

Prison Release: Degrees of Indeterminacy Project

University of Minnesota Law School

Robina Institute of Criminal Law and Criminal Justice

Funded by Arnold Ventures

Examples

from the work of the project

“Indeterminacy”

Unpredictability of actual time served
after the judicial sentence becomes
final

Major Findings:

All American prison sentencing systems are
indeterminate to some degree but ...

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There are vast differences in:

- (1) the **degrees of indeterminacy** found in individual sentences and systems; and

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There are vast differences in:

- (1) the **degrees of indeterminacy** found in individual sentences and systems; and
- (2) **how decisionmaking power is distributed** within the indeterminate ranges of prison sentences

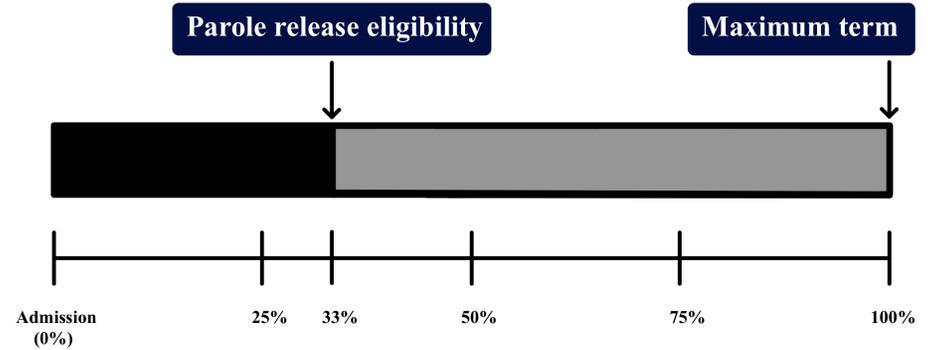
Major Findings:

Uncertainty about the length of individual prison sentences adds up, over hundreds and thousands of cases, to **uncertainty about prison population size**

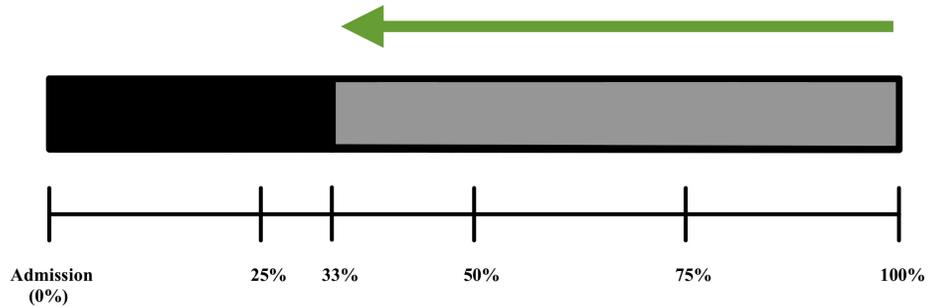
Two Major Reports

Illustrations from Paroling Systems

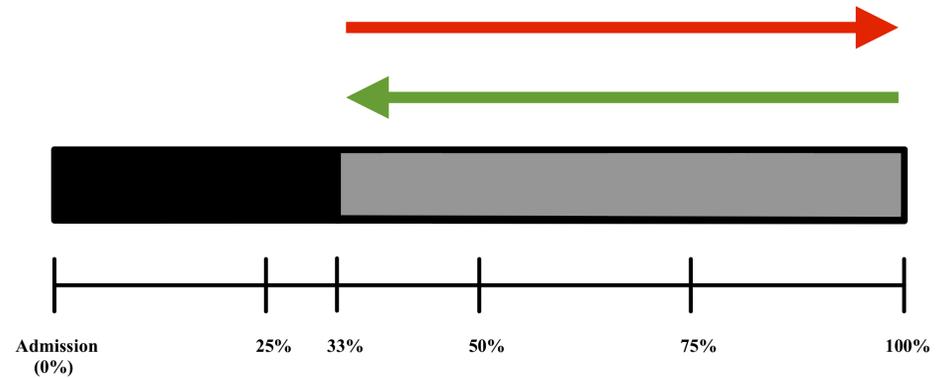
Rhode Island Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Credits for Good Conduct



Parole board has **release** discretion



Parole board also has **release-denial** discretion



Highly indeterminate sentences
have **equal potential for lenity and
severity**

For individual prisoners with this class of
sentence ...

