



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

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# PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

## *STATE REPORT: INDIANA*

Kevin R. Reitz, Allegra Lukac, and Edward E. Rhine

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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: Indiana<sup>1</sup>

#### *Executive Summary*

On our subjective ranking scale, we describe Indiana's prison-sentencing system as one with a *moderate degree of indeterminacy* overall. Parole-release discretion has been abolished for all prisoners, but generous credit earnings that accelerate mandatory release dates are potentially available to most prisoners. Prisoners can move from one credit-earning rate to another, so we posit many individual sentences that will include periods of both low and high rates of credit earning. This can produce a bifurcation during individual prison terms of periods of low and high indeterminacy. Our overall ranking of *moderate indeterminacy* reflects the fact that most prisoners have access to rules that would produce highly-indeterminate sentences, but will be delayed in achieving the necessary high credit-earning rates.

As with most American systems that have abolished parole-release discretion for the majority of prisoners, the primary location of back-end release discretion in Indiana is in the department of corrections, exercised by prison officials who administer the credit-earning and forfeiture rules. Other forms of back-end release discretion such as executive clemency and medical parole are rarely used and have no important impact on the system's operation as a whole.

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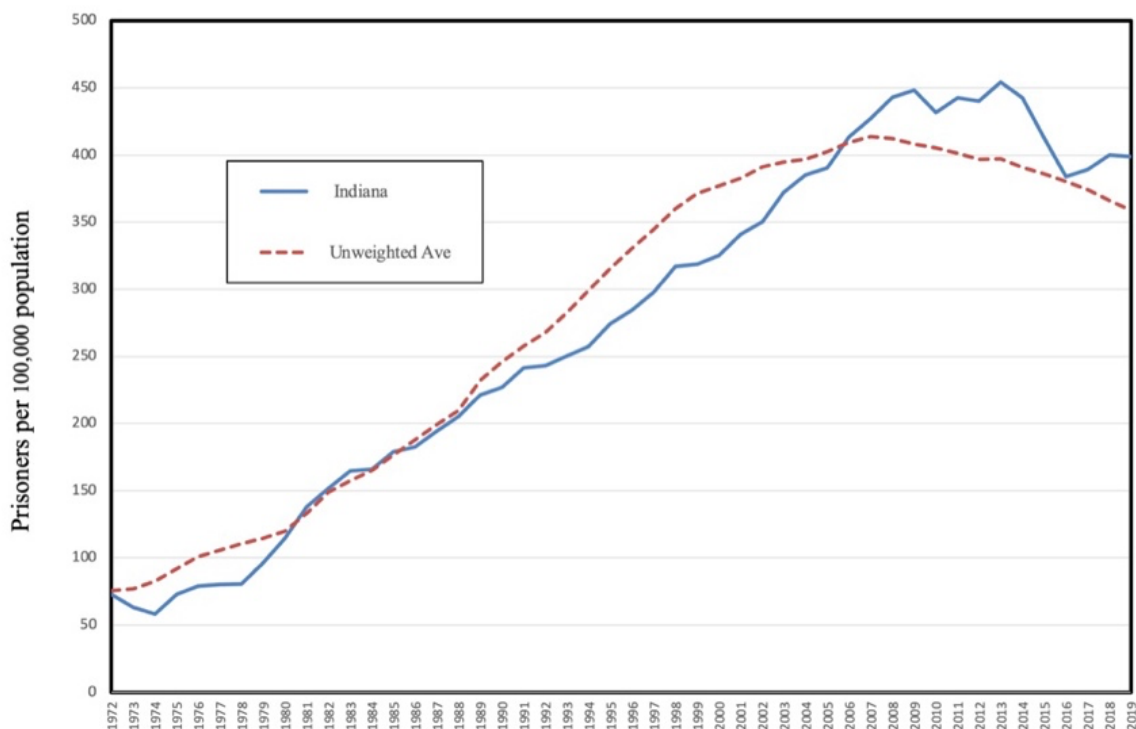
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures. We thank Gwen Horth for her review of an earlier draft.

