaches offenders with misdemeanor convictions who, in most states, would be housed in county jails rather than state prisons.

*b. Violent offenders: 85-percent rule*

Prisoners convicted of violent offenses become eligible for discretionary parole release after serving 85 percent of their judicial maximum sentences. Their minimum terms are not reducible by risk-reduction credits.<sup>8</sup>

Prisoners are not cleanly divided into the 50-percent and 85-percent categories by statute. Instead, the parole board classifies prisoners for purposes of release eligibility shortly after their admission.<sup>9</sup> The statutory criterion for inclusion in the 85-percent category is that the “facts and circumstances of the offense involve the use, attempted use, or threatened use of physical force against another person ....”<sup>10</sup>

The board has adopted regulations for carrying out its classification responsibilities: The board considers the elements of the underlying offense, an inmate’s criminal history and criminal records, police reports, prior parole and probation reports, the length of sentence(s) being served, victim statements, witness statements, and “any information which [the Board] deems to be relevant.”<sup>11</sup> More categorically, the board’s regulations state that the following offenses subject an inmate to the 85 percent limitation:

First- and second- degree manslaughter (with or without a firearm); second-degree manslaughter with a motor vehicle; misconduct with a motor vehicle; first-degree assault, first-degree assault of an elderly, blind, disabled, or pregnant person or a person with intellectual disability; first-degree assault of a Department of Corrections employee; second-degree assault (with or without a firearm), second-degree assault of an elderly, blind, disabled or pregnant person or person with

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<sup>8</sup> Conn. Gen. Stat. § 54-125a(b)(2) provides:

A person convicted of (A) a violation of section 53a-100aa [home invasion, class A felony] or 53a-102 [burglary in the second degree, class C felony], or (B) an offense, other than an offense specified in subdivision (1) of this subsection, where the underlying facts and circumstances of the offense involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole under subsection (a) of this section until such person has served not less than eighty-five per cent of the definite sentence imposed. ... in which case parole eligibility does not arise before an inmate serves 85 percent of their sentence.

The 85-percent rule was part of Connecticut’s “truth-in-sentencing” legislation passed in 1995 to qualify for federal prison-construction funding incentives. See Conn. Board of Pardons and Parole, *Parole: An Informational Brochure* (2019) at 2; Kevin R. Reitz, *The Federal Role in Sentencing Law and Policy*, 543 *Annals Amer. Acad. Pol. & Soc. Sci.* 116 (1996).

<sup>9</sup> Conn. Agencies Regs. § 54-125a-3. Inmates are notified of their classification “soon after sentencing” in a pamphlet detailing their individual programming and activity requirements (“Offender Accountability Plan”), as well as law and Board procedure governing their parole eligibility. Eligible offenders are typically scheduled for a parole hearing six months prior to their eligibility date. Conn. Board of Pardons and Paroles, *Parole: An Informational Brochure* (2019).

<sup>10</sup> Conn. Gen. Stat. § 54-125a(b)(2).

<sup>11</sup> Conn. Agencies Regs. §§ 54-125a-3–5.

intellectual disability (with or without a firearm); first- and second-degree strangulation; first-degree sexual assault; third-degree sexual assault with a firearm; first-degree kidnapping (with or without a firearm); second-degree kidnapping (with or without a firearm); first-degree unlawful restraint; home invasion; first- and second-degree burglary; second- and third- degree burglary with a firearm; first- and second-degree arson; first-, second-, and third-degree robbery; assault of public safety, emergency medical, public transit, or healthcare personnel; rioting and inciting riot at a correctional institution; and first-degree stalking.<sup>12</sup>

*c. No parole-release eligibility*

Parole-ineligible offenses in Connecticut are murder, felony murder, arson murder, and aggravated sexual assault in the first degree.<sup>13</sup>

*d. Advancement of release by six months short of the judicial maximum term in exchange for extended period of postrelease supervision*

Connecticut has alternative mechanisms for the release of prisoners six months before expiration of their judicial maximum terms (when they have not won their release through other means). Prisoners statutorily ineligible for parole release and prisoners in the 85-percent category may be released by the parole board six months prior to the expiration of their maximum terms, but only if they have served 95 percent of their sentences, and only if they agree to submit to postrelease supervision for a period of one year. A hearing is required.<sup>14</sup> By definition, this provision reaches only prisoners with judicial maximum terms longer than 10 years.<sup>15</sup>

Prisoners in the 50-percent category are always eligible for the six-month advance release, after a hearing, in exchange for their agreement to serve a one-year term of postrelease supervision.<sup>16</sup>

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<sup>12</sup> This list is compiled from Conn. Agencies Regs. § 54-125a-5(a) and Conn. Board of Pardons and Paroles, *Parole: An Informational Brochure* (2019) at 1. The list is not laid out in statute, but is the board's interpretation of the statutory standard, i.e., the board's view of which offenses necessarily "involve the use, attempted use, or threatened use of physical force against another person."