**Parole board's use of its discretion can
vary actual time served by 3:1**

For all prisoners with this class of sentence ...

Parole board's decision patterns over time
have **potential to vary prison
(sub)population size by 3:1**

Population multiplier potential

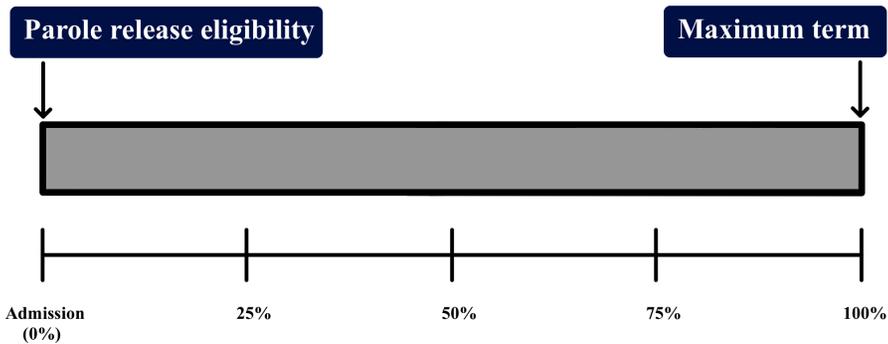
Policy question

What tools are available to manage actual uses of discretion within large expanses of possibility?

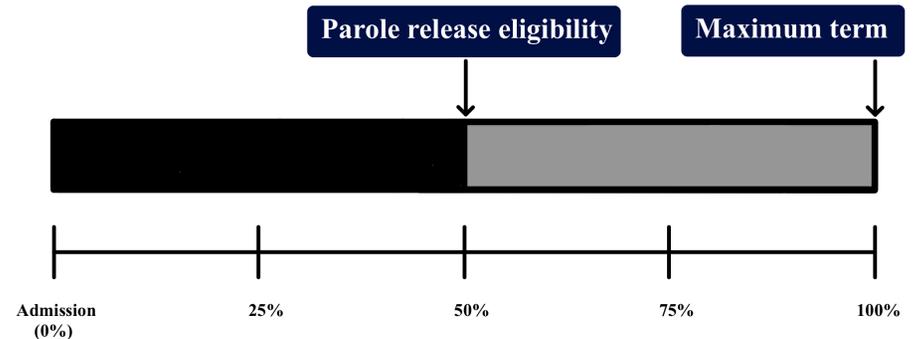
Parole Release Eligibility Formulas

More Illustrations

Hawaii Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences



Pennsylvania Figure 3. Prison-Release Timeline for General-Rules Cases with Longest Possible Minimum Term Selected by Court

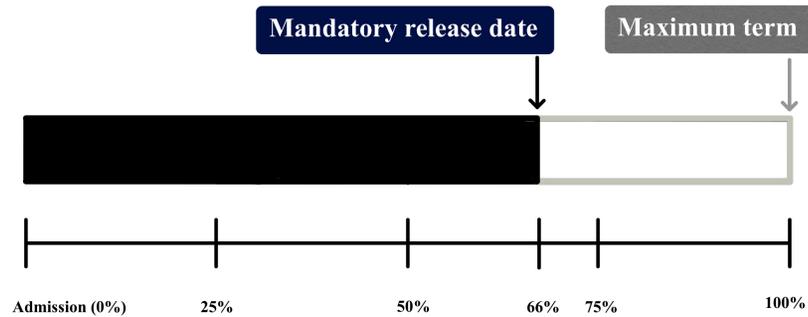


Connecticut Figure 5. Prison-Release Timeline for 85-Percent Sentences Without Risk-Reduction Credits

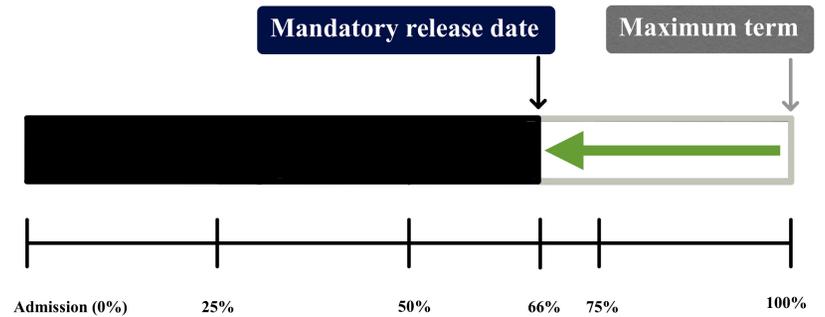


Non-Paroling Systems

Minnesota Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Serious Disciplinary Violations



