



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: RHODE ISLAND

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July 2023

Prison-Release Discretion and Prison Population Size

State Report: Rhode Island

Table of Contents

Executive Summary

Introduction

Rhode Island's prison-rate history, 1972 to 2018

Organization of this report

I. General Rules of Prison-Release Discretion in Rhode Island

1.1. General rules of presumptive release

1.2. Reconsideration after denial of release

1.3. Generally-available conduct credits: types and amounts

a. Credits for good behavior

b. Credits for prison work

c. Credits for program participation

d. Credits for meritorious service

1.4. Effects of credits on parole-release eligibility

1.5. Effects of credits on judicial maximum term

1.6. Loss of credits

II. Prisoners Outside the General Rules in Rhode Island

2.1. Life sentences without parole

2.2. Life sentences with possibility of parole

2.3. Juvenile life sentences

2.4. Sex offenders

2.5. Habitual offenders



2.6. Mandatory minimum prison terms

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

3.1. Medical or “compassionate” release

3.2. Executive clemency

3.3. Emergency release for prison overcrowding

3.4. Pandemic relief efforts in prisons

IV. Overall Assessment of Indeterminacy in Rhode Island’s Prison-Sentencing System

4.1. General-rules cases

4.2. Prisoners outside the general rules of prison release

4.3. Overall assessment

This report is part of a larger *Prison Release: Degrees of Indeterminacy Project* funded by Arnold Ventures. For other publications from the project, including additional state-specific reports, go to the Robina Institute of Criminal Law and Criminal Justice’s website at <https://robinainstitute.umn.edu>.

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 hundreds and thousands of 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 enormously across U.S. jurisdictions.

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.

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”

- *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)

Classifying entire sentencing systems on our five-point scale is an imprecise exercise largely because all jurisdictions have multiple different sentence classes with varying degrees of indeterminacy attached to each class. Prisoners who are present within a system at any moment in time represent a broad mixture of sentence classes, and this mixture is constantly changing with releases and new admissions. Thus, our systemwide rankings cannot reflect mathematical precision.

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 would be 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*).

Most states have several different classes of sentences, each with their own rules of prison release. Each sentence class carries its own PMP. Application of the PMP measure to entire prison systems is, at best, an approximation that requires the proration of multiple classes of sentences and their PMPs according to the numbers and percentages of prisoners who have received those different classes of sentence.

Prison-Release Discretion and Prison Population Size

State Report: Rhode Island¹

Executive Summary

Rhode Island has a system of *high indeterminacy* according to our comparative ranking system (see pp. v-vi). The vast majority of prisoners are serving sentences that are one-third determinate and two-thirds indeterminate.

Rhode Island changed the degree of indeterminacy in its prison-sentencing system in 2008 by increasing the amount of credits for good behavior available to prisoners. This was done in the deliberate attempt to address unwanted prison growth. There is evidence that the effort has worked.

Terminology note

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

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. For a broad overview of the law of parole release and supervision in Rhode Island, see Alexis Lee Watts, Catherine McDonough, Mike McBride, & Edward E. Rhine, *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States: Rhode Island* (Robina Institute of Criminal Law and Criminal Justice, 2017) (including surveys of parole-release criteria, procedures for release decisions, laws relating to parole supervision and revocation, and the institutional attributes of the parole board).

Introduction

Rhode Island’s prison-rate history, 1972 to 2020

At yearend 2020, Rhode Island’s prison rate was 131 per 100,000 general population, with a population of 1,382 prisoners with sentences longer than one year.² Rhode Island’s prison rate was 48th largest among all states.