<sup>13</sup> Conn. Gen. Stat. § 54-125a(b)(1).

<sup>14</sup> Conn. Gen. Stat. § 54-125g.

<sup>15</sup> We have been informed that this release mechanism has not been used since 2011 (Comments on earlier draft from Leigh Floody, Conn. Board of Pardons and Paroles, Planning, Research and Development Division, received Nov. 20, 2020).

<sup>16</sup> Conn. Gen. Stat. § 54-125g.

### 1.2. Reconsideration after denials of release

For prisoners denied parole release, the timing of reconsideration is wholly within the parole board's discretion. Prisoners may be granted a "new hearing date in the future" or "may be denied with no further consideration."<sup>17</sup>

## B. General rules on the effects of good-time, earned-time, and other discounts

### 1.3. Generally-available credits: types and amounts

"Risk-reduction credits" of up to five days per month may be awarded to prisoners in the discretion of the department of corrections. Awards are "for adherence to the inmate's offender accountability plan, for participation in eligible programs and activities, and for good conduct and obedience to institutional rules."<sup>18</sup> The department has promulgated guidelines to classify prisoners into different "risk levels," with earning rates from zero to five days per month.<sup>19</sup>

Risk-reduction credits may not be earned by prisoners serving sentences for murder, murder with special circumstances, felony murder, arson murder, first-degree manslaughter, first-degree aggravated sexual assault, aggravated sexual assault of a minor, home invasion, or any conviction as a persistent dangerous felony offender or persistent dangerous sexual offender.<sup>20</sup> Also excluded are prisoners sentenced to life without the possibility of parole or sentenced to death.<sup>21</sup>

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<sup>17</sup> Conn. Board of Pardons and Paroles, *Parole FAQs*, available at [https://portal.ct.gov/BOPP/\\_resources/Common-Elements/V4-Template/Parole-FAQs](https://portal.ct.gov/BOPP/_resources/Common-Elements/V4-Template/Parole-FAQs) (last visited June 6, 2020). See *Boyd v. Comm'r of Corr.*, 898 A.2d 838 (Conn. App. Ct. 2006) (mentioning certain mandatory minimums as the only apparent constraint on the scheduling of reconsideration hearings).

<sup>18</sup> Conn. Gen. Stat. §§ 18-98e(a),(b). A former system of "good conduct credits" is no longer available to prisoners whose offenses were sentenced after October 1, 1994, although a literal reading of the statutes suggests that such credits are still available, see Conn. Gen. Stat. §§ 18-7, 18-7a(c), 18-98a, 18-98b, and 18-98d(b). The Connecticut Supreme Court has held that the former system of good-conduct credits was wholly superseded by the new system of risk-reduction credits. See *Velez v. Comm'r of Corr.*, 738 A.2d 604 (Conn. 1999); *Tyson v. Comm'r of Corr.*, 808 A.2d 653 (Conn. 2002), cert. denied, 538 U.S. 1005, 123 S. Ct. 1914 (2003).

<sup>19</sup> Conn. Dep't of Corrections, Admin. Directive 4.2A, "Risk Reduction Earned Credit", (effective Feb. 1, 2016), available at <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0402Apdf.pdf>. See also Conn. Dep't of Corrections, "Earned Credit Grid," (revised Feb. 1, 2016), available at <https://portal.ct.gov/-/media/DOC/Pdf/RRECAD0402pdf.pdf>.

<sup>20</sup> Conn. Gen. Stat. § 18-98e(a).

<sup>21</sup> Conn. Dep't of Corrections, Admin. Directive 4.2A, "Risk Reduction Earned Credit" (effective Feb. 1, 2016), available at <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0402Apdf.pdf>.