## Introduction

### *Indiana's prison-rate history, 1972 to 2019*

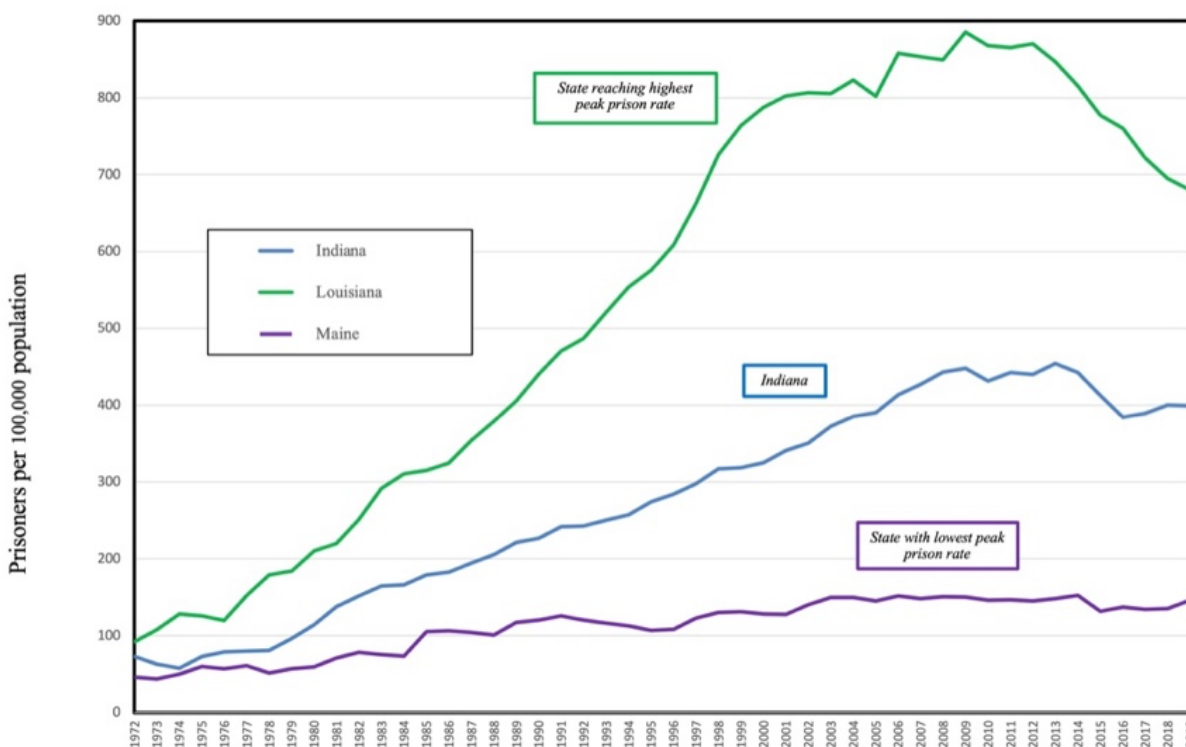
In 2019, Indiana's prison rate was 399 per 100,000 general population, with a yearend prison population of 26,969.<sup>2</sup> Indiana's prison rate was 19<sup>th</sup> highest among all states.

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



<sup>2</sup> E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 7 table 4, 11 table 7.

Figure 2. Prison Rate Change in Indiana, 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), 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).

Indiana reached its peak prison rate in 2013 at 454 per 100,000, which dropped to 399 per 100,000 in 2019. This is a net difference of -55 per 100,000, which was the 28<sup>th</sup> largest prison-rate drop of all states.

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

### *Terminology note*

This report will refer to the Indiana Parole Board as the “parole board.” The Indiana Department of Correction will be referred to as the “department of corrections.”

