



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: ILLINOIS

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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

For individual classes of sentences, we use the following benchmarks for our classifications of higher versus lower degrees of indeterminacy:

Benchmarks for rankings of “degrees of indeterminacy”

Rankings of “Degrees of Indeterminacy”

- *Extremely high indeterminacy*: >80-100 percent indeterminacy (first prospect of release at 0-19.99 percent of judicial maximum)
- *High indeterminacy*: >60-80 percent indeterminacy (first prospect of release at 20-39.99 percent of judicial maximum)
- *Moderate indeterminacy*: >40-60 percent indeterminacy (first prospect of release at 40-59.99 percent of judicial maximum)
- *Low indeterminacy*: >20-40 percent indeterminacy (first prospect of release at 60-79.99 percent of judicial maximum)
- *Extremely low indeterminacy*: 0-20 percent indeterminacy (first prospect of release at 80-100 percent of judicial maximum)

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We place Illinois's prison-sentencing system in the category of *low indeterminacy*, although the system could arguably be classified as one of *moderate indeterminacy*. This ambivalent assessment takes account of multiple tiers of sentence types. Illinois's three main classes of sentences have widely different degrees of indeterminacy: moderate (bordering on high), low (bordering on moderate), and extremely low. When a state's approach is this heterogeneous, overall system descriptions become relatively subjective.

There is no discretionary parole release for any class of prisoners under current Illinois law, including those with life sentences. All indeterminacy in the system is in the hands of prison officials through the administration of conduct-based credits. Illinois is an example of a state that generates a meaningful degree of indeterminacy through credit allotments rather than parole-release discretion.

Terminology note

This report will refer to the Illinois Prisoner Review Board as the “parole board.” The board is the primary decision maker for clemency decisions as well as parole release. The Illinois Department of will be referred to as the “department of corrections” or the “IDOC.”

¹ This report was prepared with support from Arnold Ventures in connection with the *Prison Release: Degrees of Indeterminacy Project*. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures.

Introduction

Illinois's prison-rate history, 1972 to 2020

At yearend 2020, Illinois's prison rate was 237 per 100,000 general population, with a prison population of 29,729.² Illinois's prison rate was 37th highest among all states, or 14th lowest.

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

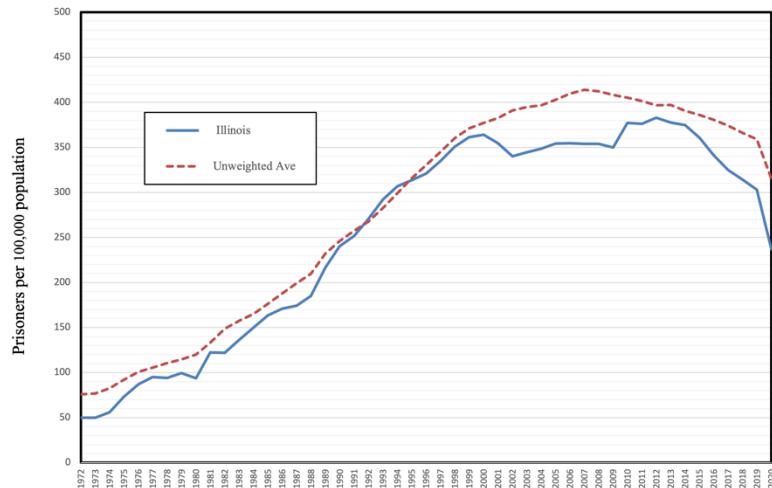
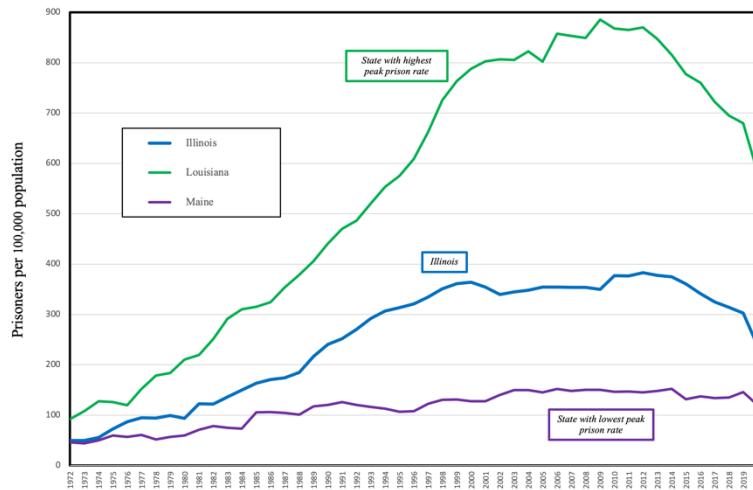


Figure 2. Prison Rate Change in Illinois, Louisiana, and Maine, 1972 to 2020



Sources: Timothy J Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of

² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7. Preliminary information about changes in Illinois' imprisonment rates after 2020 is presented below in the section on "The COVID period in Illinois."