### *a. Effects of good-time credits on parole-release eligibility*

Risk-reduction credits advance parole release eligibility for prisoners convicted of nonviolent offenses who fall under the 50-percent rule.<sup>22</sup> Risk-reduction credits do not advance parole eligibility for prisoners who fall under the 85-percent rule.<sup>23</sup>

Risk-reduction credits cannot “reduce a mandatory minimum term of imprisonment [an] inmate is required to serve by statute.”<sup>24</sup>

### *b. Effects of good-time credits on the judicial maximum term*

Risk-reduction credits reduce judicial maximum terms to establish earlier mandatory release dates for prisoners subject to both the 50-percent and the 85-percent rules.<sup>25</sup>

#### *1.4. Loss of good-time credits*

Loss of risk-reduction credits is governed by the following statutory provision:

[T]he commissioner [of the department of corrections] or the commissioner's designee may, in his or her discretion, cause the loss of all or any portion of such earned risk reduction credit for any act of misconduct or insubordination or refusal to conform to recommended programs or activities or institutional rules occurring at any time during the service of the sentence or for other good cause. If an inmate has not earned sufficient risk reduction credit at the time the commissioner or the commissioner's designee orders the loss of all or a portion of earned credit, such loss shall be deducted from any credit earned by such inmate in the future.<sup>26</sup>

The department of corrections has promulgated rules for the award and forfeiture of risk reduction credits. The rules indicate that the department also has the power to reinstate some or all credits that have been forfeited.<sup>27</sup>

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<sup>22</sup> Conn. Gen. Stat. §§ 54-125a, 18-100c.

<sup>23</sup> Conn. Gen. Stat. § 54-125(b)(2). When first established, RRECs also advanced parole eligibility for inmates in the 85 percent category. This language was struck from § 54-125a(b)(2) in 2013.

<sup>24</sup> Conn. Gen. Stat. § 18-98e(d). See section 2.4 for more detail on mandatory minima in Connecticut.

<sup>25</sup> Conn. Gen. Stat. § 18-98e(a). For all inmates sentenced after October 1, 1994, RRECs count “toward a reduction of [an inmate’s] sentence . . . .”

<sup>26</sup> Conn. Gen. Stat. § 18-98e(b)(2). See also Conn. Board of Pardons and Paroles, *Parole: An Informational Brochure* (2019).

<sup>27</sup> Conn. Dep’t of Corrections, Administrative Directive 4.2A, *Risk Reduction Earned Credit* (February 1, 2016), available at <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad0402A.pdf>. The power to reinstate credits is not expressly authorized in the statute, see Conn. Gen. Stat. § 18-98e(b)(2), but see Administrative Directive 4.2A at

## II. Prisoners Outside the General Rules

### 2.1. Life sentences without parole

A conviction of a capital felony or the class A felony of “murder with special circumstances” carries a minimum sentence of “life imprisonment without the possibility of release.”<sup>28</sup>

### 2.2. Life sentences with possibility of parole

Under Connecticut law a sentence of “life imprisonment” is defined as “a definite sentence of sixty years, unless the sentence is life imprisonment without the possibility of release.”<sup>29</sup> Prisoners serving parolable life sentences are therefore subject to the general rules of prison-release discretion that apply to other prisoners, depending on whether the nature of their offenses place them in the nonviolent category (with parole-release eligibility after 50-percent of their judicial maximum terms) or the violent category (85-percent rule). We expect that most or all such sentences will be for offenses that trigger the 85-percent rule (see section 1.1b), which would carry minimum terms of 51 years not reducible by good-time credits.

### 2.3. Juvenile life sentences

The crime of murder with special circumstances, by statutory definition, can only be committed by a person who “was eighteen years of age or older at the time of the offense.”<sup>30</sup> This is the only crime in Connecticut that carries the penalty of life without parole (see section 2.1). For offenders who were under age 18 at the time of their crimes (“juvenile offenders”), the most severe prison sentence available is a parolable life sentence—that is, under Connecticut law, a sentence with a judicial maximum term of 60 years (see section 2.2).<sup>31</sup> Furthermore, all juvenile offenders serving sentences of more than 50 years are eligible for discretionary parole release after 30 years, not reducible by good-time credits.<sup>32</sup>

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3 (“The Commissioner or Designee has the discretion to reinstate all or partial RREC credits. ... The Director of Programs and Treatment will make the final decision.”).