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

Indiana abolished parole release discretion for all prisoners effective October 1977.<sup>3</sup> Prisoners convicted of felonies reach mandatory release dates after completing their judicial maximum terms less any deductions for good time and educational credits they have earned (provided those credits are not forfeited).<sup>4</sup>

Good time credit earning rates depend on prisoners’ classification into one of several tiers. The highest earning rate is one day per day. In the lowest tier, no credits are earned.<sup>5</sup> Most prisoners may also earn educational credits of various kinds.<sup>6</sup> The amount of time deductible for educational credits is capped at one-third of the total of all credits or two years, whichever is

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<sup>3</sup> See JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* (Oxford University Press, 2003), table 3.1; Mark S. Hamm, *The Conscience and Convenience of Sentencing Reform in Indiana*, 7 Behavioral Sciences & the Law 107, 110 (1989). Indiana’s parole board has discretionary parole release authority over offenders who committed their crimes prior to October 1977. See Indiana Department of Correction, *Indiana Parole Board*, <https://www.in.gov/idoc/parole-services/parole-board/>.

<sup>4</sup> Ind. Code § 35-50-6-1(a). On credit forfeiture, see Ind. Code § 35-50-6-5(a)-(c). Forfeited educational or good time credits can be partially or wholly restored.

<sup>5</sup> Offenders earn varying amounts of good time credit dependent upon their classification into one of Class A, Class B, Class C, and Class D earning levels. Class A offenders earn one day of good time credit for each day they are imprisoned. Class B offenders earn one day of good time credit for every three days they are imprisoned. Class C offenders earn one day of good time credit for every six days they are imprisoned. Class D offenders do not earn good time credit. Ind. Code § 35-50-6-3.1(b)-(e).

Offenders imprisoned for a Level 6 felony or misdemeanor are initially assigned to Class A. Offenders imprisoned for a crime other than a Level 6 felony or misdemeanor are initially assigned to Class B. This would appear to make Class B the default classification for most newly-admitted prisoners. “Credit restricted felons” are initially classified into Class C. See Ind. Code § 35-50-6-4(a)-(c). Prisoners may be demoted to lower credit-earning classes for disciplinary violations. See Ind. Code § 35-50-6-4(d),(e). For most prisoners, an assignment into Class C or Class D must be reviewed every six months to determine if the prisoner should be reassigned to a higher credit time class. Ind. Code § 35-50-6-4(g).

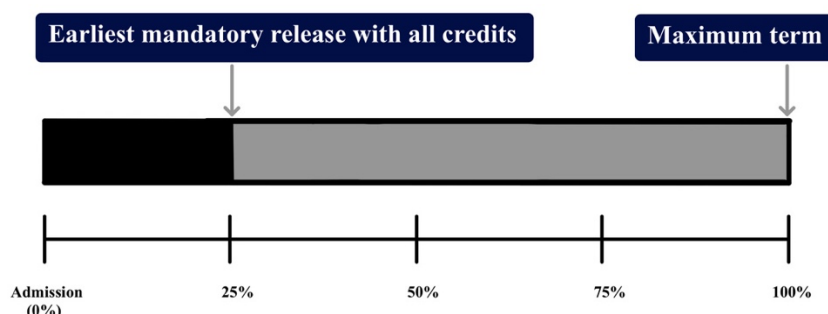
<sup>6</sup> On their face, educational credits are generous in Indiana: six months for completion of a state of Indiana GED diploma, one year for graduation from high school, not more than one year for completion of an associate degree, not more than two years for completion of a bachelor’s degree, not more than one year for completion of one or more career and technical or vocational education programs, not more than a total of six months for completion of one or more substance abuse programs, not more than six months for the completion of one or more literacy and basic life skills programs, and not more than six months for completion of one or more reformatory programs. See Ind. Code § 35-50-6-3.3(d). For many prisoners, there are sharp limits on eligibility to earn credits and the total amounts that may be earned. Only offenders assigned to Class A or Class B are eligible to earn educational credit, and total educational credits are limited to one-third of all credits (including good time credits) earned by the prisoner. Ind. Code § 35-50-6-3.3(a),(b),(j).



less.<sup>7</sup> Certain classes of “credit restricted” prisoners can never move above the lowest two good-time earning rates and are permanently ineligible for educational credits.<sup>8</sup>

Figure 3 illustrates the case of prisoners in the top good time earning group, Class A, who manage to remain in that classification throughout their prison stays. Figure 3 also posits Class A prisoners who earn the most allowable educational credits under the statutory cap. For many such prisoners, MRDs would occur at the 25 percent mark of their judicial maximum terms. A 50-percent reduction from the maximum would be due to good time credits with the additional reduction for educational credits capped at 25 percent.

