



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: IOWA

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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”

| 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 |

Prison-Release Discretion and Prison Population Size

State Report: Iowa¹

Executive Summary

We rank Iowa's prison-sentencing system overall as one of extremely-high indeterminacy based on the extraordinary prison-release rules applicable to general-rules prisoners, who are eligible for discretionary parole release on the day they are admitted to prison. Mathematically, such sentences are 100 percent indeterminate within the limits of the judicial maximum sentence. There is no prison-release system in the nation that operates with a greater level of indeterminacy for a large share of its prisoners. Even when we take account of special classes of prisoners with delayed parole-release eligibility, we still find Iowa's system to be much more indeterminate than the average paroling state's.

The department of corrections is also a more powerful player in Iowa's prison-sentencing system than in the typical state. The department has impressive powers to reduce maximum lengths of stay for general-rules prisoners through the award of earned time credits. The routine earning rate for most prisoners produces mandatory release dates at 45 percent of judicial maximum terms, which is among the steepest discounts in the country.

For higher-severity cases, such as the important group of prisoners with minimum terms set at the 70-percent mark of their maximum terms, the parole board and department of corrections share time-served discretion just as they do in general-rules cases, although the total amount of shared discretion is substantially smaller.

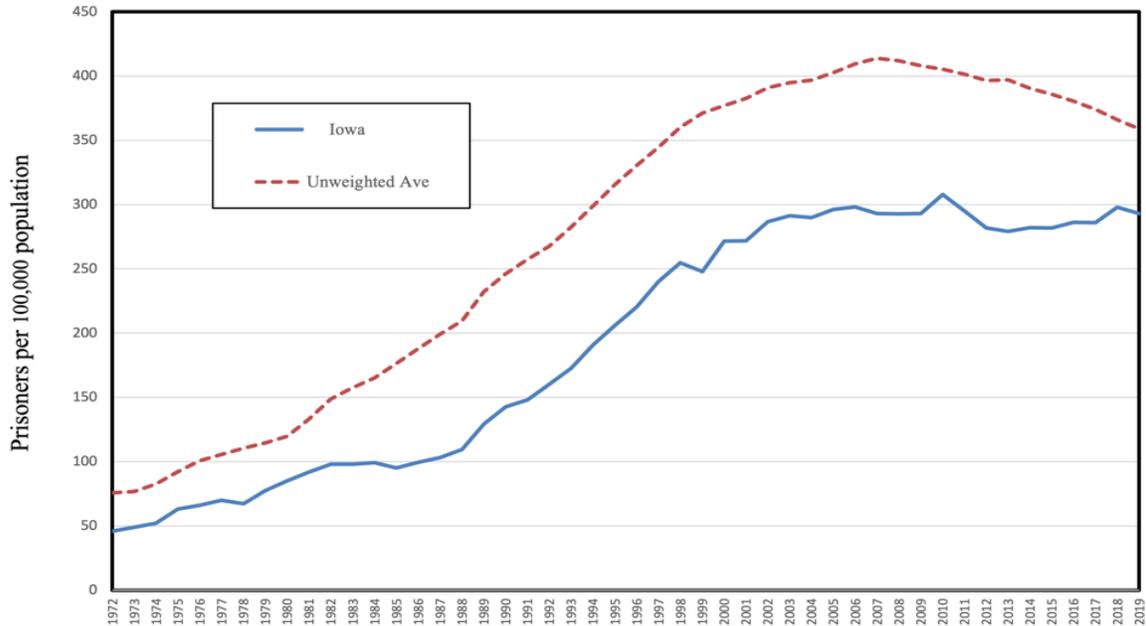
¹ This report was prepared with support from Arnold Ventures. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures. We thank John Hodges for his feedback on an earlier draft.

Introduction

Iowa’s prison-rate history, 1972 to 2019

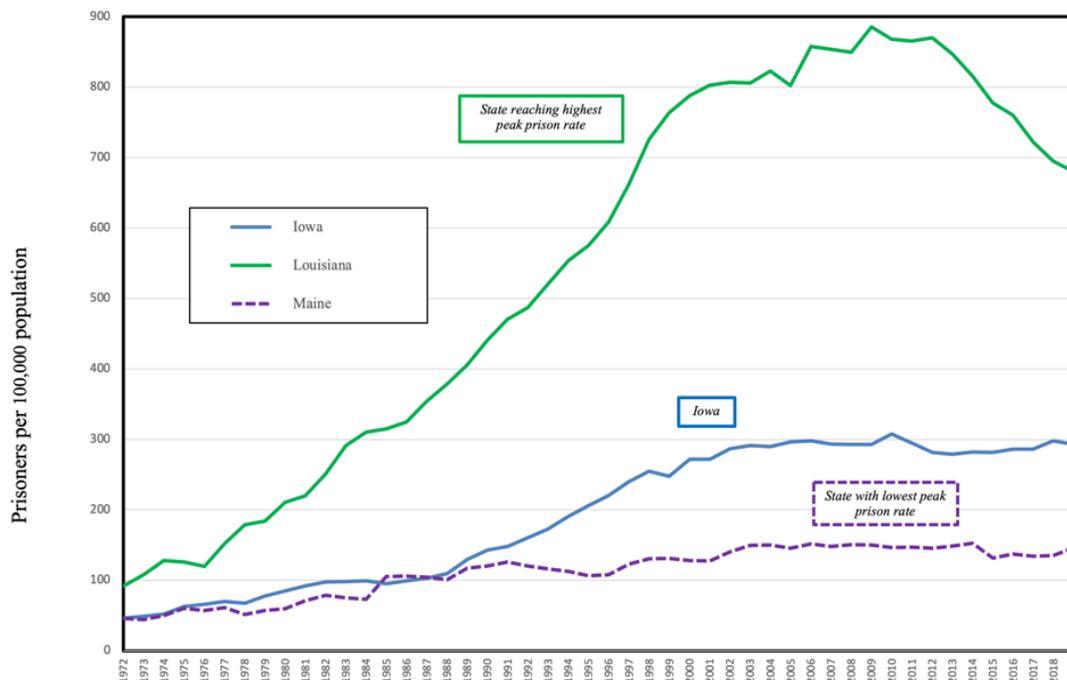
At yearend 2019, Iowa’s prison rate was 293 per 100,000 general population, with a prison population of 9,260.² Iowa’s prison rate was 35th highest among all states.