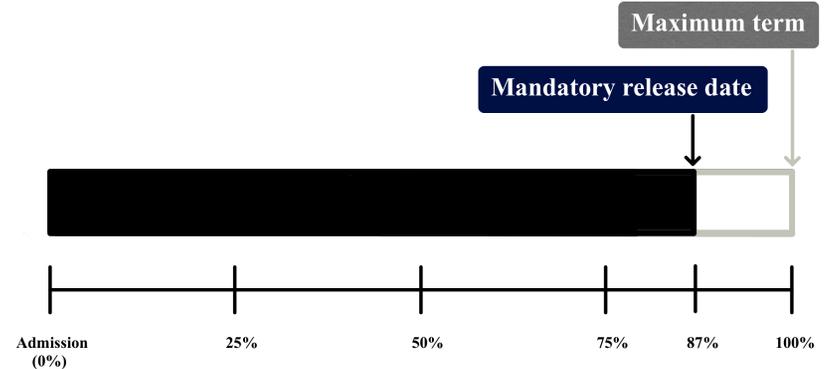
Minnesota Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Serious Disciplinary Violations



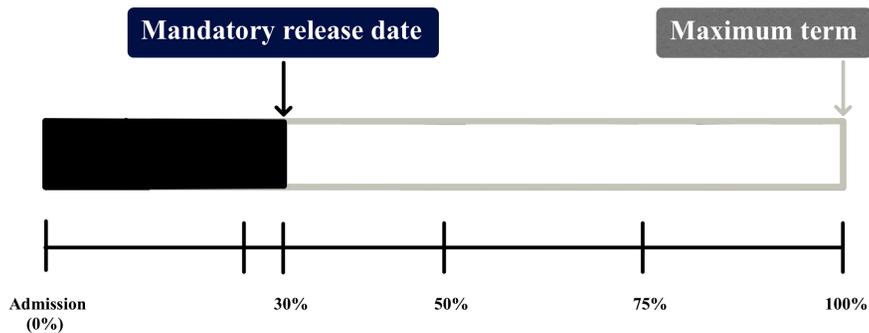
Formulas for Credit-Based Release in Non-Paroling Systems

More Illustrations

Federal System Figure 2. Prison-Release Timeline for Prisoners with General-Rules Sentences and Full Good-Time Credits



Illinois Figure 4. Prison-Release Timeline for Prisoners with General-Rules Sentences of Five Years and Full Good-Conduct Credits Plus One Year of Program Credits

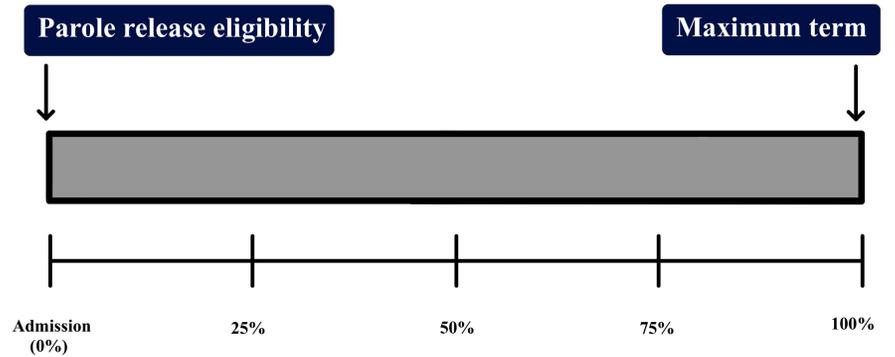


California Figure 10. Prison-Release Timeline for Determinate Sentence of 5 Years (Nonviolent Offender with Minimum Custody Assignment Who Earns Full Good Conduct, Milestone Completion, and Rehabilitative Achievement Credits plus One-Time Award for Educational Merit Credits)