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

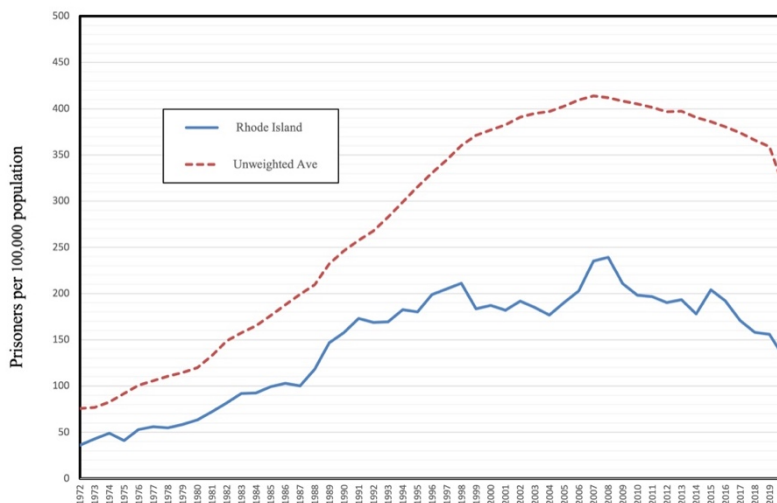
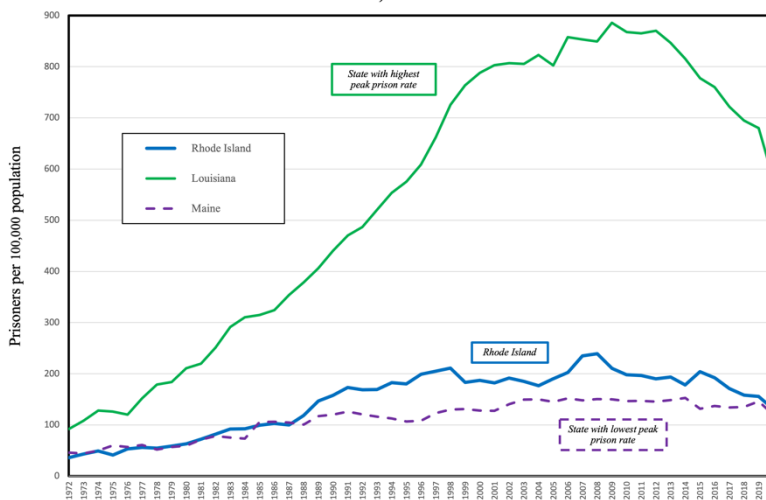


Figure 2. Prison Rate Change in Rhode Island, Louisiana, and Maine, 1972 to 2020



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 sentenced prisoners under jurisdiction of State and Federal correctional authorities on

² E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 12 table 4, 15 table 7. Preliminary information about changes in Rhode Island’s imprisonment rates after 2020 is presented below in the section on “The COVID period in Rhode Island.”.

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).

Rhode Island reached its peak prison rate in 2008 at 239 per 100,000, which dropped to 131 per 100,000 in 2020. This is a net difference of -108 per 100,000, which was the 28th largest prison-rate drop of all states from their peak positions (in various years) through 2020.

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 pace. 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, 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 have 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

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

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).

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, 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 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.

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 Rhode Island

In a separate study, the Robina Institute found 52 releases in Rhode Island from March 2020 through December 2021 that were accelerated in response to the pandemic.⁹ This number was the equivalent of about three percent of Rhode Island's pre-COVID prison population (at yearend 2019). The Robina Institute report explained as follows:

Following a request by Rhode Island prosecutors, prison authorities, and public defenders, on April 3, 2020, the Rhode Island Supreme Court issued an order establishing a process whereby superior courts and district courts would enter orders providing for the "immediate release" of 52 people from prison. The orders reduced their sentences, making the individuals eligible for release. All 52 people had less than 91 days left on their sentences and were serving time for nonviolent offenses.¹⁰

In calendar year 2020, Rhode Island's prison rate fell from 156 to 131 per 100,000—a one-year decline of -25 per 100,000. This was the 46th largest one-year drop reported among all 50 states

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, 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 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, 2022), at 35 Appendix A.