<sup>28</sup> Conn. Gen. Stat. § 53a-35a(1). As clarified elsewhere, such a sentence as “shall be imprisonment for the remainder of the defendant’s natural life. See Conn. Gen. Stat. § 53a-35b.

<sup>29</sup> Conn. Gen. Stat. § 53a-35b (“life imprisonment defined”).

<sup>30</sup> Conn. Gen. Stat. § 53a-54b (effective Oct. 1, 2015).

<sup>31</sup> Conn. Gen. Stat. § 53a-35b.

<sup>32</sup> Conn. Gen. Stat. § 54-125a(f)(1). The issue of eligibility for good-time credits is not resolved expressly by statute, but the Appellate Court of Connecticut has interpreted it in this manner, see *Boyd v. Commissioner of Correction*, \_\_\_ A.3d \_\_\_, 199 Conn. App. 575, 598 (Conn. App. 2020). It remains possible that the state supreme court could differ from this ruling.

In addition, and unusual among American jurisdictions, Connecticut extends a statutory right to appointed counsel at parole-release proceedings to prisoners who were juveniles at the time of their offenses and who are serving sentences of more than ten years.<sup>33</sup>

#### *2.4. Other parole eligibility rules for juvenile offenders*

Juvenile offenders serving judicial maximum sentences of 10 to 50 years become eligible for discretionary parole release after serving 60 percent of their maximum terms or twelve years, whichever is greater. Juvenile offenders serving judicial maximums sentences of more than 50 years become eligible for parole release after 30 years.<sup>34</sup> Under current judicial precedent in Connecticut, these special minimum terms are not reducible by good-time credits.<sup>35</sup>

#### *2.5. Persistent dangerous felony offenders*

Repeat offenders convicted of certain serious crimes are deemed to be “persistent dangerous felony offenders” when they have one or more prior convictions for designated serious crimes.<sup>36</sup> Defendants found to be persistent dangerous felony offenders must receive judicial maximum prison terms chosen by sentencing courts from statutory ranges that are two or three times

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<sup>33</sup> Conn. Gen. Stat. § 54-125a(f)(3) (provision applicable to “a person convicted of one or more crimes committed while such person was under eighteen years of age, ... and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes”) (“Whenever a person becomes eligible for parole release pursuant to this subsection, the board shall hold a hearing to determine such person's suitability for parole release. At least twelve months prior to such hearing, the board shall notify the office of Chief Public Defender, the appropriate state's attorney, the Victim Services Unit within the Department of Correction, the Office of the Victim Advocate and the Office of Victim Services within the Judicial Department of such person's eligibility for parole release pursuant to this subsection. The office of Chief Public Defender shall assign counsel for such person pursuant to section 51-296 if such person is indigent.”), No equivalent right to appointed counsel exists for prisoners who committed their offenses as adults, and there may be no right of representation by retained counsel, *see* Conn. Board of Pardons and Parole, *Parole: An Informational Brochure* (2019) at 4 (“[t]he only individuals allowed to speak at your hearing are the Parole Officer, the panel members, yourself and any victims of your crime(s.)”); *id.* at 3 (there is no mention of assistance of counsel in preparing for a parole hearing; instead, brochure states that “[a]t the time of your eligibility, an Institutional Parole Officer will work on completing your parole file. You will be required to sign several documents in order to complete your parole application.”).

<sup>34</sup> Conn. Gen. Stat. § 54-125a(f)(1).

<sup>35</sup> *Boyd v. Commissioner of Correction*, \_\_ A.3d \_\_, 199 Conn. App. 575, 598 (Conn. App. 2020).

<sup>36</sup> The triggering offenses of current conviction include manslaughter, arson, kidnapping, robbery in the first or second degree, assault in the first degree, home invasion, burglary in the first degree, burglary in the second degree with a firearm, sexual assault in the first or third degree, aggravated sexual assault in the first degree, and sexual assault in the third degree with a firearm. Conn. Gen. Stat. §§ 53a-40(a)(1)(A),(B). The triggering offenses of prior conviction are laid out at some length in the same provisions.

more severe than ordinarily authorized for their offenses of current conviction.<sup>37</sup> The general rules of prison-release discretion apply to their extended sentences.