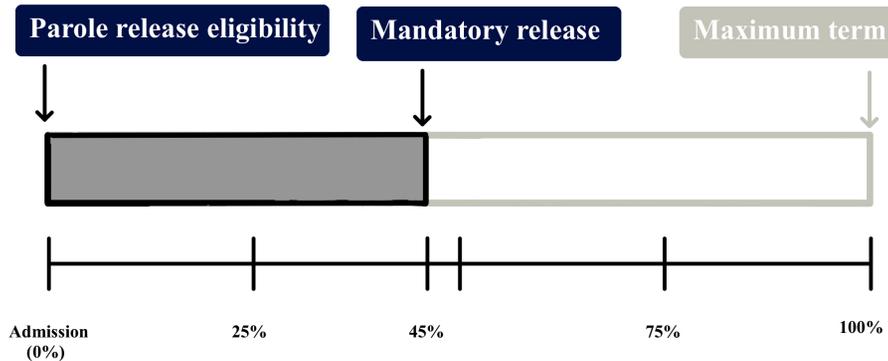


States with overlapping parole release and credit-based release

Iowa Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Earned Time Credits



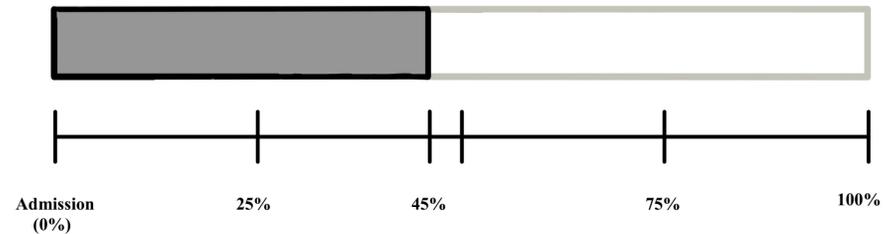
Iowa Figure 4. Prison-Release Timeline for Prisoners with General-Rules Sentences and Standard Earned Time Credits



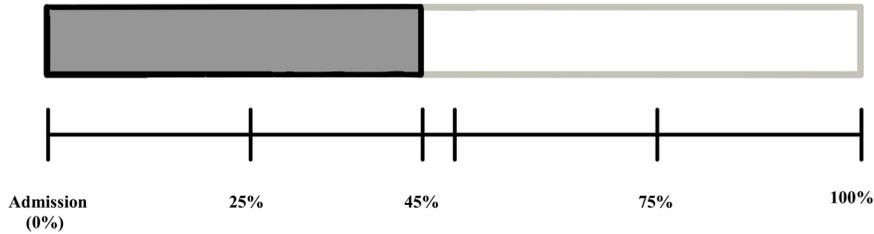
DOC's unilateral release discretion



Parole board's unilateral release discretion



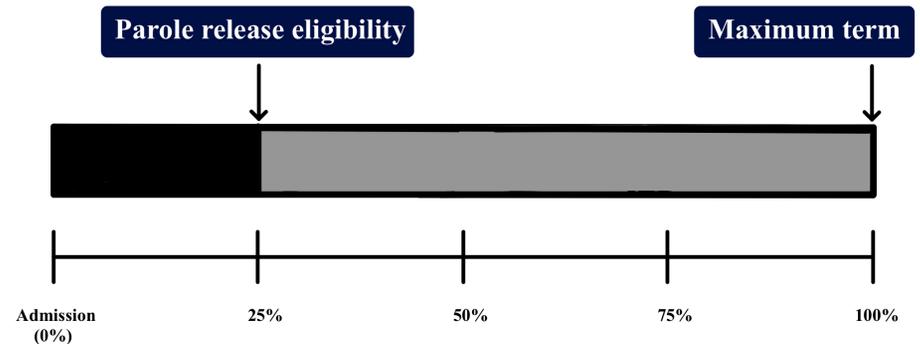
No one has release-denial discretion



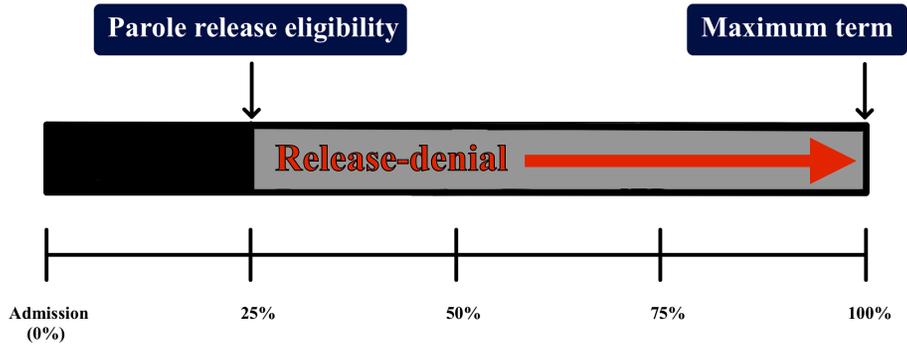
Checks and balances approach

Credit-based deductions tend to be especially important for prisoners convicted of violent crimes