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), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020--Statistical Tables* (Bureau of Justice Statistics, 2021), at 15-16 table 7 (for 2019-2020).

After 1972, Illinois reached its peak prison rate during in 2012 at 383 per 100,000, which dropped to 237 per 100,000 in 2020. This is a net difference of -146 per 100,000, which was the 20st largest prison-rate drop of all states from their peak rates (in various years) through 2020. At yearend 2020, Illinois' prison rate was at a lower point than in any year going back to 1990.

Figures 1 and 2 span two important periods in American criminal-justice history. From 1972-2007, the United States saw 35 years of uninterrupted growth in the nationwide aggregated prison rate. This might be called the Great Prison Buildup. Since 2007, national prison rates have been falling. From 2007 through yearend 2019 (prior to the COVID pandemic), the average drop in states' prison rates was about 1.2 percent per year, with much variation across individual states.

The COVID period

We view American prison rates following the arrival of the COVID pandemic in March 2020 as discontinuous with earlier rates and trends. Whatever factors were at work to determine state prison rates in the “before times,” the pandemic introduced a major new causal force that, at least temporarily, diverted the course of prison-rate change nationwide.³

In calendar year 2020, most states saw unusually large drops in their prison rates. Prison rates fell in 49 states, the District of Columbia, and the federal system. The aggregate 50-state prison rate for the U.S. dropped by about 15 percent in a single year. From yearend 2019 to yearend 2020, the (unweighted) average state prison rate fell from 359 to 308 prisoners per 100,000

³ In Figures 1 and 2 above, the COVID period arrives in the very last year of data that has been reported by the Bureau of Justice Statistics (BJS) as of this writing—from yearend 2019 to yearend 2020. Figures 1 and 2 rely exclusively on BJS data covering the years 1972-2020. For a tentative update, the Vera Institute of Justice has collected state imprisonment counts reaching into December 2021, which are not fully compatible with BJS reports. See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022).

general population, for an average incremental downturn of -51 per 100,000.⁴ We believe this was the largest one-year decline in state prison rates in American history.⁵

In calendar year 2021, U.S. prison rates did not continue to descend at the same dramatic speed. Preliminary data from the Vera Institute indicate that the aggregate 50-state prison population fell by about 1.8 percent from January to December 2021. Prison populations actually rose in 19 states.⁶

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year or so, it is relevant to ask whether indeterminacy in American prison sentences played a consequential role in events. An adequate history cannot yet be written, but considerable data has already been assembled.

Nationwide, COVID-driven changes in prison-release practices were not the main driving force of prison population shrinkage from early 2020 through the end of 2021. This is not to say that there was no expansion of prison release during the pandemic. Thirty-six states and the federal government did at least *something* to expedite releases, each jurisdiction choosing from a grab bag of different strategies—e.g., expedited parole release, loosened release criteria, increased or restored credit awards, early release of prisoners already close to their mandatory release dates, expanded compassionate release for the elderly or medically infirm, increases in clemency grants, invocation of overcrowding emergency provisions, and court orders. Such steps did not yield large numbers of “COVID releases” in most states, however, and many COVID releases were not much earlier than they would have been in the pandemic’s absence.⁷

⁴ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 1, 7 table 2. Across 2020, prison rates fell in every state except Alaska, where the rate increased by 1.2 percent.

⁵ Historical sources show no one-year decline in average state prison rates that approaches -51 per 100,000. See Margaret Werner Cahalan, *United States Historical Correctional Statistics, 1850-1984* (Bureau of Justice Statistics, 1986); Margaret Cahalan, *Trends in Incarceration in the United States since 1880: A Summary of Reported Rates and the Distribution of Offenses*, 25 Crime & Delinq. 9 (1979).

