

How Does Prison Release Indeterminacy Affect Prison Population Size?

By Julia A. Laskorunsky and Kevin Reitz

Indeterminacy in prison sentences refers to the unpredictability of the actual length of time that will be served in prison compared to the length of the sentence pronounced by the judge. It reflects the degree to which back-end authorities – mainly parole boards and prison officials from the department of corrections – can modify the length of the prison term once a judicial sentence has been finalized. Parole board members affect sentence length by choosing when to release people in between their parole eligibility date and their judicial maximum term. Similarly, prison officials affect sentence length through the administration of earned-time and good-time credits, which can change the parole eligibility date and/or the mandatory release date. These informal and often low-visibility decisions are a critical part of overall prison policy, and cumulatively, can have a tremendous impact on prison population size.

Indeterminacy exists along a continuum and is found, to some extent, in all state sentencing systems – even those that have determinate sentencing regimes. Work by Reitz and colleagues shows that American states differ dramatically in the degrees of indeterminacy that are built into their prison sentences.¹ They also differ in how they divide up release discretion within the reservoir of discretion created by indeterminacy. In some states, parole boards are extremely powerful. In others, the department of corrections is the major player. There is no American consensus over how back-end authority over time served should be arranged or used.

Case Studies

Glossary of Terms

Judicial Maximum Term: the maximum term of confinement that someone could serve under the terms of the judicial sentence

Mandatory Release Date: the date of automatic discharge after serving a specified term in prison. Can be moved up and back in most states due to the accrual and forfeiture of good time and earned time credits

Parole Eligibility Date: the earliest point in the sentence someone is eligible to be released by the parole board



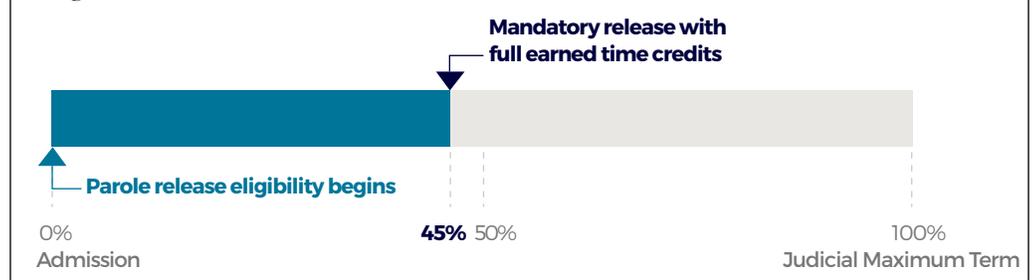
Iowa

AN EXAMPLE OF **EXTREMELY HIGH INDETERMINACY** IN A PAROLING STATE

In Iowa, most individuals serving a prison sentence are eligible for parole at the start of their sentence (Figure 1).² This means that an individual who receives a sentence with a 10-year judicial maximum term could theoretically be released the day their sentence starts, or they could serve as much as 10 years, or anything in between.

A fairly generous earned time policy – administered by the department of corrections – allows incarcerated individuals with full earned time credits to move their mandatory release date to the 45-percent mark of the judicial maximum term. This decreases the parole board's unilateral power to allow or deny release to 45-percent of the total sentence.

Figure 1. Iowa Prison-Release Timeline for Most Offenses



In an extremely high indeterminacy system such as Iowa, the ability of back-end officials to affect prison population size is substantial. A paper by Gaes and Laskorunsky estimates that back-end authorities in Iowa could decrease the current prison population by up to 44-percent if they released individuals closer to their first release eligibility.³ They could also increase the population size by as much as 219-percent by holding individuals closer to their judicial maximum term. This means that Iowa's FY 2021 prison population of 7,744 could be decreased to 4,337 or increased to 24,703 through back-end discretion alone.⁴

1. Reitz, K., Rhine, E., Lukac, A., and Griffith, M. (2022). *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size. Final Report.* Robina Institute of Criminal Law and Criminal Justice.