**Indiana Figure 3. Prison-Release Timeline for Class A Prisoners with Most Possible Good-Time and Educational Credits**



We would describe the earliest releasees under Figure 3 as *high-achieving* rather than average prisoners, but an MRD at the 25-percent mark is not an impossible goal. Figure 3 captures a wide range of plausible time-served outcomes. For continuous Class A prisoners, including those with average and below-average prison records, actual time served may fall anywhere along the continuum between the 25-percent mark and the full maximum term.

In Figure 3’s timeline, the first 25-percent of potential time served is “determined” by the judicial sentence and cannot be reduced in the normal course by decisionmakers at the back end of the prison-sentencing system.<sup>9</sup> Beyond the 25-percent milestone, individual lengths of

<sup>7</sup> Ind. Code § 35-50-6-3.3(j).

<sup>8</sup> An offender classified as a “credit restricted felon” may not be assigned to the higher credit earning classes of Class A or Class B. Credit restricted felons are those who have committed one of the following offenses: child molesting involving sexual intercourse, deviate sexual conduct, or other sexual conduct if the offender is at least twenty-one years of age and the victim is less than twelve years of age; child molesting resulting in serious bodily injury or death; and murder if the person killed the victim while committing or attempting to commit child molesting, the victim was a victim of a sex crime for which the offender was convicted, or the victim of the murder was known to be a witness against the offender in a prosecution for a sex crime. See Ind. Code §§ 35-31.5-2-72, 35-50-6-4(g). Credit restricted felons are not eligible to earn educational credits. Ind. Code § 35-50-6-3.3(a)(1),(b)(1).

<sup>9</sup> Reductions “not in the normal course” would include such rarely-used release mechanisms as executive clemency or medical parole.

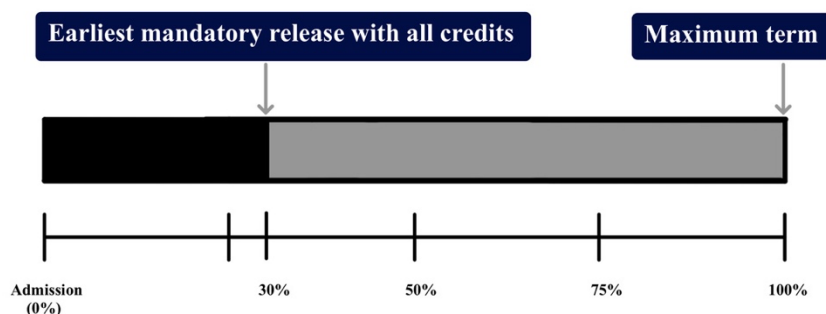
stay depend on the actions and decisions of the prison officials who administer Indiana's conduct-based credit system.

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 prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board's release decisions is 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *never-release scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (an *always-release scenario*).

In the lexicon of this project, the sentences in Figure 3 are 25-percent determinate and 75-percent indeterminate. That is, 75 percent of actual time served is not determined until after the judicial sentence has been finalized. Such sentences carry a PMP of 4:1. That is, if all prisoners in the Figure 3 group were to be released on the earliest possible date, the “Figure 3 subpopulation” would over time stabilize at a number one-fourth the size of the same subpopulation if all were held for their full maximum terms. On the subjective ranking scale developed for this project, this class of sentences has a *high degree of indeterminacy*. For prisoners with this class of sentence, prison population size is predominately determined at the back end of the prison-sentencing system.