¹⁰ *Id.*, at 78 Appendix E.

for that year (tied with New Hampshire).¹¹ Measured in percentage terms, it was a 16 percent reduction in the state’s prison rate. The state’s total prison population fell by 274 people, from 1,656 to 1,382.¹²

Accelerated COVID releases were responsible for only a small share of the state’s reduction in prison population in 2020. Falling admissions were a more important factor. The number of prison admissions in the state dropped by 40 percent in 2020 compared with the previous year (from 655 to 393). Total releases in 2020 fell by 5.6 percent over 2019 (from 699 to 660).¹³

Rhode Island’s prison-rate drop reversed somewhat after calendar year 2020. In the fiscal year July 2021 through June 2022, the Rhode Island Department of Corrections reported an average daily population of sentenced prisoners of 1,420.¹⁴

I. General Rules of Prison-Release Discretion in Rhode Island

Rhode Island maintains an integrated prison and jail system.¹⁵ The rules of prison release surveyed in this report sometimes address prisoners who are serving short terms of confinement—a population that would be held in local jails in most states.

1.1. General rules of presumptive release

Most prisoners with sentences of more than six months become eligible for discretionary parole release when they have served one-third of their judicial maximum sentences.¹⁶

¹¹ 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.

¹² *Id.*, at 12 table 4.

¹³ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 18 table 8, 20 table 9.

¹⁴ See Rhode Island Department of Corrections, *Prison Population v. Prison Capacity* (undated), at <https://doc.ri.gov/node/681> (FY21-22 Cap & Midnight Count) (including prisoner counts through June 2022).

¹⁵ E. Ann Carson, *Prisoners in 2018, Jurisdiction Notes* (Bureau of Justice Statistics, 2020), at 6.

¹⁶ R.I. Gen. Laws §§ 13-8-8, 13-8-9. Maximum penalties for specific crimes are set out in the statute that defines the substantive offense. Rhode Island has no general grading scheme within which crimes are classified. See, e.g., R.I. Gen. Laws § 11-5-2 (stating that felony assault convictions carry a maximum of 20 years if serious bodily injury resulted and six years if [non-serious] bodily injury or no injury resulted); R.I. Gen. Laws § 11-8-1 (stating that “[e]very person who shall commit burglary shall be imprisoned for life or for any term not less than five (5) years”).

1.2. Reconsideration after denial of release

Upon denial of release, the parole board may schedule a reconsideration hearing at a “reasonable interval” within six years, or they may deny further reconsideration through the remainder of the prisoner’s term.¹⁷

1.3. Generally-available credits: types and amounts

Several different types of credits against sentence may be earned by prisoners in Rhode Island for different behaviors or accomplishments. Awards of credits are within the discretion of the department of corrections. Prisoners who earn the full credits generally available for good behavior, prison work, and program participation accrue credits at a rate of 17 days per month.¹⁸

a. Credits for good behavior

Most prisoners with maximum sentences of more than one month earn credits for good behavior at the rate of ten days per month. Credits may accrue “for each month that prisoner has faithfully observed all the rules and requirements of the institutions and has not been subjected to discipline.” The award of credits requires “the consent of the director of the department of corrections or his or her designee and upon recommendation by the assistant director of institutions/operations.”¹⁹

Such credits for good behavior are not available to prisoners convicted of murder, assault with intent to commit murder, first degree sexual assault, first or second degree child molestation sexual assault, and kidnapping of a minor.²⁰ Prisoners convicted of second and third degree sexual assault, assault with intent to commit first degree sexual assault, and production or possession of child pornography often earn credits for good behavior at reduced rates, according to the following formulas: Those with judicial maximum sentences of one to ten years earn the same number of days of credits for good behavior per month as there are years in their maximum sentences. Those with maximum terms of six months to one year earn one day of credit per month. Those with maximum sentences of ten years or longer earn credits for good behavior capped at a rate of ten days per month.²¹

¹⁷ R.I. Parole Board, *Guidelines* (July 20, 2022), Section 1.4(D)(1). For prisoners convicted of crimes committed while at or under 22 years of age, the board may deny further consideration for parole release but, if the board votes to grant reconsideration, it must be scheduled within three years. *Id.*, at Section 1.4(D)(3).