⁶ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2 (reporting a decrease of 15.8 percent in the state prison population overall in 2020 followed by a decrease of 1.8 percent in 2021). The states reported to have had increases in prison populations in 2021 were: Alaska (up 7.7 percent), Arkansas (up 5.8 percent), California (up 3.9 percent), Connecticut (up 3.4 percent), Delaware (up 2.0 percent), Idaho (up 8.8 percent), Iowa (up 9.1 percent), Kentucky (up 0.2 percent), Missouri (up 1.5 percent), Montana (up 9.8 percent), Nebraska (up 5.9 percent), North Carolina (up 0.9 percent), North Dakota (up 20.6 percent), Ohio (up 0.04 percent), Rhode Island (up 2.1 percent), South Dakota (up 2.4 percent), Utah (up 8.4 percent), West Virginia (up 12.9 percent), and Wyoming (up 3.7 percent). *Id.* at 3-4 table 2.

⁷ For a survey of state releasing practices in response to COVID, see Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022) (finding that 24 states released 0 to 150 prisoners in response to the pandemic from March 2020 through December 2021, while only five states and the federal system released more than 3,000 prisoners). The effects on annual imprisonment rates were even less than the absolute numbers of releases would suggest. Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court commitments, fewer revocations from community supervision, and some prisons' embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.⁸

The COVID period in Illinois

The state-specific experience of Illinois does not suggest a large mobilization of new or old prison-release processes in the immediate period of COVID shock.

In calendar year 2020, Illinois' prison rate fell from 303 to 237 per 100,000—a one-year decline of -66 per 100,000. This was the 11th largest one-year drop reported among all 50 states for that year.⁹ Measured in percentage terms, it was a 21.8 percent reduction in the state's prison rate. The state's total prison population fell by 8,530 people, from 38,259 to 29,729.¹⁰

COVID releases made up only a small portion of this drop. In a separate study, the Robina Institute found a total of 644 COVID-influenced releases in Illinois from March 2020 through

was “short time left on sentence.” Thus, some of the accelerated COVID releases in 2020 and 2021 were of prisoners who would have been released in the same year anyway, albeit somewhat later.

⁸ See E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17, 17 table 8 (admissions fell from 530,905 to 319,346). There was no comparable upswing in prison releases. Total releases from state prisons actually fell in 2020, dropping 9.8 percent from the previous year. *Id.* at 19 table 9 (nationwide releases fell from 557,309 to 502,723). Only five states released five percent or more of prisoners in 2020 than they had released in 2019: Arizona (6.9 percent), Maine (30.9 percent), Nebraska (5.9 percent), New Jersey (19.7 percent), and Wyoming (8.0 percent). For a focus on patterns of parole release in 2020, see Tiana Herring, *Parole boards approved fewer releases in 2020 than in 2019, despite the raging pandemic* (Prison Policy Initiative, February 3, 2021), at <https://www.prisonpolicy.org/blog/2021/02/03/parolegrants/> (surveying data from 13 states; finding that total numbers of parole releases fell in nine states; among all 13 states, the average drop in numbers of parole releases from yearend 2019 to yearend 2020 was 11.3 percent). See also Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022) (concluding that “the greatest impact on prison population overall occurred on the admissions side of the equation.”). From March 2020 through December 2021, Mitchell et al. estimate a total of 47,967 “non-routine COVID releases” from state prisons nationwide. Over a similar period (January 2020 to December 2021), Vera Institute of Justice (Vera) reported a drop in the aggregate state prison population of 217,989 people, from 1,259,977 to 1,041,988. Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2.

⁹ The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7.

¹⁰ *Id.*, at 11 table 4.

December 2021. This number was the equivalent of about two percent of Illinois' pre-COVID prison population (at yearend 2019).¹¹

Falling admissions appear to have been the most important factor in Illinois' reduction of prison population in 2020. The number of prison admissions in the state dropped by 47 percent in 2020 compared with the previous year (from 21,951 to 11,631). Total numbers of releases did not grow in 2020, but fell by 13.6 percent from 2019 (from 23,834 to 20,589).¹²

From yearend 2020 to December 2021, the Vera Institute reported that Illinois saw a smaller decrease in its prison population than in COVID's first year, from 29,574 to 27,970—or 3.4 percent. According to Vera's figures, Illinois still had the 37th highest prison rate of all states in December 2021 (the same ranking as at yearend 2020).¹³