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



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

Figure 2. Prison Rate Change in Iowa, 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> (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).

Iowa reached its peak prison rate during the national buildup period in 2010 at 308 per 100,000, which dropped to 293 per 100,000 in 2019. This is a net difference of -15 per 100,000, which was the 42nd largest prison-rate drop of all states.

During the nation’s long prison buildup period, 1972 to 2007, Iowa’s prison rate was consistently lower than the average state’s, and Iowa’s year-by-year prison-rate growth—except for one stretch of the 1990s—was consistently less than the average state’s.

Organization of this report

This report is divided into four parts. Parts I through III describe the contours of Iowa’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 Iowa 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 Iowa system as a whole. The overarching goal of Part IV is to explore the relationship between the various forms of prison-release discretion in Iowa and the size of the state’s prison population.

Terminology note

This report will refer to the Iowa Department of Corrections as the “department of corrections” and will refer to the Iowa Board of Parole as the “parole board.”

I. General Rules of Prison-Release Discretion

A. General rules of parole-release eligibility

1.1. General rules of first release eligibility

As a general rule, prison sentences in Iowa include a judicial maximum term but no minimum term. Except for the most serious crimes, judges have discretion to choose a maximum sentence below or up to the statutory maximum penalty authorized for each class of felony.³ For the vast majority of their sentences, sentencing judges have no control or knowledge of when defendants will first be considered for parole release.⁴

Most prisoners in Iowa are eligible for discretionary parole release immediately upon admission.⁵ The parole board must “review the status” of prisoners “at least annually,”⁶ but hold authority to release or deny release until prisoners reach their dates of mandator release. Mandatory release occurs at the expiration of prisoners’ judicial maximum sentences reduced by earned time credits, if any have accrued (see section 1.4b).

Although the timing of discretionary parole release is largely unregulated in Iowa, the legislature has expressed the following policy preference:

It is the intent of the general assembly that the board shall implement a plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of this state.⁷

³ Iowa Code §§ 902.3, 902.9. Class A felonies are an exception to this rule; they carry a mandatory sentence of life without parole (see section 2.1). Statutory maximum penalties are separately prescribed for class B through class D felonies, for habitual offenders, and for defendants convicted of delivery of methamphetamine to a minor (or conspiracy to do so). Iowa Code § 902.9(1)(a)-(e).

⁴ Iowa Code § 902.3. For exceptions to this general rule, see section 1.2.

⁵ See Iowa Admin. Code § 205-8.6(906)(8.6)(1) (“The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate’s prospects for parole or work release at any time.”). See also Iowa Code § 902.6 (“A person who has been committed to the custody of the director of the Iowa department of corrections shall remain in custody until released by the order of the board of parole”).

⁶ Iowa Code § 906.5(1) (also creating several exceptions, including prisoners convicted of class A felonies, class B felonies with sentences of more than 25 years, and prisoners serving mandatory minimum terms).

⁷ Iowa Code § 906.5(2).

1.2. Sentences with delayed parole-release eligibility

For a minority of prisoners in Iowa, eligibility for discretionary parole release is delayed by statute, so that the parole board does not have release discretion immediately upon admission. The relevant statutes come in three types: Some prescribe specific mandatory minimum terms of imprisonment (see section 2.4), some require minimum terms as a percentage of the judicial maximum sentences selected by the courts, and some give the courts discretion to choose minimum terms within a statutorily-defined range.

Examples of Iowa statutes that dictate an exact percentage of the judicial maximum term that prisoners must serve before becoming eligible for discretionary parole release are:

- Prisoners convicted of attempted murder of a peace officer must serve 100 percent of whatever maximum sentence is selected by the court. They are not eligible for discretionary parole release or any other form of early release.⁸
- Defendants convicted of one of several enumerated felonies must serve 70 percent of the judicial maximum before becoming eligible for parole release: second-degree murder, attempted murder,⁹ second-degree sexual abuse, second-degree kidnapping, second-degree robbery,¹⁰ or vehicular homicide by an intoxicated or reckless driver if the defendant failed to stop and remain at the scene.¹¹
- Prisoners with at least one prior conviction for “a forcible felony or a crime of a similar gravity” must serve at least 50 percent of the judicial maximum sentence before becoming eligible for parole.¹² “Forcible felonies” include child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, first-degree arson, and first-degree burglary.¹³

⁸ Iowa Code § 707.11(5)(c) (attempted murder is a class B felony with statutory maximum penalty of 25 years; the offense usually carries no minimum term, but “[i]f the fact finder determines the attempt to commit murder was against a peace officer ..., the person shall serve one hundred percent of the term of confinement imposed and shall be denied parole, work release, or other early release.”).

⁹ As noted in the previous bullet point, there is a different rule when the intended victim is a peace officer.

¹⁰ This applies to offenses committed before July 1, 2016. Iowa Code § 902.12(1)(e).

¹¹ Iowa Code § 902.12(1).