For Class A prisoners with judicial maximum terms longer than eight years, degrees of indeterminacy are smaller than shown in Figure 3. This is because educational credits are ultimately capped at the hard boundary of two years. To illustrate, Figure 4 shows the timeline for Class A prisoners with 10-year (or 120-month) maximum terms. For this sentence configuration, good time credits can remove as much as 60 months from total time served, but educational credits are capped at 24 months. Thus, the earliest possible MRD falls at 36 months, which is the 30-percent mark of the judicial maximum term.

**Indiana Figure 4. Prison-Release Timeline for Class A Prisoners with Ten-Year Maximum and Most Possible Good-Time and Realistic Educational Credits**



The range of possible time-served outcomes in Figure 4 still falls comfortably within the category of highly indeterminate sentences, as we have defined it.<sup>10</sup>

Many prisoners in Indiana accrue good time credits much more slowly than depicted in Figures 3 and 4. Below the top earning rates, Class B prisoners receive one day of good time credit for every three days served and are eligible for educational credits. Class C prisoners receive one day of good time credit for every six days served and are not eligible for educational credits. Class D prisoners earn no credits at all.

Based solely on our reading of the relevant statutes, we think most prisoners start off in Class B and are eligible to be reclassified upward into Class A from the beginning of their terms.<sup>11</sup> On the other side of the coin, prisoners can also be demoted to a lower earnings class for bad behavior. Given the prospects for movement up or down, we expect there are many prisoners who earn credits at multiple different rates prior to release. We know of no publicly-available statistics that would allow us to estimate the numbers of prisoners who occupy the different earnings classes.

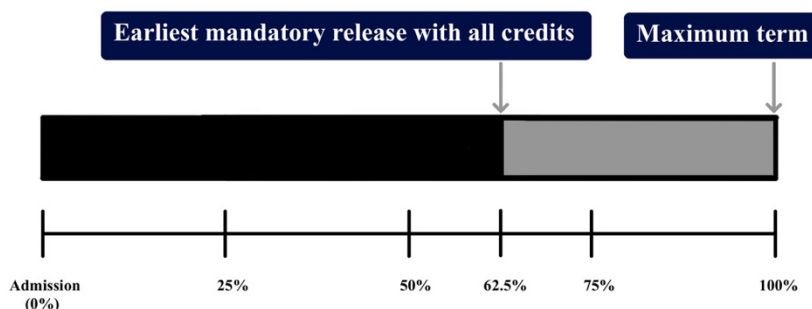
Figure 5 shows the timeline for Class B prisoners who earn good time credits at the full available rate, and who also earn the most possible educational credits (capped at one-third of the total of all credits). Such prisoners would reach MRDs at the 62.5-percent mark of their

<sup>10</sup> If we were to do the math for a Class A prisoner with a 20-year sentence, the earliest possible MRD would fall at the 40-percent mark (96 months of the 240-month judicial maximum term). In our subjective classification system, this timeline moves into borderline territory between highly indeterminate and moderately indeterminate prison sentences, but we assume that the vast majority of Class A prisoners have maximum terms much shorter than 20 years. Ind. Code § 35-50-6-3.3(d).

<sup>11</sup> See Ind. Code § 35-50-6-4(a)-(c).

judicial maximum terms. Within this total, they may earn as much as a 25-percent reduction from good time credits and an additional 12.5 percent for educational credits.