### 2.6. *Mandatory minimum prison terms*

A small number of Connecticut laws require the judge to impose a mandatory minimum prison term that is not reducible by any means, including parole release or the award of good-time credits.<sup>38</sup> These typically state that a portion or all of a sentence of imprisonment “may not be suspended or reduced *in any manner . . .*”<sup>39</sup> Connecticut offenses with this language involve the operation of a vessel or motor vehicle while a license is suspended or revoked, or while under the influence.<sup>40</sup>

Other mandatory sentence provisions in Connecticut allow for credit-based reductions from their “mandatory” terms. That is, such statutes mandate the lowest possible judicial sentence that must be imposed by the court and mandate that the judicial sentence must be an unsuspended prison sentence, but *do not mandate* that the judicial maximum sentence must not carry eligibility for parole release or reduction through good time credits. For example, a straw man firearm purchase is a class C felony.<sup>41</sup> This particular class C felony provides that at least two years of the sentence “may not be suspended or reduced by the court.”<sup>42</sup> However, if the parole board classifies a prisoner convicted of this offense in the 50-percent, the prisoner will be eligible for parole upon serving one year of his sentence less risk-reduction credits.<sup>43</sup>

### 2.7. *Sex offenders*

The parole board may require sex offenders to undergo specialized treatment for at least one year before they will be considered for parole release.<sup>44</sup>

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<sup>37</sup> Conn. Gen. Stat. § 53a-40(i) (the doubling occurs for persistent offenders with one prior conviction of a triggering offense; the tripling occurs for persistent offenders with two or more such prior convictions).

<sup>38</sup> Conn. Gen. Stat. § 18-98e(d). *See generally* Office of Legislative Research, *Crimes with Mandatory Minimum Prison Sentences* (2017), available at <https://www.cga.ct.gov/2017/rpt/pdf/2017-R-0134.pdf>.

<sup>39</sup> *See, e.g.*, Conn. Gen. Stat. § 14-227a (emphasis added).

<sup>40</sup> Conn. Gen. Stat. §§ 14-36, 14-215, 14-227a; 14-227m–n, 15-133, 15-156. The mandatory minimum terms of imprisonment under these offenses are typically for less than one year (and sometimes for as little as a number of hours). The longest is for operating a motor vehicle under the influence with a child passenger present, which carries a two year mandatory minimum term of imprisonment.

<sup>41</sup> When performed knowingly. Conn. Gen. Stat. § 28-37j(a).

<sup>42</sup> Conn. Gen. Stat. § 29-37j(a).

<sup>43</sup> Conn. Gen. Stat. § 54-125a.

<sup>44</sup> Conn. Gen. Stat. § 54-125c.

### ***III. Other Forms of Prison-Release Discretion (not routinely used)***

#### ***3.1. Medical or “compassionate” release***

With the exception of inmates convicted of a capital felony or murder with special circumstances, the parole board has the authority to release on medical parole “any inmate serving any sentence of imprisonment[.]” as long as the inmate has been diagnosed by a licensed physician and is suffering from a terminal condition which renders them “so debilitated or incapacitated [that they are] physically incapable of presenting a danger to society.”<sup>45</sup> The Board has the authority to appoint a special panel to decide requests for medical parole on an emergency basis.<sup>46</sup> Evaluation for such diagnoses may be requested by the Board, the Commissioner of Correction, or a correctional warden or superintendent, or a request can be made to any of these figures by “an inmate, [or] an inmate’s spouse, parent, guardian, grandparent, aunt or uncle, sibling, child over eighteen years, or attorney.”<sup>47</sup> Release on medical parole does not affect an inmate’s parole eligibility under any other statutes.<sup>48</sup>

For inmates whose debilitation or infirmity result from a non-terminal condition or advanced age, compassionate parole release is available under nearly identical requirements, however, not before an inmate has served one half of their sentence. The parole board may commute part of a prisoner’s sentence in order to satisfy the one half time-served requirement.<sup>49</sup>

Under “special or unusual circumstances,” the Commissioner of Correction may recommend that the Board grant parole to an inmate prior to the inmate’s eligibility date.<sup>50</sup>

#### ***3.2. Judicial sentence reductions***

During the term of any prison sentence with a judicial maximum term of three years or less, the sentencing court may reduce prisoners sentences or order them discharged after a hearing and for good cause shown. However, this does not apply to any portion of a sentence that may not be suspended or reduced by the court.<sup>51</sup>

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<sup>45</sup> Conn. Gen. Stat. §§ 54-131b–131c. An inmate has a “terminal” condition if they have six months or less to live. Medical release may be conditioned on periodic subsequent diagnoses. If a subsequent diagnosis finds that the parolee is fit enough to present a danger to society, the parolee may be returned. Conn. Gen. Stat. §54-131d.