¹² Iowa Code § 902.11. The prior forcible felon provision does not apply when either (1) the sentences were completed at least five years prior to the instant conviction, or (2) the instant conviction is for operating a vehicle while under the influence of drugs or alcohol. *Id.*

¹³ Iowa Code § 702.11(1). The statute also lists offenses that do not qualify as “forcible felonies,” including: willful injury, third-degree sexual abuse committed between spouses, third-degree sexual abuse when the offender is

For some categories of cases, courts have discretion to set a defendant's minimum term to parole-release eligibility within a statutorily-defined range of possibility. For example:

- Judges have discretion to determine parole eligibility (within specified ranges) at the time of sentencing for several additional felonies: child endangerment (30 to 70 percent of the maximum term served), first-degree robbery¹⁴ (50 to 70 percent), second-degree robbery¹⁵ (50 to 70 percent), and first-degree arson (50 to 70 percent).¹⁶
- Defendants convicted of a third or subsequent offense of domestic abuse assault are required to serve 20 to 100 percent of the imposed maximum sentence before becoming parole-eligible.¹⁷ The sentencing judge chooses this minimum term of confinement, up to the judicial maximum, which in theory allows the judge to deny parole at the time of sentencing.¹⁸

1.3. Reconsideration after denials of release

Prisoners who are denied parole release must generally be reconsidered for release at least annually.¹⁹

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

1.4. Generally-available credits: types and amounts

As a general rule, prisoners are eligible for good time credits called “earned time” in Iowa. The amount of available earned time credits depends on the type of sentence being served, but most inmates are eligible to earn 1.2 days for each day of good behavior and participation in approved employment, educational, or treatment programs.²⁰ Prisoners in this category who

more than four years older than the victim, sexual exploitation by a counselor, therapist, or school employee, child endangerment that does not result in a serious injury, assault without intent to inflict serious injury, domestic abuse assault committed by obstructing breathing, and removal of a peace officer's communication or control device. *Id.*, § 702.11(2).

¹⁴ This applies to offenses committed on or after July 1, 2018. Iowa Code § 902.12(3).

¹⁵ This applies to offenses committed on or after July 1, 2016. Iowa Code § 902.12(4).

¹⁶ Iowa Code § 902.12(2)–(5).

¹⁷ Iowa Code § 902.13.

¹⁸ See Iowa Code § 902.13(2).

¹⁹ Iowa Code § 906.5(1)(a). Exceptions are for those convicted of class A or B felonies serving more than 25 years, felons convicted of conspiracy to manufacture or delivery of methamphetamine to a minor, and felons serving mandatory minimum sentences. *Id.*

²⁰ There are three earning categories. The 1.2-day-per-day rate of earning is for Category “A” prisoners, defined as prisoners who do not fall into Categories “B” or “C.” Iowa Code § 903A.2(1)(a)(1). Credits accumulate as “the

perform “exemplary acts” as defined by department of corrections policy may earn up to 365 additional days of credits.²¹

The credit earning rules are more restrictive for some categories of prisoners:

- Prisoners convicted of certain offenses receive earned time credits at the lower rate of “fifteen eighty-fifths of a day for each day of good conduct.”²²
- Prisoners required to participate in sex-offender or domestic-abuse treatment programs are not entitled to earned time reductions until they have completed the programming.²³
- Prisoners with sentences of life without parole may receive earned time credits during their prison stays, but these have no effect on sentence length in the absence of a commutation by the governor.²⁴
- Prisoners convicted of attempted murder of a peace officer are not eligible to receive earned time credits at all.²⁵

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

For most prisoners, earned time credits have no effect on dates of eligibility for discretionary parole release. Because general-rules prisoners are eligible for parole release on the day they are admitted to prison, there is no room for earlier eligibility. For prisoners serving sentences with delayed parole-release eligibility (see section 1.2), earned time credits do not operate to reduce those minimum terms.

For prisoners serving legislatively-mandated minimum sentences for designated offenses (see section 2.4), earned time credits may be applied to reduce the time they must serve before

inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director [of the department of corrections] to earn the reduction.”

Prisoners in Category A include those serving life sentences for crimes graded as class A felonies in Iowa. See Iowa Code §§ 903A.2(1)(a)(1); 902.1 (Class A felony). Credits earned by prisoners with life sentences become operative only if their sentences are commuted to a term of years. *Id.*, §§ 903A.2(5); 902.2 (“Commutation procedure for class A felons”).

²¹ Iowa Code § 903A.2(1)(a)(3).

²² Iowa Code § 903A.2(1)(b) (this is a group serving Category “B” sentences in the statute’s language). The Iowa Supreme Court has held that Category “B” prisoners who committed their offenses as juveniles were entitled to earn credits at the higher (Category “A”) rate of 1.2 days per day, see *Breedon v. Iowa Dep’t of Corrections*, 887 N.W.2d 602, 610-12 (Iowa 2016).

²³ Iowa Code § 903A.2(1)(a)(2),(b)(2).

²⁴ Iowa Code § 903A.2(5).

²⁵ Iowa Code § 903A.2(1)(c) (such prisoners are classified as serving Category “C” sentences); *id.*, § 707.11(5)(c).

eligibility for discretionary parole release.²⁶ This appears to be the one corner of the system in which earned time credits affect the timing of release eligibility.

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

For most Iowa prisoners, the primary function of earned time credits is to reduce the judicial maximum term.²⁷ Such reductions produce a *mandatory release date*, so long as credits earned are not later forfeited.²⁸ The system is set up to create expectations of mandatory release. Release dates are calculated by the department of corrections early in prisoners' terms based on their projected earnings of credits.²⁹

For most prisoners, there is no fixed ceiling on the total amount of reductions from their judicial maximum sentences.³⁰ For prisoners convicted of certain offenses, however, the total possible reduction is capped at 15 percent. These are the same classes of offenders whose earning rate is limited to fifteen eighty-fifths of a day for each day, which could otherwise produce an 18 percent reduction of their maximum sentences (see section 1.4).³¹

1.5. Loss of good time credits

Earned time credits may be forfeited for an inmate's violation of institutional rules, failure to complete required treatment, or dismissal of an inmate's civil action. Forfeited credits may be subsequently restored to an inmate "for acts of heroism or for meritorious actions" as determined by the director of the department of corrections.³²

²⁶ Iowa Code § 903A.5(1) (allowing earned time credits to reduce mandatory minimum sentences imposed for distribution of controlled substances to minors; manufacture, delivery, or possession of controlled substances; use of a dangerous weapon; persons sentenced as habitual offenders; conspiracy to manufacture or deliver methamphetamine to a minor; and conviction with prior forcible felonies).