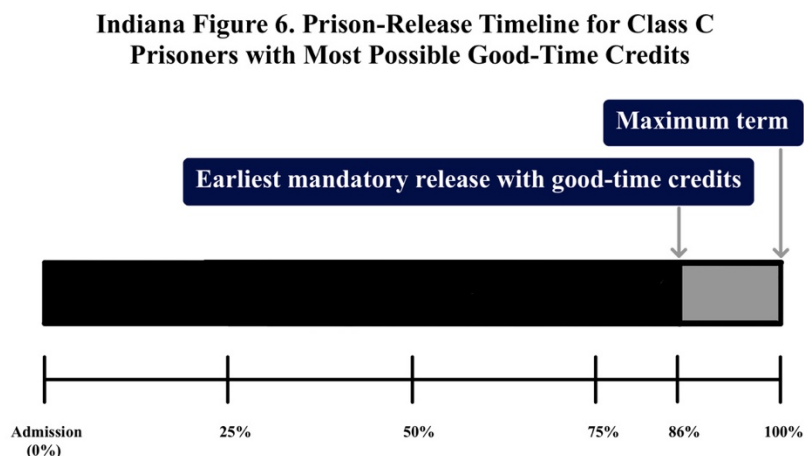
**Indiana Figure 5. Prison-Release Timeline for Class B Prisoners with Most Possible Good-Time and Educational Credits**



In this project’s subjective rankings, the sentences illustrated in Figure 5 have a *low degree of indeterminacy*—or, it may be more natural to say, they have a *high degree of determinacy*. Such sentences have a PMP of 1.6:1, comparable to the general-rules sentences in the predominately non-paroling sentencing systems such as Minnesota and Washington. Prison sentence length is determined primarily at the front end of the prison-sentencing system (for example, by prosecutors and judges), more so than by back-end decisionmakers—although a meaningful fraction of time-served discretion is positioned at the back end. Back-end decisions in Figure 5 could, in the aggregate, vary the size of the “Figure 5 subpopulation” by as much as 60 percent.

The Class B earnings category appears to be the default classification for most prisoners in Indiana, at the outset of their prison stays. We do not know how many Class B prisoners succeed in moving into the higher Class A earning category, or how long it takes to do so.

Finally, Figure 6 illustrates the case of Class C prisoners, who are limited to good time credits at a rate of one per six days, and cannot earn educational credits. Taking full advantage of this low earning rate, their MRDs would not occur until the 86-percent mark of their judicial maximum sentences. The PMP of this class of sentences is only 1.16:1. In the project’s ranking scale, these are sentences with an *extremely low degree of indeterminacy*—or alternatively, we can say they are *extremely high in determinacy*. The Figure 6 timeline resembles the general-rules timelines found in the most determinate of all U.S. sentencing systems, including Oregon, Virginia, and the federal system.



Looking back across Figures 3 through 6, the Indiana prison-sentencing system is a markedly mixed system with many individual sentences that fall into the category of high indeterminacy and many others that fall into categories of low or extremely low indeterminacy. It is a highly determinate system for all prisoners who are ineligible for Class A status and who are thus excluded from the high credit-earning potentials shown in Figures 3 and 4.

## 2. Life sentences

### a. Adults

Offenders may be sentenced to life without parole (LWOP) for the crime of murder if the state proves beyond a reasonable doubt the existence of at least one aggravating circumstance during the sentencing hearing.<sup>12</sup> Generally, the sentencing hearing for murder is held before a jury, and the procedural requirements necessary to sentence an offender to death are required to sentence an offender to life without parole.<sup>13</sup>

Current Indiana statutes do not authorize parolable life sentences, although such sentences were on the books prior to Indiana's transition to determinate sentencing in 1977.<sup>14</sup> Under prior law, offenders sentenced to life with the possibility of parole became eligible for parole after serving 20 years.<sup>15</sup>

<sup>12</sup> Aggravating circumstances are listed in statute. See Ind. Code § 35-50-2-9 (b).

<sup>13</sup> See generally Ind. Code § 35-50-2-9.

<sup>14</sup> Marisa Kwiatkowski, "When life doesn't mean life," *The Times of Northwest Indiana* (Oct. 8, 2009), [https://www.nwitimes.com/news/local/when-life-doesnt-mean-life/article\\_61f60835-58c6-5fb8-be9f-66c719d6d2b9.html](https://www.nwitimes.com/news/local/when-life-doesnt-mean-life/article_61f60835-58c6-5fb8-be9f-66c719d6d2b9.html).