The Illinois Department of Corrections reported that numbers of prison admissions rebounded in calendar year 2021 compared with 2020—but not entirely back to the pre-COVID level of 2019. Admissions increased by 27 percent in 2021 over 2020, but were still 19 percent lower than they had been in 2019. Interestingly, prison admissions due to parole revocations for technical violations fell from 2019 to 2020 (from 6,689 to 4,146) and fell again in 2021 (to 3,727). The 2021 rebound in total admissions came almost entirely from new court commitments.¹⁴

¹¹ Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022), Appendix A. Mitchell et al. do not estimate the drop in states' prison rates attributable to COVID releases. Instead, their report counts total COVID releases from March 2020 through December 2021 as a fraction of each state's prison population at the end of 2019. The resulting impact on prison rates is impossible to estimate because many or most of the COVID releasees in 2020-21 would have been released during the two-year period anyway, albeit somewhat later.

¹² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8, 19 table 9.

¹³ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 2, 3 table 2. As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁴ Illinois Department of Corrections, *Adult Individuals in Custody Population on December 31, 2021*, at <https://www2.illinois.gov/idoc/reportsandstatistics/Documents/CY21%20Fact%20Sheet.pdf>.

1. General rules of prison release in Illinois

In 1977, the Illinois legislature abolished discretionary parole release, replacing it with a system of “determinate” sentences. The law took effect in 1978.¹⁵ Under the new regime, prisoners serve their judicial maximum terms minus any sentence credits they have earned and not forfeited.¹⁶ So calculated, release dates become “mandatory release dates” (MRDs) in the terminology of this project. We call MRDs that move earlier and earlier with the accrual of credits “movable MRDs.”¹⁷

Most prisoners in Illinois are eligible to earn three different kinds of credits against their judicial maximum sentences, including “statutory sentence credits,” “program sentence credits,” and “earned sentence credits.”¹⁸

Prisoners’ credit earning rates vary according to their crimes of conviction and sometimes their prior records. The great majority of all prisoners receive one day of statutory sentence credit—or good-conduct credits—for every day in confinement, provided they comply with department of corrections rules and regulations.¹⁹ If earned throughout a prisoner’s term, accrual of good-conduct credits would result in an MRD at the 50-percent mark of the judicial maximum sentence, as shown in Figure 3. We will call these “general-rules sentences.”

¹⁵ James J. Bagley, *Why Illinois adopted determinate sentencing*, 62 *Judicature* 390, 393 (1979) (“[T]he new law establishes a system of determinate sentencing for all felonies in Illinois; abolishes the concept of parole release; [and] requires that persons convicted of felonies serve the specific amount of time to which they have been sentenced by a judge, subject only to time credited for good behavior . . .”). Prisoners with sentences imposed before the 1977 legislation took effect remained eligible for parole. See 730 ILCS § 5/3-3-3(a).

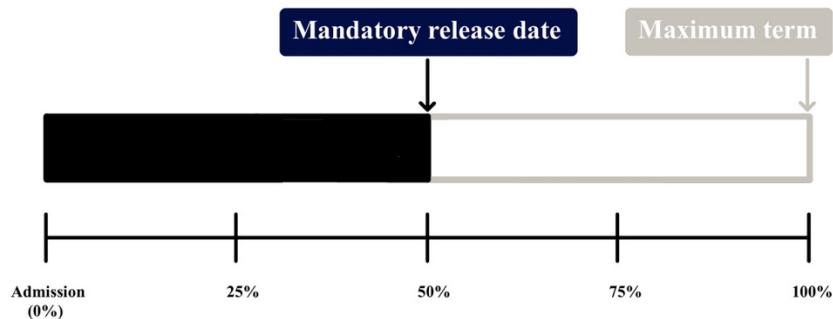
¹⁶ See 730 ILCS § 5-4.5-100(b).

¹⁷ See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”). Movable MRDs may also move later and later with the forfeiture of credits previously earned.

¹⁸ 730 ILCS § 5/3-6-3(a)(1.5).

¹⁹ 730 ILCS § 5/3-6-3(a)(2.1).