²⁷ Iowa Code § 903A.5(1) ("An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less earned time and other credits earned and not forfeited, unless the inmate is pardoned or otherwise legally released.").

²⁸ The mandatory release date is called the "tentative discharge date" in Iowa because of the possibility of forfeiture of good-time credits (see section 1.5).

²⁹ See *State v. Millsap*, No. 08-1181, 2009 WL 2170246 at *2 (Iowa Ct. App. July 22, 2009) ("For purposes of the tentative discharge date, the [Iowa Department of Corrections] calculates all possible earned time and reduces the sentence imposed by the possible earned time.").

³⁰ In theory, Category "A" prisoners could wipe out their entire maximum sentences with enough awards for "exemplary acts" (see section 1.4).

³¹ Iowa Code § 903A.2(1)(b) (the group serving Category "B" sentences).

³² Iowa Code § 903A.3(1),(3).

II. Prisoners Outside the General Rules

2.1. Life without parole

Class A felonies in Iowa carry a mandatory sentence of life without possibility of parole (LWOP), except for defendants who were under the age of 18 at the time of their offenses (see section 2.3). Class A felonies include first-degree murder, first-degree sexual abuse, first-degree kidnapping, and certain repeat sex offenses.³³ Prisoners originally sentenced to LWOP for class A felonies may be released on parole only if the governor has first commuted their sentences to a term of years.³⁴

Iowa's department of corrections reported that prisoners serving life sentences made up nine percent of the state's total prison population on March 31, 2020. This report contained no breakdown of LWOP versus other life sentences.³⁵ However, it appears that the great majority of life sentences in the state are LWOP. The Sentencing Project reported that, in 2016, slightly more than eight percent of all Iowa prisoners were serving LWOP sentences and only half of one percent were serving life sentences with the possibility of parole.³⁶

2.2. Life sentences with possibility of parole

In Iowa, life sentences with possibility of parole exist only for prisoners convicted of class A felonies who were under age 18 at the time of their crimes (see section 2.3). One offense, "conspiracy to manufacture for delivery or delivery or intent or conspiracy to deliver amphetamine or methamphetamine to a minor," carries a statutory maximum of penalty of 99 years, with eligibility for discretionary parole release.³⁷ This allows for sentences that are functionally the same as life sentences with possibility of parole.

³³ See Iowa Code §§ 707.2(2); 709.2(2); and 710.2(2). See also *id.*, § 902.14(1) (a second or subsequent offense involving any combination of second- or third-degree sexual abuse or certain lascivious acts with a child is a class A felony, with the predicate offenses found in *id.*, §§ 709.3; 709.4; and 709.8(1)(a) or (b)).

³⁴ Iowa Code § 902.1(1).

³⁵ Iowa Department of Corrections, *Quarterly Quick Facts* (September 30, 2020), available at <https://doc.iowa.gov/data/quick-facts>. These reports are archived at <http://publications.iowa.gov> as more recent editions are posted.

³⁶ Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (Sentencing Project, 2017) at 10 (table 2).

³⁷ Iowa Code § 902.9(1)(a).

2.3. Juvenile life sentences

Defendants convicted of a class A felonies committed before age 18 receive sentences of life with the possibility of parole.³⁸ Authorized penalties include a life sentence with eligibility for discretionary parole release from the outset of the juvenile offender's term, or after a minimum term of confinement imposed by the sentencing court.³⁹ This creates an unprecedented continuum of possibility concerning time-to-be-served by juvenile lifers.⁴⁰

Courts' authority to set long minimum terms for juvenile life sentences is subject to constitutional scrutiny in Iowa, although there are no strict numerical cutoffs in current law. In a case involving a juvenile life sentence, in which the trial court imposed a minimum term of 52.5 years, the Iowa Supreme Court held that such an extremely long minimum sentence for a juvenile offender triggered federal and state constitutional concerns.⁴¹

2.4. Sentences with mandatory minimum terms

Mandatory minimum prison terms are statutorily imposed in the following circumstances: (1) use of a dangerous weapon during the commission of a forcible felony,⁴² (2) habitual offender, defined as an offender convicted of a class C or D felony who has two prior felonies,⁴³ and (3) conspiracy to manufacture or deliver amphetamine or methamphetamine to a minor.⁴⁴ Discretionary parole release is not available under these laws until expiration of the mandatory minimum term.

³⁸ LWOP sentences for juvenile offenders have been held per se illegal under the Iowa constitution, see *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016). This state constitutional ruling goes further than the Supreme Court's holding in *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012), which allows for juvenile LWOP sentences if adequate procedures are followed to individualize the imposition of such sentences and take account of mitigating factors arising from the defendant's youth.

³⁹ Compare Iowa Code § 902.1(2)(a)(3) (authorizing prison sentence "for the rest of the defendant's life with the possibility of parole"), with *id.*, § 902.1(2)(a)(2) (authorizing prison sentence "for the rest of the defendant's life with the possibility of parole after serving a minimum term of confinement as determined by the court"). The statutory penalties for class A felonies also include the option of LWOP for juvenile offenders, but this provision was found unconstitutional in *State v. Zarate*, 908 N.W.2d 831, 843 (Iowa 2018).