<sup>15</sup> Ind. Code § 11-13-3-2(b)(3).

Based on a 2020 survey of state departments of corrections, the Sentencing Project reported that fewer than one percent of all prisoners in Indiana were serving life sentences. Out of a total of 28,143 prisoners, 85 or 0.3 percent were serving parolable life sentences and 131 or 0.5 percent were serving LWOP sentences.<sup>16</sup>

### ***b. Juvenile life sentences***

Indiana statute permits juveniles age 16 years and older at the time of their offenses to be sentenced to LWOP upon conviction of murder.<sup>17</sup> This sentencing scheme was upheld by the Indiana Supreme Court in 2012, which ruled that an offender who was 17 at the time he murdered his ten year old brother could be sentenced to LWOP.<sup>18</sup> Offenders younger than 16 convicted of murder may be imprisoned to a fixed term ranging from 45 to 65 years.<sup>19</sup>

## ***3. Infrequently used forms of prison release***

### ***a. Compassionate release***

Offenders may be considered for special medical clemency upon recommendation by the commissioner of corrections to the parole board. The board must consider the seriousness of the medical condition, whether the medical condition can be adequately treated while offender is on inmate status, and whether the medical condition would effectively prevent the offender from engaging in any future serious criminal activity.<sup>20</sup> The parole board must then submit its recommendation to the governor regarding the application.<sup>21</sup>

Indiana does not publish the number of special medical clemency applications the governor has granted.<sup>22</sup>

Offenders may also be eligible for temporary leave “to return to his home or other place authorized by the department during what appears to be his terminal illness.”<sup>23</sup> There is no limit placed on the duration of the temporary leave due to terminal illness.<sup>24</sup> Temporary leaves

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<sup>16</sup> Ashley Nellis, No End in Sight: America’s Enduring Reliance on Life Imprisonment (The Sentencing Project, 2021), at 10 table 1.

<sup>17</sup> Ind. Code § 35-50-2-3(b)(2).

<sup>18</sup> *Conley v. State*, 972 N.E.2d 864 (Ind. 2012).

<sup>19</sup> Ind. Code § 35-50-2-3(a).

<sup>20</sup> 220 Ind. Admin. Code § 1.1-4-1.5(a).

<sup>21</sup> Ind. Code § 11-9-2-2(b).

<sup>22</sup> Families Against Mandatory Minimums, “Compassionate Release: Indiana” at p. 2, [https://famm.org/wp-content/uploads/Indiana\\_Final.pdf](https://famm.org/wp-content/uploads/Indiana_Final.pdf).

<sup>23</sup> Ind. Code § 11-10-9-2(a)(7).

<sup>24</sup> Ind. Code § 11-10-9-2(b).

are granted by the Chief Administrative Officer of the place of confinement.<sup>25</sup> The following offenders are ineligible for temporary leave: offenders sentenced to death, offenders who have more than seven and one-half years until their earliest projected release date, offenders in disciplinary or administrative segregation, and offenders with a history of assaultive behavior.<sup>26</sup>

Indiana Department of Corrections reports do not list how many inmates are granted temporary leaves due to terminal illness.<sup>27</sup>

### ***b. Clemency***

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment.<sup>28</sup> The parole board must submit to the governor its recommendation regarding any application for commutation of sentence, pardon, reprieve, or remission of fine or forfeiture.<sup>29</sup> There is no language in the statute to suggest the governor is bound by the board's recommendation.

Former Governor of Indiana Mike Pence reportedly granted only three pardons during his tenure as governor from 2013 to 2017.<sup>30</sup> Current Governor Eric Holcomb has pardoned at least six former offenders since taking office in 2017.<sup>31</sup>

### ***c. Release during overcrowding emergencies***

Indiana does not have a law authorizing the emergency release of inmates due to prison overcrowding.

### ***d. COVID releases***

From March to June of 2020, Indiana's prison population fell from 26,891 to 25,876 inmates, however this decline was likely due to prisoners reaching the end of their sentences in addition

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<sup>25</sup> 210 Ind. Admin. Code § 1-5-1(4).