Illinois Figure 3. Prison-Release Timeline for Prisoners with General-Rules Sentences and Full Good-Conduct Credits



In addition to the deductions shown in Figure 3, general-rules prisoners may earn “program sentence credits” of one day for each day they are enrolled in full-time substance abuse programs, educational programs, correctional industry assignments, behavior modification programs, life skills courses, or re-entry planning provided by the department of corrections.²⁰ Further, they may earn an additional 90-180 days of credit for passing a high school equivalency test, obtaining an associate degree, obtaining a bachelor’s degree, and obtaining a master’s or professional degree.²¹ Even more, the director of corrections has discretion to award up to 180 days of “earned sentence credits” to prisoners serving less than five years and 365 days to prisoners serving more than five years for compliance with the rules and regulations of the department, service to the department, service to a community, or service to the state.²²

Depending on program availability and the activities of individual general-rules prisoners, program sentence credits could produce MRDs significantly earlier than shown in Figure 3. Figure 4, for example, posits a five-year sentence during which the prisoner has earned full good-conduct credits plus six months of program-enrollment credits and an additional six months for obtaining a GED.²³ Barring forfeiture, such a high-achieving prisoner would win an MRD at the 18-month or 30-percent mark of a five-year judicial maximum term.

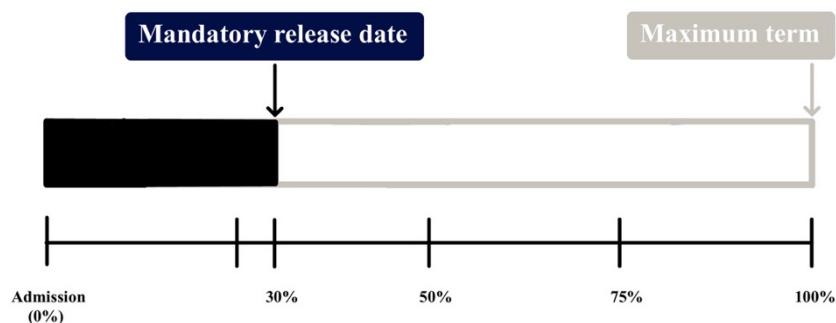
²⁰ 730 ILCS § 5/3-6-3(a)(4)(A).

²¹ 730 ILCS § 5/3-6-3(a)(4.1).

²² 730 ILCS § 5/3-6-3(a)(3).

²³ This hypothetical case could be varied in several ways. It does not posit the maximum possible program sentence credits that could conceivably be earned by a prisoner and ignores the possible award of earned sentence credits entirely. Still, we believe Figure 4 depicts the case of an unusually high-achieving prisoner who has managed to earn a high allotment of credits during a time span of only 18 months from admission to release.

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



On the subjective scale developed for this project, general-rules sentences as illustrated in Figures 3 and 4 have a *moderate degree of indeterminacy*, bordering on a *high degree of indeterminacy*. Either classification could be justified depending on one's assumptions of how credits against sentence are administered. Theoretically, sufficient sentence deductions are available to drive time served down to a small fraction of judicial maximum terms, but we think such cases would encounter limits of practical feasibility. As prisoners win generous credits that advance their MRDs, the amount of time they have to collect additional credits dwindles. Moving from Figure 3 to Figure 4, an advancement of a general-rules prisoner's MRD from the 50-percent to the 40-percent mark is easier than a further advancement from the 40-percent to the 30-percent mark. We think the outcome illustrated in Figure 4 is realistic but would require an in-prison performance by a prisoner that is well above average.

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 longest-time-served scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (*a shortest-time-served scenario*).

Figure 4 approximates the full degree of indeterminacy potentially carried by this class of sentences. It embraces a large range of possible time-served outcomes while stopping short of the limits of practical possibility. The PMP for sentences shown in Figure 4 is 3.33:1. That is,

over sufficient time, the subpopulation of prisoners with this type of sentence would be 233 percent larger in a longest-time-served regime than in a shortest-time-served regime. For this large segment of the Illinois prison-sentencing system, corrections officials at the back end of the system have far greater jurisdiction over the length of time-actually-served than the combined decisional power of officials who produce judicial sentences at the front end of the system (e.g., prosecutors and judges). In Illinois, such back-end discretion is held primarily by the prison officials who administer the conduct-based credit system.

Selected classes of prisoners convicted of especially serious offenses are subject to lower credit earning rates than general-rules prisoners,²⁴ and some are not eligible for credits at all.²⁵ Under current law, there are substantial numbers of prisoners who must serve at least 85 percent²⁶ or at least 60 percent²⁷ of their judicial maximum sentences, and a small number who must serve

²⁴ Most of the earning restrictions were introduced in “truth-in-sentencing” legislation in Illinois in the late 1990s. See Restore Justice, *Know More: Truth-in-Sentencing*, accessed June 21, 2022 at <https://restorejustice.org/about-us/resources/know-more/know-more-truth-in-sentencing/>.