¹⁸ See R.I. Gen. Laws § 42-56-24(c),(f),(g) (adding up to 17 total days per month from a potential ten days for good behavior, two days for prison work, and five days for program participation).

¹⁹ R.I. Gen. Laws § 42-56-24(c).

²⁰ R.I. Gen. Laws § 42-56-24(a).

²¹ R.I. Gen. Laws § 42-56-24(b).

b. Credits for prison work

All prisoners except those with life sentences may earn an additional two days of credits per month if they have “faithfully engaged in institutional industries.”²²

c. Credits for program participation

Prisoners may also earn five days of credits per month if they have “participated faithfully in programs [determined] to address that prisoner's individual needs that are related to his/her criminal behavior,” plus an additional 30 days of credits when they have “successfully completed” a program. Life prisoners and those convicted of certain violent and sex offenses (as listed in the second paragraph of section 1.3(a) above) may not earn such credits.²³

d. Credits for meritorious service

Prisoners serving sentences for certain violent and sex offenses (as listed in the second paragraph of section 1.3(a) above) are also eligible to earn up to three days of credits per month, with a maximum of thirty-six days per year, if they have “performed heroic acts affecting the lives and welfare of the institutional personnel, inmates, or the general public, or [have] submitted extraordinary and useful ideas and plans which have been implemented for the benefit of the state resulting in substantial savings and/or a higher degree of efficiency or performance while participating in and completing academic or vocational education programs, or [have] submitted useful ideas concerning academic or vocational programs which have been implemented at the adult correctional institutions.”²⁴

1.4. Effects of credits on parole-release eligibility

The accrual of credits does not affect the timing of prisoners’ first eligibility for discretionary parole release, except in some prison overcrowding emergencies (see section 3.3 below).²⁵

²² R.I. Gen. Laws § 42-56-24(f). This section is applicable to prisoners who have been sentenced to imprisonment for more than one month.

²³ R.I. Gen. Laws § 42-56-24(g).

²⁴ R.I. Gen. Laws § 42-56-26.

²⁵ R.I. Gen. Laws § 13-8-9 (Prisoners may only be released on parole after serving “not less than one-third ($\frac{1}{3}$) of the term for which he or she was sentenced.”). Good time credits may be applied to advance the parole-release eligibility of nonviolent offenders as a remedy for prison overcrowding, but only after other measures have been exhausted. R.I. Gen. Laws § 42-26-13.3(e),(f).

1.5. Effects of credits on judicial maximum term

Credits are deducted from prisoners' judicial maximum terms to produce earlier dates of mandatory release.²⁶

1.6. Loss of credits

Discipline for bad conduct results in a deduction of one day of credits “[f]or every day a prisoner shall be shut up or otherwise disciplined.” Credits may be restored upon a showing of “subsequent good behavior and disposition to reform.”²⁷

II. Prisoners Outside the General Rules in Rhode Island

2.1. Life sentences without parole

Some first-degree murders accompanied by statutorily enumerated aggravating circumstances carry authorized sentences of life without parole (LWOP). Such sentences are not mandatory and may be imposed only in accordance with detailed statutory procedures that resemble capital sentencing procedures in some other states. Even when statutory aggravating factors have been proven, sentencing judges retain discretion to weigh mitigating factors and impose a life sentence with the possibility of parole.²⁸

2.2. Life sentences with possibility of parole

Prisoners with life sentences for first- or second-degree murder become eligible for discretionary parole release after serving 25 years. Other prisoners with life sentences are eligible after serving 20 years.²⁹ Prisoners convicted of first- or second-degree murder who were sentenced to a term of years rather than life imprisonment become eligible for discretionary parole release after serving 50 percent of their judicial maximum terms.³⁰

2.3. Juvenile life sentences

In contrast with most states in the wake of the Supreme Court's 2012 decision in *Miller v. Alabama*,³¹ Rhode Island's courts and legislature have not revised the state's rules concerning

²⁶ R.I. Gen. Laws § 42-56-24(b),(c),(f),(g).