2. Reitz, K., Griffith, M., and Rhine, E. (2021). *Prison-Release Discretion and Prison Population Size, State Report: Iowa.* Robina Institute of Criminal Law and Criminal Justice.

3. Gaes, G. and Laskorunsky, J. (2022). *The Relationship Between Backend Release Decisions and Prison Population Levels.* Robina Institute of Criminal Law and Criminal Justice.

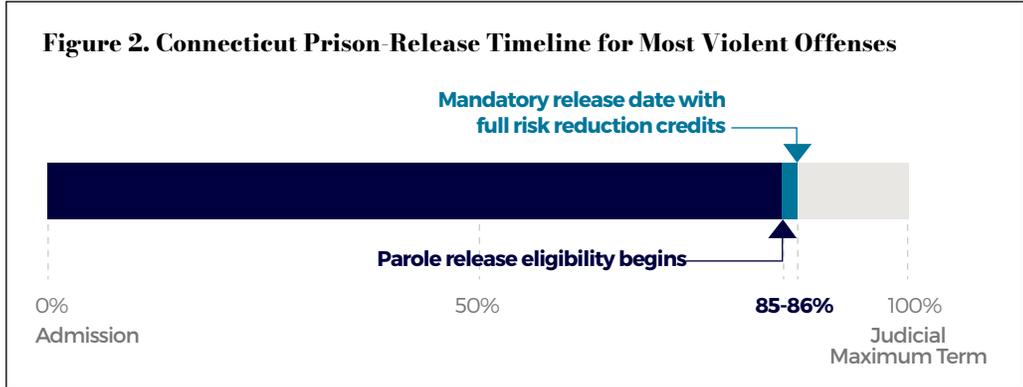
4. Iowa Department of Corrections. (2021). *Iowa Prison Admissions and Releases – FY 2021.* Iowa Legislative Service Agency.



Connecticut

AN EXAMPLE OF **LOW INDETERMINACY** IN A PAROLING STATE

In Connecticut, individuals serving a prison sentence for a parolable violent offense are subject to a very low degree of indeterminacy.⁵ These individuals become eligible for parole release once they have served 85% of their judicial maximum term (Figure 2). Incarcerated individuals are also eligible to earn risk reduction credits (i.e., good time), which advance their mandatory release date, but not their parole eligibility date. Those earning all the risk reduction credits available to them could advance their mandatory release date to 86-percent of their judicial maximum term.



For example, at the parole board’s discretion, an individual serving a 10-year term for a violent offense could be released as early as 8.5 years (85%) into their sentence when they reach their first parole eligibility date; or they could serve the full 10-year term. With full risk reduction credits, the gap between the first date of parole eligibility and mandatory release narrows to just a month (86%), leaving the parole board little control over determining the final time served for this sentencing group.

For low-indeterminacy sentences such as those in Figure 2, the ability of back-end officials to influence prison population size for affected prisoners is limited.



Illinois

AN EXAMPLE OF INDETERMINACY IN A **NON-PAROLING** STATE

While the level of indeterminacy is generally lower in systems without discretionary parole release, the level of discretion afforded to prison officials in shaping the length of the final prison term can be significant. In Illinois, credit discounts from earned time and good time - if they are not forfeited due to behavioral infractions - move up the date of mandatory release.⁶ For example, the Illinois system allows certain classes of incarcerated individuals to accrue enough good time and earned time to be released at 30-percent of their judicial maximum terms (Figure 3).



In non-paroling systems, prison officials have sole control over back-end prison release discretion for most sentenced individuals. Their ability to affect prison population change ranges from limited to significant, depending on the design of the good-time and earned-time credit system.

5. Reitz, K., Jacobs, M., and Rhine, E. (2021). *Prison-Release Discretion and Prison Population Size, State Report: Connecticut*. Robina Institute of Criminal Law and Criminal Justice.
 6. Reitz, K., Lukac, A., and Rhine, E. (2022). *Prison-Release Discretion and Prison Population Size, State Report: Illinois*. Robina Institute of Criminal Law and Criminal Justice.