Before 1998, inmates in Illinois prison could proactively earn time off their court-appointed sentence through good behavior and participation in prison programming. Overall, these credits could reduce a person’s sentence by up to half, or a day off for every day in prison. This system changed in 1998 with the passage of truth-in-sentencing (TIS) laws. Today, these laws limit the amount of time inmates convicted of certain offenses can earn off their non-life sentences.

Illinois joined a number of other states that made significant cutbacks in the availability of good time and earned time in the 1990s. See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Chapter 8.

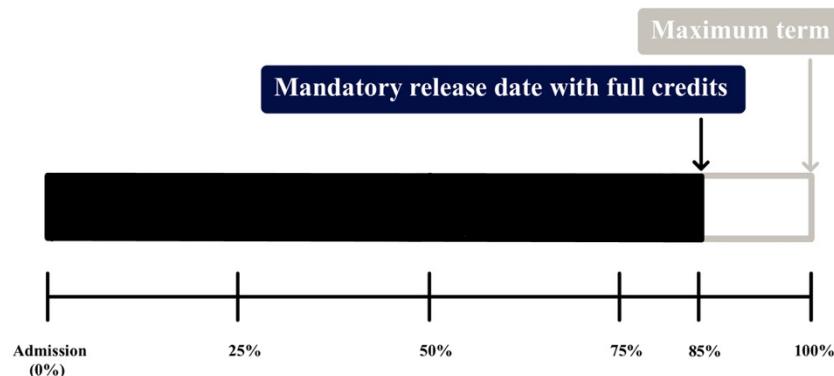
²⁵ Prisoners convicted of first degree murder or terrorism are not eligible for sentence credits of any kind and must serve 100 percent of their judicial maximum terms. 730 ILCS § 5/3-6-3(a)(2)(i).

²⁶ Offenses and prior records that receive 85-percent sentences are: attempt to commit terrorism, attempt to commit first degree murder, solicitation of murder, solicitation of murder for hire, intentional homicide of an unborn child, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated kidnapping, aggravated battery with a firearm, heinous battery, being an armed habitual criminal, aggravated battery of a senior citizen, aggravated battery of a child, aggravated discharge of a firearm, a second or subsequent offense of luring a minor, aggravated domestic battery, aggravated driving under the influence of alcohol or other drugs, aggravated battery with a machine gun or firearm equipped with a silencing device or attachment, and aggravated arson. 730 ILCS § 5/3-6-3(2)(a)(ii),(iv),(vi)–(vii); 730 ILCS § 5/3-6-3(a)(2.3),(2.4),(2.5),(2.6). The following offenses also receive 85-percent sentences when the offense resulted in great bodily harm to the victim: home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, and armed violence with a category I or category II weapon where the offense resulted in great bodily harm to the victim. 730 ILCS § 5/3-6-3(a)(2)(iii).

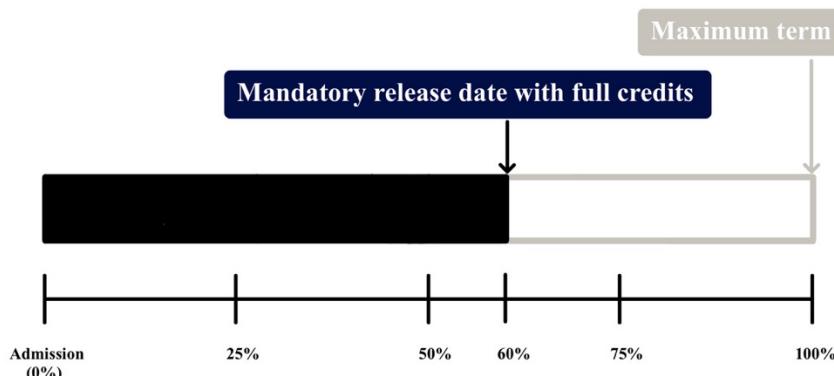
²⁷ Offenses that receive 60-percent sentences are: narcotics racketeering, controlled substance trafficking, methamphetamine trafficking, drug-induced homicide, aggravated methamphetamine-related child endangerment, money laundering, a Class X felony conviction for delivery of a controlled substance, possession of a controlled substance with intent to manufacture or deliver, calculated criminal drug conspiracy, criminal drug conspiracy, street gang criminal drug conspiracy, participation in methamphetamine manufacturing, aggravated participation in methamphetamine manufacturing, delivery of methamphetamine, possession with intent to deliver methamphetamine, aggravated delivery of methamphetamine, aggravated possession with

at least 75 percent.²⁸ For prisoners in these categories, no amount of credit earnings can advance their MRDs earlier than the fixed statutory cutoffs.²⁹ Figure 5 illustrates the prison release timeline for prisoners who have received 85-percent sentences and Figure 6 does the same for 60-percent sentences.