<sup>46</sup> Conn. Gen. Stat. § 54-131f.

<sup>47</sup> Conn Gen. Stat. § 54-131e.

<sup>48</sup> Conn. Gen. Stat. § 54-131g.

<sup>49</sup> Conn. Gen. Stat. § 54-131k.

<sup>50</sup> Conn. Gen. Stat. § 54-125.

<sup>51</sup> Conn. Gen. Stat. § 53a-39.

For prison sentences with judicial maximum terms of more than three years, judges' sentence-reduction powers only exist "upon agreement of the defendant and the state's attorney to seek review of the sentence."

### 3.3. Executive clemency

The Connecticut governor's clemency power is limited to grants of temporary reprieves after conviction.<sup>52</sup> The parole board has exclusive jurisdiction over the granting of conditioned or absolute pardons of punishments and releases, including the death penalty.<sup>53</sup> Prisoners must apply for a commutation of their sentences.<sup>54</sup>

### 3.4. Emergency release for prison overcrowding

Connecticut has no statutory emergency release scheme for prison overcrowding.<sup>55</sup>

### 3.5. COVID releases

In Spring 2020, the Connecticut Department of Corrections reported a COVID-response practice to "review and release eligible and suitable low risk offenders with a verified housing plan." The department reported a 72 percent increase in the number of prison releases from February to March 2020, with even greater numbers released in April 2020.<sup>56</sup> In a press release on June 2, 2020, the department reported a total drop in the state prison population of slightly more than 16 percent since March 1, 2020.<sup>57</sup> The press release also reported some numbers of expedited releases of "those offenders who are at least 60 years old or who have health conditions making them more susceptible to catching the virus" and "furloughs up to 45-days for offenders serving sentences of two years or less," although no numbers were attached to these specific release mechanisms.

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<sup>52</sup> Conn. Const. art. IV, § 13. Temporary reprieves last until the next legislative session. *Id.*

<sup>53</sup> Conn. Gen. Stat. § 54-130a.

<sup>54</sup> Conn. Board of Pardons and Paroles, "The Pardon Process" (2018), available at <https://portal.ct.gov/-/media/BOPP/Pardons/Pardon-Process.pdf>. Note that several applications relevant to released offenders go by the name of "pardons" and "provisional pardons" in Connecticut. *Id.* For more detail on the issuance of provisional pardons, see Conn. Gen. Stat. §54-130e.

<sup>55</sup> See Conn. Gen. Stat. §§ 18-87e-f (repealed 1995) (former provisions for responding to "prison overcrowding emergency").

<sup>56</sup> Conn. Dep't of Corrections, DOC COVID-19 Release Facts (May 5, 2020), available at <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/RELEASE-FACT-SHEET-covid-19-050520.pdf>.

<sup>57</sup> Conn. Dep't of Corrections, Press Release, *CT Prison Population Down 2,000 Since March 1st* (June 2, 2020), available at <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Press-Release-re-Populations-Drops-by-2000--060220.pdf>. The press release further stated: "According to data compiled by the Prison Policy Initiative, Connecticut currently has had the sixth-largest correction population decrease since the start of the COVID-19 public-health emergency among 40 other states and the federal system."

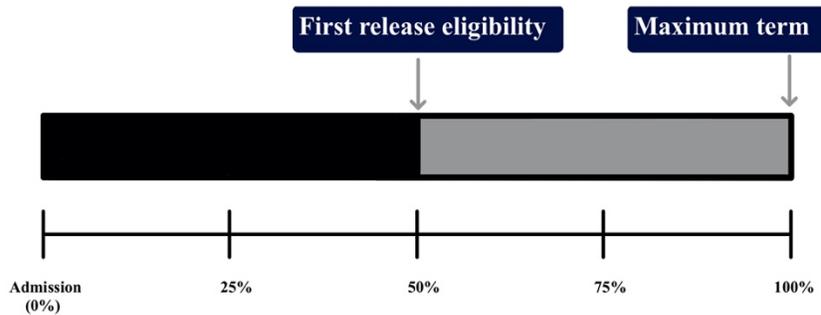
### IV. Modeling the Relationship Between Prison-Release Discretion and Prison Population Size in Connecticut