²⁷ R.I. Gen. Laws § 42-56-24(d),(e).

²⁸ For the types of first-degree murders that are eligible for sentences of life without parole, see R.I. Gen. Laws §§ 11-23-2, 11-23-2.1. For the multi-stage procedures that must be followed to obtain such sentences, see R.I. Gen. Laws § 12-19.2-1 et seq.

²⁹ R.I. Gen. Laws § 13-8-13(a)(4),(5).

³⁰ R.I. Gen. Laws § 13-8-9(b).

³¹ See *Miller v. Alabama*, 567 U.S. 460, 480 (2012) (holding mandatory sentences of life without parole unconstitutional when applied to defendants who were under age 18 at the time of their crimes; stating further

LWOP sentences imposed on defendants who were under age 18 at the time of their offenses.³² As of 2020, no prisoners were serving such sentences in Rhode Island.³³

2.4. Sex offenders

Most sex offenders are subject to the general rules of parole eligibility at one-third of their judicial maximum terms, but Rhode Island's parole guidelines state that they "will not generally be seriously considered for parole" until they have completed sex offender treatment.³⁴

2.5. Habitual offenders

Defendants who meet the statutory criteria of "habitual offenders" in Rhode Island must receive a consecutive sentence with a judicial maximum term of up to 25 years and a minimum term to be selected by the sentencing court before becoming eligible for parole.³⁵

In order for the habitual offender statute to be triggered, defendants must be newly convicted of "any offense punished by imprisonment for more than one year." In addition, they must

that, "[a]lthough we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). *See also* *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016) (stating that *Miller* requires "a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence."). It is possible that Rhode Island's unusually elaborate procedural framework for the imposition of sentences of life without parole would satisfy *Miller's* strictures without amendment (see section 2.1). This process always requires the individualized consideration of mitigating factors, see R.I. Gen. Laws § 12-19.2-4 ("Consideration of aggravating and mitigating circumstances").

³² In 2017, proposed legislation to create parole-release eligibility after 15 years for all juvenile offenders with life sentences was passed by the state Senate but failed in the House. *See* Katie Mulvaney, *Bill would end life-without-parole sentences for minors in R.I.*, Providence Journal (June 12, 2017), <https://www.providencejournal.com/story/news/courts/2017/06/12/bill-would-end-life-without-parole-sentences-for-minors-in-ri/20607624007/>; Associated Press, *Rhode Island's try to ban juvenile life without parole fails* (July 30, 2017), <https://apnews.com/article/23440555f419449e8f374102d321ccae>.

³³ *See* Campaign for the Fair Sentencing of Youth, *29 States and DC Ban or Have No One Serving Life Without Parole for Children*, at <https://www.fairsentencingofyouth.org/media-resources/states-that-ban-life/> (last visited November 2, 2022) (listing Rhode Island as a state that still allowed sentences of life without parole for juvenile offenders "but currently do not have anyone serving the sentence"); *see also* Katie Mulvaney, *Bill would end life-without-parole sentences for minors in R.I.*, Providence Journal (June 12, 2017), <https://www.providencejournal.com/story/news/courts/2017/06/12/bill-would-end-life-without-parole-sentences-for-minors-in-ri/20607624007/> (reporting that "[n]o juveniles are currently serving life-without-parole sentences in Rhode Island, but nine are facing decades behind bars, with several facing multiple life terms").

³⁴ R.I. Parole Board, *Guidelines* (July 20, 2022), Section 1.5(E)(1) ("An individual sentenced for sexual offense(s) will not generally be seriously considered for parole until they have successfully taken part in the sex offender treatment program (SOTP) while serving their sentence.").