**Illinois Figure 5. Prison-Release Timeline
for 85-Percent Sentences**



**Illinois Figure 6. Prison-Release Timeline
for 60-Percent Sentences**



In this project's subjective ranking system, 85-percent sentences are *extremely low in indeterminacy*. The 60-percent sentences might be considered *low in indeterminacy*, but just barely. Under our quantitative benchmarks, such sentences fall exactly on the borderline between *low* and *moderate indeterminacy* (see p. iv). We choose to rank them on the “*low*” side

intent to deliver methamphetamine, and methamphetamine conspiracy when the substance containing the controlled substance or methamphetamine is 100 grams or more. 730 ILCS § 5/3-6-3(a)(2)(v),(4.7).

²⁸ The only offense that remains in the 75-percent category may be gunrunning. See 730 ILCS § 5/3-6-3(a)(2)(v),(4.7)(ii). In 2018, the legislature created the category of 60-percent sentences out of the list of offenses that formerly were given 75-percent sentences, with the exception of gunrunning. ILCS § 5/3-6-3(a)(4.7)(ii).

²⁹ 730 ICLS § 5/3-6-3(a)(4.7).

of the boundary because uncertainties in time actually served are driven by credit earnings rather than the highly discretionary decisions of a parole board. Without information to the contrary, we view credit-based sentence discounts to be more predictable in their administration than open-ended parole-release decisions.³⁰

The PMP for sentences shown in Figure 5 is 1.18:1. That is, the distance of population change from the most generous use of release discretion to the stingiest is only 18 percent. For this subgroup of prisoners, therefore, the front-end judicial sentence is the major determinant of actual time-to-be-served by each defendant. Front-end discretion is also the major driver of population size for the group.

For Figure 6, the PMP is 1.66:1. There is substantial power at both the front end and back end of the prison-sentencing system to affect prison population size for this subpopulation, but a greater share of authority is weighted toward the front end.

2. Life sentences in Illinois

a. Adults

Defendants convicted of first degree murder may be sentenced to life without parole (LWOP) (called “natural life imprisonment” in Illinois) if the trier of fact has found the existence of at least one statutory aggravating factor beyond a reasonable doubt or that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.³¹

Natural life sentences are mandatory in first degree murder cases for defendants who were adults at the time of their crimes if they (1) had been previously convicted of first degree murder under any state or federal law; (2) were found guilty of murdering more than one victim; (3) were found guilty of murdering a police officer, fireman, or emergency management worker in the course of their duties; (4) were found guilty of murdering a DOC employee in the course of their duty; (5) were found guilty of murdering an emergency medical technician in the course of duty; or (6) were found guilty of murdering a community policing volunteer in the course of their duty.³²

³⁰ This project’s definition of indeterminacy in prison sentencing rests on the unpredictability of time-that-will-actually-be-served under a given sentence or class of sentence. A lower amount of unpredictability yields a lower degree of indeterminacy.

³¹ 730 ICLS § 5/5-8-1(a)(1)(b).

³² 730 ICLS § 5/5-8-1(a)(1)(c).

Illinois has no current law authorizing life sentences with the possibility of parole.³³ In other words, all life sentences are LWOP sentences.

The Sentencing Project reported that, in 2016, Illinois had a total of 1,614 prisoners serving life sentences out of a total prison population of 46,240 (or 3.5 percent of all prisoners). Almost all of these (1,609) were LWOP sentences.³⁴

b. Juvenile life sentences

Defendants convicted of first degree murder who were under age 18 at the time of their crimes must be sentenced to a maximum of 40 years imprisonment.³⁵ In 2019, the Illinois Supreme Court ruled that sentences greater than 40 years for juvenile offenders were constitutionally prohibited.³⁶