#### 4.1. General-rules cases

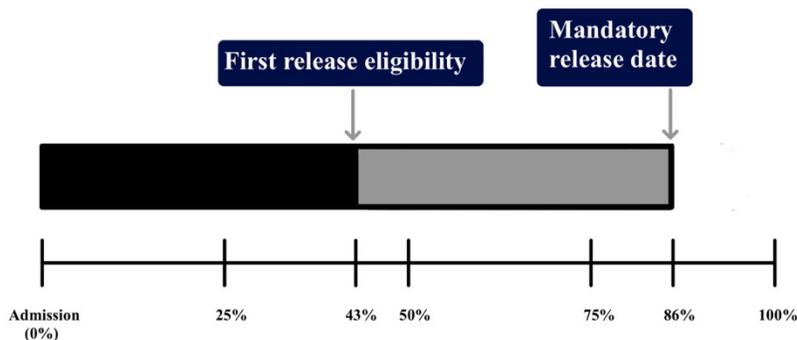
##### a. Nonviolent offenders: 50-percent rule

As shown in Figure 3, sentences for nonviolent offenders carry first parole-release eligibility at the 50-percent milestone of the judicial maximum sentence. Figure 4 adds the effects of full earnings of risk-reduction credits (at the rate of five days per month), which are applied against prisoners’ minimum and maximum terms.

Connecticut Figure 3. Prison-Release Timeline for General-Rules Cases Without Risk-Reduction Credits



Connecticut Figure 4. Prison-Release Timeline for General-Rules Cases With Full Risk-Reduction Credits



For prisoners who earn 5 days of credit per month, their mandatory release dates would be moved back to about the 86-percent mark of their judicial maximum sentences. Their dates of first parole-release eligibility would advance to the 43-percent mark.

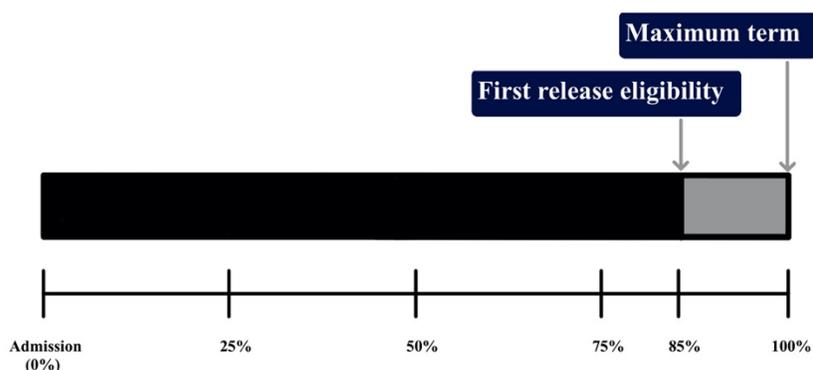
In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence over prison population size that is ceded by law to back-end decision makers such as parole boards and prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board’s release decisions is 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *never-release 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 (an *always-release scenario*).

Combining Figures 3 and 4, general-rules sentences for nonviolent offenders are 43 percent determinate and 57 percent indeterminate. That is, the judicial maximum sentence controls 43 percent of the potential time-to-be-served by prisoners. The remaining portion of the timeline is within the combined control of back-end decision makers. For this group of prisoners, the PMP is about 2.3:1. That is, for this group of prisoners, a never-release regime would produce a prison population 130 percent larger than it would be under an always-release regime.