³⁵ R.I. Gen. Laws § 12-19-21(b).

have “two (2) or more felony offenses arising from separate and distinct incidents and sentenced on two (2) or more occasions to serve a term in prison.”³⁶

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

3.1. Medical or “compassionate” release

The parole board may grant “medical parole” to any prisoner not serving a sentence of life without parole who is terminally ill, severely ill, or permanently physically or cognitively incapacitated. The board must consider whether “there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the release is compatible with the welfare of society and will not so depreciate the seriousness of the crime as to undermine respect for the law.”³⁷

The parole board may also grant “geriatric parole” to any prisoner not serving a sentence of life without parole who is an “aging prisoner.” A prisoner eligible for geriatric parole may also be granted medical parole.³⁸

3.2. Executive clemency

The governor, “by and with the advice and consent of the senate,” has exclusive authority to exercise “the pardoning power, except in cases of impeachment, or as from time to time may be prescribed by law.”³⁹ Only one pardon has been granted in the last decade, which was issued to a person already deceased.⁴⁰

3.3. Emergency release for prison overcrowding

In 1993, Rhode Island adopted a statutory scheme that sets out successive steps to be taken in circumstances of prison overcrowding. The law is triggered when the prison population exceeds 95 percent of annual capacity for at least 30 consecutive days, or over 100 percent of capacity for at least five consecutive days.⁴¹ To administer the law, the legislature created a permanent agency called the Criminal Justice Oversight Committee (hereinafter “the committee”) with powers to “set capacities for each secure facility” and “[c]oordinate and

³⁶ R.I. Gen. Laws § 12-19-21(a).

³⁷ R.I. Gen. Laws § 13-8.1-4(a),(g); *see also* R.I. Gen. Laws § 13-8.1-3(2),(3),(4),(5) (defining terms).”

³⁸ R.I. Gen. Laws § 13-8.1-4(b). An “aging prisoner” is one that is 65 years of age or older and suffers from functional impairment, infirmity, or illness. R.I. Gen. Laws § 13-8.1-3(1).

³⁹ R.I. Const. art. IX, § 13.

⁴⁰ Restoration of Rights Project, Rhode Island: Restoration of Rights, Pardon, Expungement & Sealing (updated Aug. 23, 2022), at https://ccresourcecenter.org/state-restoration-profiles/rhode-island-restoration-of-rights-pardon-expungement-sealing/#II_Pardon_policy_practice.

⁴¹ R.I. Gen. Laws § 42-26-13.3(a).

oversee such remedial measures as may be needed to address and reduce overcrowding at the adult correctional institutions.”⁴²

The overcrowding statute is designed to create multiple layers of responses to prison overcrowding, with more drastic measures authorized only when earlier efforts have failed. Within five days of first notice of prison overcrowding, the committee must hold an emergency meeting to select among several authorized measures as it “deems appropriate” to address the issue. The committee’s options at this stage include acceleration of bail for pretrial detainees and parole and probation violators, disposal of pending cases against sentenced inmates, and implementation of other systemic improvements that may expedite that process.⁴³

After 60 days, if the above measures have failed, the committee must “encourage, coordinate and oversee efforts to initiate one or more” additional efforts described in the statute, including plans to “[a]ccelerate parole hearings for those currently eligible and expedite release of those granted parole; ... [t]emporarily suspend existing guidelines for parole eligibility and consider all prisoners statutorily eligible for release or parole; [and] [u]tilize statutorily authorized grants of meritorious good time to accelerate the release of nonviolent sentenced offenders who are within thirty (30) days of expiration of sentence.”⁴⁴

After another 60 days, if the overcrowding emergency persists, the committee may direct the parole board to include all forms of good time credits (see section 1.4) in the computation of nonviolent offenders’ minimum terms to first eligibility for discretionary parole release.⁴⁵

Finally, after another 60 days of failure, the governor is empowered to grant all nonviolent offenders additional “emergency good time” in ten day increments, to be applied to computation of their parole eligibility dates, until sufficient numbers of eligible offenders have been released to meet mandated prison population levels.⁴⁶