<sup>26</sup> Ind. Dept. of Corr. Policy 02-04-104.

<sup>27</sup> *Ibid.*, Families Against Mandatory Minimums, "Compassionate Release: Indiana" at pg. 4, [https://famm.org/wp-content/uploads/Indiana\\_Final.pdf](https://famm.org/wp-content/uploads/Indiana_Final.pdf).

<sup>28</sup> Ind. Const. art. V § 17.

<sup>29</sup> Ind. Code § 11-9-2-2(b).

<sup>30</sup> Rob Burgess, "Holcomb doubles Pence's 4-year total of pardons in one day," *The Indiana Lawyer* (Dec. 12, 2017), <https://www.theindianalawyer.com/articles/45594-holcomb-doubles-pences-4-year-total-of-pardons-in-one-day>.

<sup>31</sup> Drew Daudelin, "Gov. Holcomb Pardons Six Ex-Offenders," *WFYI Indianapolis* (Nov. 21, 2017), <https://www.wfyi.org/news/articles/gov-holcomb-pardons-six-ex-offenders>.

to fewer inmates entering state prisons during this time period.<sup>32</sup> Governor Holcomb expressed reluctance to release inmates prior to the expiration of their sentence during the COVID-19 pandemic, stating “I do not believe in releasing those low-level offenders.”<sup>33</sup>

#### 4. Overall assessment

Overall assessment of the degree of indeterminacy in Indiana’s prison-sentencing system requires an “averaging out” of several different sentence classes. This is a difficult exercise at best, and Indiana is a stark example of such a mixed system. For any true mathematical averaging, we would need good data about the numbers of prisoners who fall into particular “bins” of earning rates. This mathematical project is greatly complicated by the fact that most prisoners are eligible for reclassification during their prison stays.

Ultimately, we rank Indiana’s prison-sentencing system as one that operates with a *moderate degree of indeterminacy* overall, but this is an educated guess. If most prisoners serve most of their terms at the credit-earning levels of Class B or below, then the system is unmistakably low in indeterminacy (see Figures 5 and 6). However, most prisoners have the opportunity to move into the highest class of credit earners, which gives large numbers of people access to much higher degrees of indeterminacy in the amount of time they will actually serve (see Figures 3 and 4). We treat the earning-rate classification decisions made by prison officials as themselves an example of discretion-based indeterminacy. All prisoners who have *potential* access to Class A are one decision point away from the practical realities of highly-indeterminate sentences. Because such classifications are not instantaneous at admission for most prisoners, however, the system is designed to produce many overall sentences that are bifurcated into separate timelines of lower and higher indeterminacy. A crude averaging-out of this fractured pattern suggests a system that offers at least a moderate degree of indeterminacy over the full course of most prison sentences.

If this judgment is correct, then actual time served by Indiana prisoners is determined in roughly equal shares by front-end and back-end decisionmakers.

As with most American systems that have abolished parole-release discretion for the majority of prisoners, the primary location of back-end release discretion in Indiana is in the department of corrections, exercised by prison officials who administer the credit-earning rules. Other forms of back-end release discretion, such as executive clemency and medical parole, are rarely used and have no important impact on the system’s operation as a whole.

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<sup>32</sup> Jake Harper, “Indiana left it to county courts to release prisoners during the COVID crisis. Most of them haven’t,” 89.3 *WFPL* (Jul. 18, 2020) <https://wfpl.org/indiana-left-it-to-county-courts-to-release-prisoners-during-the-covid-crisis-most-of-them-havent/>.

<sup>33</sup> Jake Harper, “Crowded prisons are festering ‘petri dishes’ for Coronavirus, observers warn,” *NPR* (May 1, 2020) <https://www.npr.org/sections/health-shots/2020/05/01/848702784/crowded-prisons-are-festering-petri-dishes-for-coronavirus-observers-warn>.