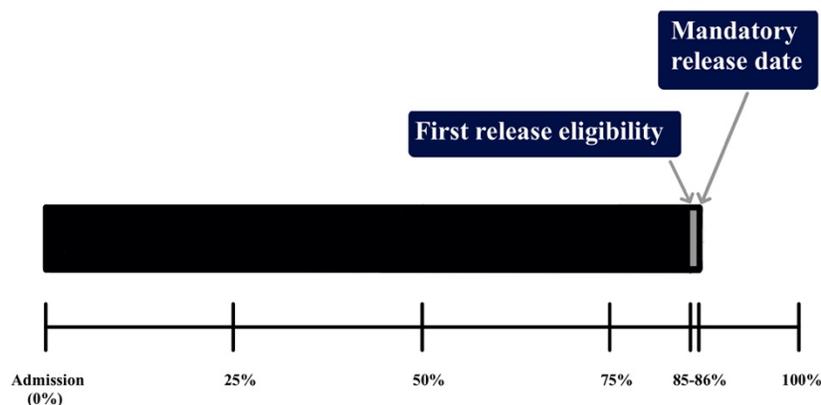
*b. Violent offenders: 85-percent rule*

As shown in Figure 5, sentences for violent offenders carry first parole-release eligibility at the 85-percent milestone of the judicial maximum sentence. Figure 6 adds the effects of full earnings of risk-reduction credits (at the rate of five days per month), which are applied against prisoners’ maximum terms, but not against their minimum terms.

**Connecticut Figure 5. Prison-Release Timeline for 85-Percent Cases Without Risk-Reduction Credits**



**Connecticut Figure 6. Prison-Release Timeline for 85-Percent Cases With Full Risk-Reduction Credits**



For violent offenders, general-rules prison sentences are 85 percent determinate and 15 percent indeterminate. The PMP for this subpopulation of prisoners is only 1.18:1. A never-release regime would increase the size of this segment of the population only 18 percent above the always-release scenario.

#### 4.2. *Distribution of time-served discretion*

The highest earning rate of risk-reduction credits in Connecticut is low compared to comparable credit systems in most other states. This by itself puts a cap on the amount of time-served discretion that resides in the department of corrections. Credit awards do advance the mandatory release dates for most prisoners, which is not true in many states. Thus, the small increment of time-served authority given to corrections officials has teeth.

To assess the distribution of authority within the Connecticut's prison-release system, we must compare the low credit-granting capabilities of corrections officials with the amount of release discretion given by law to the parole board. For nonviolent offenders, the parole board's potential release and release-denial discretion spans as much as 57 percent of the judicial maximum term. Through credit awards, prison officials can remove some of the parole board's release-denial discretion at the tail end of a sentence, but the greatest possible removal is 14 percent of the judicial maximum term. (And the credit awards that effect this subtraction from the parole board's *release-denial discretion* have the simultaneous effect of increasing the board's *release discretion* by 7 percentage points of the judicial maximum.) For Connecticut prisoners convicted of nonviolent offenses, therefore, the parole board is the dominant of the two back-end authorities. Credit awards are of more than trivial importance, but most of the PMP for nonviolent sentences is within the control of the parole board.

The situation is far different for prisoners convicted of violent offenses. Here, the parole board holds release and release-denial discretion over, at most, 15 percent of the judicial maximum term. Prison officials have the power to remove nearly all of the board's release-denial discretion, however, with credit awards that mandate release after 86 percent of the maximum has been served. In short, the parole board and department of corrections have overlapping powers, with the parole board's power to order release only slightly greater than that of corrections officials. Figure 6 shows the slender difference between the two.

In the abstract, these duplicative powers to release make release before the maximum more likely than when a single decision maker is in exclusive control. In other words, a prison stay beyond the 86-percent mark for violent offenders requires unfavorable decisions by *both* the parole board and corrections officials. The same is true for nonviolent offenders, but in most cases the release discretion that "matters" will have been exercised earlier in their terms.

### 4.3. Overall assessment

Overall, we place Connecticut’s prison-sentencing system in the category of *low indeterminacy*, but this is a “split-the-difference” approach that takes account of two different prison-release sub-systems. For nonviolent offenders who fall under the 50-percent parole-eligibility rules, there is a PMP of 2.3:1. Standing alone, we would associate this with a *moderate degree of indeterminacy*. In contrast, for violent offenders under the 85-percent rules, the PMP is 1.18:1—a figure we have consistently associated with *extremely low indeterminacy* in this project.

The Connecticut Department of Corrections does not regularly report breakdowns of its prison population according to offenses of conviction. We guess that the two groups are relatively evenly divided in the prison population.<sup>58</sup>

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<sup>58</sup> Our assumption was supported by comments on an earlier draft from Leigh Floody, Conn. Board of Pardons and Paroles, Planning, Research and Development Division, received Nov. 20, 2020.