⁴⁰ We know of no other state that allows for similarly wide variations of minimum terms across cases involving juvenile life sentences.

⁴¹ *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013). The court did not rule that there was an exact constitutional cutoff on the permissible length of minimum sentences for juvenile offenders, but remanded the case for resentencing consistent with the reasoning in *Miller v. Alabama*. The *Null* court took note that its decision was at odds with precedent in a number of other states. *Id.* at 72.

⁴² Iowa Code § 902.7 (mandatory minimum of five years for defendant who displayed, possessed, or represented he was in possession of a deadly weapon in the course of a "forcible felony").

⁴³ Iowa Code § 902.8 (mandatory minimum of three years).

⁴⁴ Iowa Code § 902.8A (mandatory minimum of ten years).

The Iowa Supreme Court has ruled as a matter of state constitutional law that mandatory minimum sentences may not be imposed on offenders who were under age 18 at the time of their offenses. In cases that would carry mandatory minimum sentences for adults, trial courts have discretion to impose shorter minimum terms or even suspended sentences.⁴⁵

⁴⁵ *State v. Lyle*, 854 N.W.2d 378, 404 (Iowa 2014). While judges are not required to impose a minimum term of imprisonment prior to parole eligibility for juveniles, they are allowed to do so if they make an individualized determination and consider mitigating circumstances. *Id.* at 403.

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

3.1. Medical or “compassionate” release

The Iowa Board of Parole does not grant release for medical reasons or other “compassionate” releases.⁴⁶ However, a prisoner’s deteriorating health may be considered as a “factor deemed relevant” by the board when making decisions under its general parole-release authority.⁴⁷

3.2. Executive clemency

The governor may grant a reprieve, pardon, or commutation of sentence to any person convicted of a criminal offense upon recommendation by the parole board.⁴⁸

Class A felons serving life sentences may request a commutation of the sentence to a term of years once every ten years. This is the only avenue by which an adult prisoner serving a life sentence may be released.⁴⁹ The board is to provide advice and a recommendation to the governor at the governor’s request.⁵⁰ A commutation of a life sentence does not result in prisoner’s automatic release; it simply makes the prisoner eligible for parole consideration.⁵¹

Executive clemency is not currently a meaningful factor in determining the Iowa’s prison population size. In FY 2019, the parole board recommended a total of five pardons and zero commutations to the governor.⁵²

3.3. Emergency release for prison overcrowding

There is no statutory emergency release scheme for prison overcrowding in Iowa.

3.4. COVID releases

Iowa has instituted no formal program of accelerated prison releases in response to the COVID pandemic. Instead, the state has relied on the preexisting discretion of the parole board, which

⁴⁶ Iowa Board of Parole, *Does the Board Consider Offenders for a “Hardship” or “Medical Parole”?*, available at <https://bop.iowa.gov/faq/does-board-consider-offenders-hardship-or-medical-parole>.

⁴⁷ Alexis Lee Watts et al., *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Iowa 9* (Robina Inst. of Criminal Law & Criminal Justice, 2016), available at https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/605447_iowa_parole_profile.pdf.

⁴⁸ Iowa Code § 914.3; Iowa Admin. Code § 205-14.3(1)(a).

⁴⁹ Iowa Code § 902.2.

⁵⁰ Iowa Admin. Code § 205-14.3(2).

⁵¹ Iowa Admin. Code § 205-14.6(4).

⁵² Iowa Board of Parole, *Annual Report Fiscal Year 2019* at 11 (table).

allows for the release of most prisoners at any point during their prison terms. The parole board issued the following statement to the press on April 3, 2020:

Working in concert with the Iowa Department of Corrections, the Board of Parole is working diligently to review requests for transition out of the prison system for those persons whom the Board deem appropriate to transition. Although that is the work of the Board in times of relative calm, it is all the more so the case in this season. ... The Board and Department have identified logical targets relative to expedited release options in light of this current COVID-19 reality.⁵³

While no COVID release statistics have been published on the parole board's website, one news outlet reported as follows:

The Iowa Board of Parole has approved 482 inmates for early release from the state's prisons to reduce overcrowding during the COVID-19 pandemic. Iowa Department of Corrections director Beth Skinner says another 90 state prison inmates are approved for future release.⁵⁴

As of September 2020, the press reported that Iowa's prison population had fallen to a 20-year low of 7,406, but attributed most of the drop to suspensions of admissions and court delays in the processing of new cases.⁵⁵

⁵³ Iowa Board of Parole, *Press Release* (April 3, 2020), available at https://bop.iowa.gov/sites/default/files/documents/2020/04/bop_media_inquiry_response_4-3-20.pdf.

⁵⁴ Ric Hanson, *More than 500 state prison inmates getting early parole due to COVID-19*, KJAN Radio Atlantic, Apr. 21, 2020.

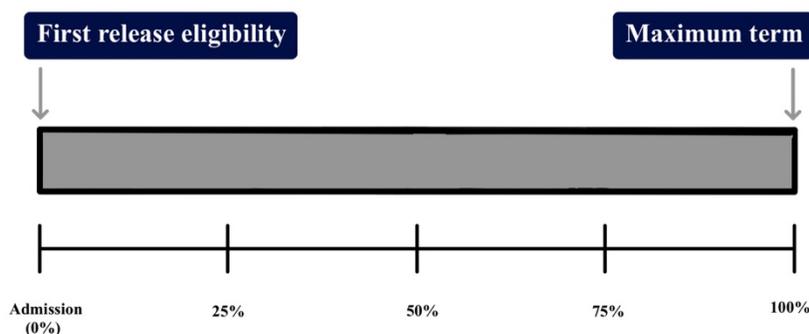
⁵⁵ Erin Jordan, *Iowa prison population drops to 20-year low*, The Courier, Sept. 12, 2020 (also reporting that parole releases in FY 2020 increased by 428 over the number of such releases in FY 2019). The September 2020 prison population of 7,406 represented a 20-percent drop of 1,854 from the 9,260 prisoners Iowa reported to the Bureau of Justice Statistics at yearend 2019. See E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020) at 7 (table 4).