3. Infrequently used forms of prison release in Illinois

a. Compassionate release

The Prisoner Review Board may release a prisoner who is terminally ill or medically incapacitated, or is diagnosed with a condition that will result in medical incapacity within the next six months.³⁷ In considering an application for medical release, the Prisoner Review Board may consider: (1) the prisoner's diagnosis and likely recovery; (2) cost of care to the State should the prisoner remain in custody; (3) the impact of continued incarceration on the provision of medical care within the DOC; (4) the likelihood that the prisoner poses a substantial danger to the physical safety of identifiable persons; (5) any statement from the victim regarding release; and, (6) whether the condition was disclosed to the sentencing judge and taken into account at that time.³⁸

A prisoner granted medical release is subject to mandatory supervision for the first five years of their release.³⁹

³³ Defendants convicted of first degree murder who do not receive natural life or death sentences receive determinate terms of at least 20 but no more than 60 years, or extended terms of at least 60 but no more than 100 years. 730 ICLS § 5/5-4.5-20(a).

³⁴ Ashley Nellis, Still Life: America's Increasing Use of Life and Long-Term Sentences (The Sentencing Project, 2017), at 10 table 2.

³⁵ 730 ICLS § 5/5-4.5-105(c).

³⁶ *People v. Buffer*, 137 N.E.3d 763, 774 (Ill. 2019).

³⁷ 730 ICLS § 5/3-3-14(b).

³⁸ 730 ICLS § 5/3-3-14(f).

³⁹ 730 ICLS § 5/3-3-14(g).

b. Clemency

The governor has the power to grant pardons, reprieves, and commutations after conviction for all offenses.⁴⁰ All applications must be filed with the Prisoner Review Board, which makes written recommendations to the governor.⁴¹

c. Release during overcrowding emergencies

Illinois has no statutory scheme for the emergency release of inmates in circumstances of prison overcrowding.

4. Overall assessment of indeterminacy in the Illinois prison-sentencing system

We place Illinois's prison-sentencing system in the category of *low indeterminacy*, although the system could arguably be classified as one of *moderate indeterminacy*. This ambivalent assessment takes account of multiple tiers of sentence types. Illinois's three main classes of sentences have widely different degrees of indeterminacy: moderate (bordering on high), low (bordering on moderate), and extremely low. When a state's approach is this heterogeneous, overall system descriptions become relatively subjective. We would not argue heatedly with the alternative view that the Illinois prison-sentencing system averages out to one of moderate indeterminacy.

There is no discretionary parole release for any class of prisoners under current Illinois law, including those with life sentences. All indeterminacy in the system is in the hands of prison officials through the administration of conduct-based credits. Illinois is an example of a state that generates a meaningful degree of indeterminacy through credit allotments rather than parole-release discretion.

That Illinois is close to the borderline of moderate indeterminacy will be an unexpected finding to many readers. Since the late 1970s, Illinois has consistently been classified as a state that switched from an "indeterminate" to a "determinate" sentencing system, at the outset of a 20-year period of "determinate" sentencing reforms across one-third of all states. Ever since, Illinois has regularly appeared on lists of "determinate" jurisdictions along with the highly-determinate systems established in the 1970s in California and Maine. This illustrates the weakness of a classification system that divides all jurisdictions into binary categories of determinacy and indeterminacy. With a measurement system more sensitive to different *degrees* of indeterminacy, we would say that Illinois is one of the least determinate of the so-called "determinate states."⁴²

⁴⁰ Ill. Const. Art. V, § 12.

⁴¹ Ill. Admin. Code tit. 20, pt. 1610.180(a),(b),(h).

⁴² Another state that abolished most forms of parole-release discretion in the mid-1970s was Indiana. Like Illinois, Indiana has been classified as a "determinate" system ever since. In our view, Indiana's prison-sentencing system

Illinois's is an example of a prison-sentencing system that generates a significant degree of indeterminacy through conduct-based credits rather than parole-release discretion. One major observation of this project is that, in mathematical terms, some systems achieve significant degree of indeterminacy through credit allocations and the discretionary decisions that accompany their award, forfeiture, and restoration. Figure 4 (see Part I) posits general-rules sentences that could conceivably be 30 percent determinate and 70 percent indeterminate—all through the legal availability of credit awards. It is a mistake to think of “indeterminacy” as exclusively the product of parole-release discretion.

operates with a *moderate degree of indeterminacy*, which makes it neither fish nor fowl. See Kevin R. Reitz, Allegra Lukac, & Edward E. Rhine, *Prison-Release Discretion and Prison Population Size, State Report: Indiana* (Robina Institute of Criminal Law and Criminal Justice, 2021).