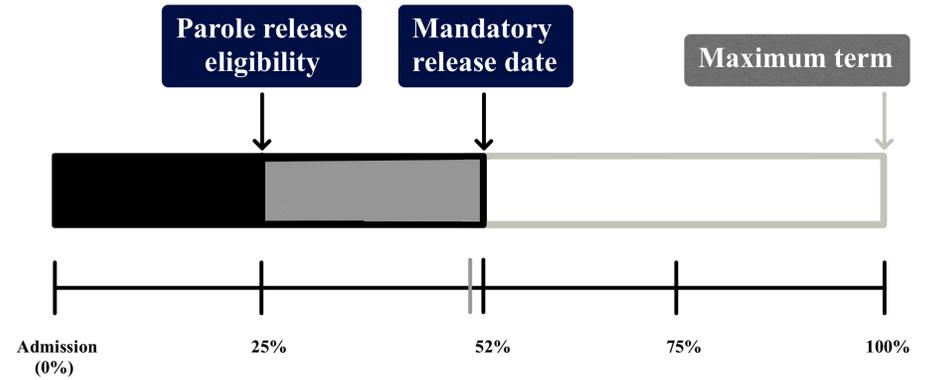
Oklahoma Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Earned Credits



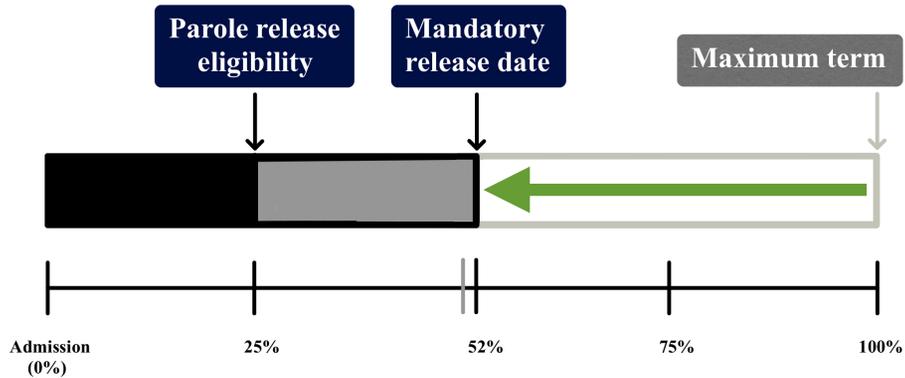
Oklahoma Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and No Earned Credits ... Convicted of Violent Offenses



Oklahoma Figure 5. Prison-Release Timeline for Prisoners Convicted of Violent Offenses with Earned Credits of 33 Days Per Month*



Oklahoma Figure 5. Prison-Release Timeline for Prisoners Convicted of Violent Offenses with Earned Credits of 33 Days Per Month*



Movable MRDs

Release denial requires the unfavorable decisions of two separate agencies

Unavoidable issues in credit-based release systems

How are prison officials exercising their discretion?

How hard is it to earn the necessary credits?

Are programs available?

*What should happen when
programs are in short
supply?*

Screen **low-risk prisoners** out of any but the
most essential programs

Soften credit-earning requirements to give
eligible prisoners a realistic chance to
comply

As an ultimate fallback, **waive requirements** when prisoners cannot satisfy them because of administrative failures beyond their control

New Jersey's statute provides that credit will be granted if "the inmate has completed relevant rehabilitation programs ... or applied for but **was unable to complete or was denied access to these programs due to circumstances beyond the inmate's control** including, but not limited to, capacity limitations or exclusionary policies of these programs."

(N.J. Stat. 30:4-123.355d(a)(3))

In North Carolina, credit's are granted even if prisoners have not completed their "risk reduction incentives" as normally required, if the DOC finds that "that **the defendant is unable to complete the incentives [by the required date] through no fault of the defendant.**"

(N.C.G.S.A. § 15A-1340.18(e))