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

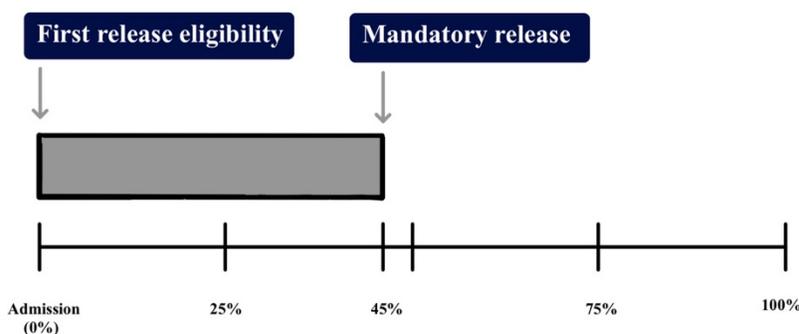
4.1. Prison release timeline for general-rules prisoners

Figure 3 illustrates the full scope of parole-release discretion for the portion of the Iowa prison population subject to the general rules of parole-release eligibility (see section 1.1). Figure 4 depicts cases in which general-rules prisoners have earned the standard earned time credits of 1.2 days per day,⁵⁶ which are deducted from the judicial maximum term to establish a mandatory release date at the 45-percent mark of the maximum.

Iowa Figure 3. Prison-Release Timeline for General-Rules Cases Without Earned Time Credits



Iowa Figure 4. Prison-Release Timeline for General-Rules Cases With Standard Earned Time Credits



⁵⁶ These are the maximum available good-time discounts except for prisoners who perform “exemplary acts” as defined by the department of corrections, who may receive as much as an additional year of credit against their judicial maximum terms (see section 1.4).

Figures 3 and 4 depict sentences that are 100 percent indeterminate. That is, within the ceiling of judicial maximum sentences, the judge’s sentence “determines” 0 percent of actual time-to-be-served by the defendant. One hundred percent of time-served discretion is reposed at the back end of the prison-sentencing system, to be exercised mainly by the parole board and department of corrections.⁵⁷

Which government officials regulate prison population size in such a system? 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 departments of corrections. To give an oversimplified 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*).⁵⁸

The PMP measurement is awkward here. Because general-rules inmates in Iowa are eligible for parole release immediately upon admission, calculation of a theoretical PMP for this group is a nonsensical exercise that requires division by zero. We could, however, move forward on the assumption that prisoners are rarely if ever released by the parole board before a certain amount of time has passed. For example: Without data, it may be reasonable to think that the Iowa parole board would not release anyone until at least 10 percent of their judicial maximum sentences had expired—or, at least, such extremely early releases would be so rare as to have no effect on overall prison population size.⁵⁹ If we were to adopt such an assumption then the PMP for this general-rules prisoners in Iowa could be represented as 10:1.

While we have doubts about this method,⁶⁰ our Degrees of Indeterminacy Project employs the artificial proxy of a 10-percent minimum sentence for purposes of PMP calculations in systems

⁵⁷ This statement ignores infrequently-used forms of back-end release discretion such as the clemency power.

⁵⁸ This highly simplified illustration does not consider the possible effects of good-time or other discounts. Moreover, unlike the illustration, there is no real-world system in which all prisoners are serving sentences subject to the same prison-release formula. In every prison population, there are various subpopulations of prisoners who are serving different classes of prison sentences, including some who are serving revocation sentences. Each sentence class must be analyzed separately; there is no single PMP that reaches uniformly across the prison population. It may be possible to calculate a single weighted average PMP for an entire prison system, but this would require fine-grained information about the composition of the prison population and the mix of sentences different groups of prisoners are serving. For a more complete discussion of the calculation and uses of the PMP measure, see this project’s Final Report.

⁵⁹ This assumption appeals to us in part because of the statutory formulas for release eligibility we have observed across the states. In states that define minimum terms as percentages of judicial maximum terms, it is unusual to find a lower threshold than 10-percent of the maximum. See, for example, Texas and Utah reports.

⁶⁰ See Final Report, discussion as follows:

like Iowa's that prescribe no formal minimum terms for large classes of prison sentences.⁶¹ In our subjective scale of degrees of indeterminacy (from extremely high to extremely low indeterminacy), prison sentences with no minimum terms are always ranked as extremely high in indeterminacy.

The PMP fails us for general-rules cases in Iowa because we cannot fix a lower boundary on prison populations in an *always-release* scenario. The existence of an upper boundary is not speculative, however. With sufficient data, we could generate reasonably good estimates of the size of Iowa's general-rules population if back-end officials were to sustain *never-release* practices over a long period. To give a highly simplified example, if the relevant prisoners have all been released at the midpoint between their minimum and maximum terms in past years, then a dramatic shift to a *never-release* regime (all else held equal) would set into motion an eventual doubling of that segment of the prison population. This kind of information is highly useful to policymakers even if the *always-release* scenario points implausibly to a population of zero.

4.2. Prisoners with delayed parole-release eligibility

For defendants convicted of designated serious crimes, or with certain criminal histories, Iowa law contains a variety of rules about minimum prison terms that must be imposed (see sections 1.2 and 2.4). Perhaps the largest category of such prisoners are those convicted of serious violent crimes who are statutorily required to serve 70 percent of their judicial maximum terms before becoming eligible for discretionary parole release, with a ceiling of 15 percent on earned time reductions from their maximum terms.⁶² These are called “70% sentences” or “70/85

One problem with the insertion of a 10-percent proxy is that the degree of indeterminacy project is interested in exploring the potential operation of prison-sentencing systems under conditions of stress, as well as their “normal” operations during unexceptional times. For example, if the Iowa prisons were to become extremely overcrowded—and perhaps subject to a federal court order to make drastic cuts in population size—Iowa officials could conceivably respond by releasing lower-level felons who had spent almost no time in confinement. A change of this scope has occurred in California in the wake of the Supreme Court's decision in *Brown v. Plata*, 563 U.S. 493 (2011), which required the state to reduce its prison population by roughly 40,000 over a two-year period. See California report. Although California won an extension of the two-year deadline, it did succeed in reducing its prison population from about 165,000 to 135,000 in the years 2011-2012. See E. Ann Carson & William J. Sabol, *Prisoners in 2011* (Bureau of Justice Statistics, 2012) at 3 (table 2) (for yearend 2010); E. Ann Carson, *Prisoners in 2013* (Bureau of Justice Statistics, 2014), 3 (table 2) (for yearend 2012). Similarly, during a public health emergency, one could imagine Iowa officials allowing extremely early releases for some low-level offenders. Such systemic responses are permissible in Iowa without any change in their current prison-sentencing framework.

⁶¹ See Hawaii and Utah reports.

⁶² For a discussion of this sentence configuration, which entered Iowa law in 2003, see Paul Stageberg & Sarah Rabey, *An Analysis of the use of 70% Mandatory Minimum Sentences in Iowa* (Iowa Department of Human Rights Division of Criminal and Juvenile Justice Planning, 2013) at 6. Any class of sentence that has received enough attention to warrant its own report is worth separate consideration by this project.

percent sentences” in Iowa.⁶³ In 2018, this group made up nearly 15 percent of Iowa’s total prison population—a percentage that has been forecast to steadily increase in the next decade.⁶⁴

Figure 5 (next page) lays out the timeline for 70-percent sentences for prisoners with no earned time credits. Figure 6 alters the case to assume that prisoners have earned their full allocations of earned time credits. In Figure 6, prisoners reach mandatory release dates after serving 85 percent of their judicial maximum terms.

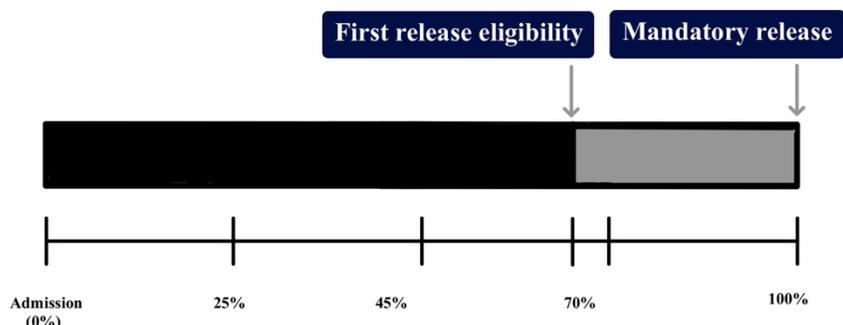
The 70-percent group serves sentences that are 70 percent determinate and 30 percent indeterminate. The PMP for this group is 1.4:1. Within the indeterminate segment of the timeline, 15 percent of the judicial maximum sentence is within the definitive control of the parole board while another 15 percent is controlled by the department of corrections. The board has unilateral release and release-denial discretion from the 70-percent mark until the 85-percent mark. The department of corrections has unilateral release discretion at the 85-percent mark of the maximum term through its superintendence of earned time credits. The department has no unilateral release-*denial* discretion, however. Even if the department withholds all credits, it cannot block release; this merely extends the period during which the parole board has release and release-denial discretion.

We note that, in addition to 70-percent sentences, there are other classes of sentences in Iowa that carry delayed parole-release eligibility, including some with mandatory minimum terms and others with minimum terms chosen by the courts within statutorily-allowable ranges. The degree of indeterminacy in these classes of sentences varies widely. Some have minimum terms as low as 20 percent of the judicial maximum sentence, others can be as low as 30 or 50 percent, many can be set as high as 70 percent in the judge’s discretion, and in one type of case the “minimum” sentence is 100 percent of the maximum term.

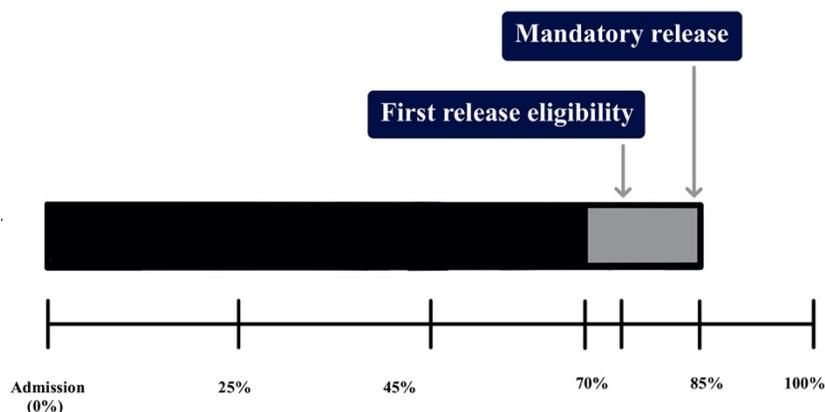
⁶³ Iowa Code § 902.12(1). For examples of the in-state terminology, see Sarah Fineran, *The Correctional Policy Project: Iowa Prison Population Forecast FY 2018-FY 2028* (Iowa Department of Human Rights Statistical Analysis Center, 2018) at 18; Paul Stageberg & Sarah Rabey, *An Analysis of the use of 70% Mandatory Minimum Sentences in Iowa* (Iowa Department of Human Rights Division of Criminal and Juvenile Justice Planning, 2013) at 10.

⁶⁴ Sarah Fineran, *The Correctional Policy Project: Iowa Prison Population Forecast FY 2018-FY 2028* (Iowa Department of Human Rights Statistical Analysis Center, 2018) at 18 (reporting “1,284 70% inmates” and “7,173 non-70% inmates” at midyear 2018); Paul Stageberg & Sarah Rabey, *An Analysis of the use of 70% Mandatory Minimum Sentences in Iowa* (Iowa Department of Human Rights Division of Criminal and Juvenile Justice Planning, 2013) at 10 (projecting the steady growth of “70/85 percent sentences” in Iowa’s prison population from FY 2013 through FY 2023).

Iowa Figure 5. Prison-Release Timeline for Cases with 70-Percent Minimums and No Earned Time Credits



Iowa Figure 6. Prison-Release Timeline for Cases with 70-Percent Minimums and Full Earned Time Credits



We lack statistics on the size of these various groups in Iowa’s total prison population. Whatever their percentage of the total, they introduce pockets of greater determinacy than found in general-rules cases with immediate parole-release eligibility upon admission. In assessing the overall operation of Iowa’s prison-sentencing system, it is important to keep in mind that there are several different “tiers” of sentence types.

4.3. Allocation of prison-release discretion

Both the parole board and the department of corrections are more powerful players in Iowa’s prison-sentencing system than in the typical state. For the large class of general-rules cases, the parole board’s release discretion extends by law across the entirety of prisoners’ terms until their mandatory release dates. This release discretion “activates” in Iowa much earlier than in most indeterminate systems across the country.

In addition, for general-rules prisoners, the department of corrections has impressive powers to reduce maximum lengths of stay through the award of earned time credits. The typical

earning rate for general-rules prisoners produces mandatory release dates at 45 percent of judicial maximum terms, which is among the steepest discounts in the country.

Iowa's system, with two powerful back-end decisionmakers, might be characterized as one of "checks and balances." While the parole board's releasing powers are striking, the department of corrections can remove 55 percent of the board's release-*denial* authority in general-rules cases through the routine award of earned time credits, as shown in Figure 4. This means that, for general-rules prisoners, runaway prison growth to the fullest reach of judicial maximum sentences would require the coordinated efforts of both the parole board and the department of corrections. The hypothetical *never-release* scenario, as a practical matter, is more difficult to approach in Iowa than in most other states because it can be produced only by sustained patterns of highly unusual behavior across two separate agencies.

For higher-severity cases, such as the 70-percent group, the parole board and department of corrections share time-served discretion just as they do in general-rules cases, although the total amount of shared discretion is substantially smaller.

4.4. Overall assessment

We rank Iowa's prison-sentencing system overall as one of extremely-high indeterminacy based on the extraordinary prison-release rules applicable to general-rules prisoners. Mathematically, such sentences are 100 percent indeterminate within the limits of the judicial maximum sentence. As an educated guess, we posit that a majority of all Iowa prisoners are subject to the general rules of prison-release eligibility, which allow for discretionary release immediately upon the time of admission.⁶⁵ There is no prison-release system in the nation that operates with a greater level of indeterminacy for a large share of its prisoners, and only two states that match Iowa in this respect.⁶⁶

When we take account of prisoners with delayed parole-release eligibility, we still find Iowa's system to be more indeterminate than the average paroling state's, albeit not dramatically so. The most sizable group in Iowa, with 70-percent sentences, would not look out of place in other systems. In many jurisdictions nationwide, especially severe offenses or criminal histories produce minimum terms in the range of 70 to 85 percent. Furthermore, some of Iowa's delayed-eligibility sentences can feature minimum terms as low as 20 or 30 percent of judicial maximum terms. This is a very high degree of indeterminacy for cases singled out in statute for especially stern treatment. On our 50-state comparative scale, we do not believe Iowa's delayed-

⁶⁵ As recited earlier, we know that about 9 percent of Iowa's prison population are serving life sentences and about 15 percent are serving 70-percent sentences. Beyond this, our analysis must rely on educated guesses. Iowa's department of corrections does not publish an annual report containing prison population breakdowns by sentence type or parole eligibility.

⁶⁶ Only two other states, Hawaii and Utah, employ equally indeterminate sentences for large numbers of prisoners.

eligibility cases “pull” its overall ranking downward and out of the category of extremely-high indeterminacy.

We give special mention to Iowa’s high level of generosity in its system of earned time credits for most prisoners. There seems to be a philosophy in Iowa that the mandatory release milestone should be movable and should play a significant limiting role over the state’s prison population size.⁶⁷ Without statistics on types of releases, it is hard to say how many prison terms are affected by Iowa’s generous rules for the advancement of mandatory release dates through the accrual of earned time credits. Set against national statistics, however, it would seem to be a statutory formula that benefits meaningful numbers of prisoners. On average nationwide, prisoners served 46 percent of their judicially-imposed prison terms in 2016, which means that many prisoners nationwide served more than 46 percent.⁶⁸

All told, it is possible that Iowa’s mechanism for the shortening of judicial maximum prison terms through the steady advancement of mandatory release dates is an important regulator of prison growth and prison population size. This is a hypothesis well worth testing.

⁶⁷ Also, we note that Iowa prison releasees get credit for street time if they’re later revoked—a generous rule compared with most states. See Iowa Code § 906.16(1)–(2). This has the effect of moving mandatory re-release dates forward for revoked prisoners.

⁶⁸ Danielle Kaeble, *Time Served in State Prison, 2016* (Bureau of Justice Statistics, 2018) at 4 (table 3).