⁴² R.I. Gen. Laws §§ 42-26-13, 42-26-13.2(1),(4). The committee consists of the following members: (1) The presiding justice of the superior court; (2) The chief judge of the district court; (3) The attorney general; (4) The public defender; (5) The superintendent of state police; (6) The director of the department of corrections; (7) The chairperson of the parole board; (8) The director of the Rhode Island public safety grants administration; (9) A member of the governor's staff selected by the governor; (10) Four (4) members of the general assembly, one appointed by the speaker; one appointed by the president of the senate; one appointed by the house minority leader; and one appointed by the senate minority leader; (11) An elector of the state, appointed by the governor and designated as chairperson of the committee; (12) A member of the Victims' Rights Group, appointed by the speaker of the house; (13) The president of the Rhode Island Brotherhood of Correctional Officers; and (14) The chief justice of the state supreme court. R.I. Gen. Laws § 42-26-13(b).

⁴³ R.I. Gen. Laws § 42-26-13.3(a),(b).

⁴⁴ R.I. Gen. Laws § 42-26-13.3(d)(2),(3),(4).

⁴⁵ R.I. Gen. Laws § 42-26-13.3(e). For prisoners who have earned the full measure of credits available for good conduct, prison work, and program participation, this would have the effect of reducing the minimum term to parole eligibility by about one-third.

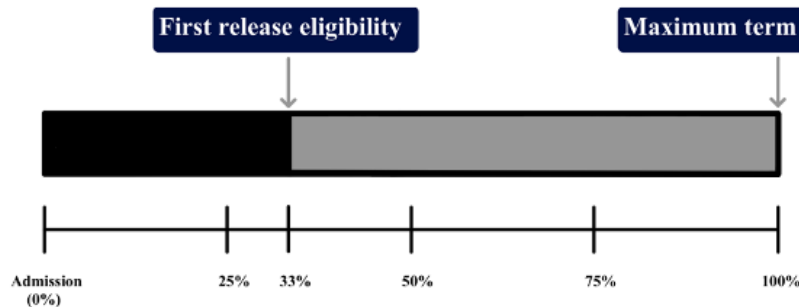
⁴⁶ R.I. Gen. Laws § 42-26-13.3(f).

IV. Overall Assessment of Indeterminacy in Rhode Island’s Prison-Sentencing System

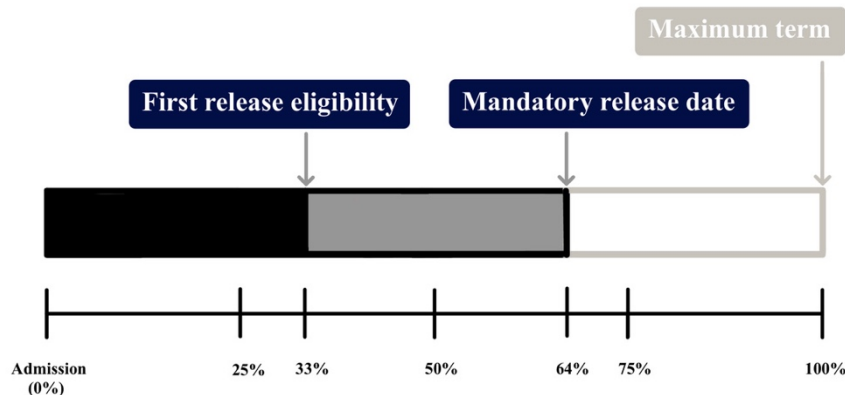
4.1. General-rules cases

For general-rules prisoners who have earned no credits for good conduct, eligibility for discretionary parole release occurs at the one-third mark of their judicial maximum sentences, as shown in Figure 3 below. Prisoners can earn a variety of types of credits based on their conduct, which can reduce their maximum terms but do not affect the timing of parole-release eligibility. Figure 4 illustrates cases in which prisoners have earned the full credits generally available for good behavior, prison work, and program participation. At ordinary rates, such credits would accrue at a rate of 17 days per month.

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



Rhode Island Figure 4. Prison-Release Timeline for General-Rules Prisoners with Credits for Good Conduct of 17 Days per Month



Under the assumptions in Figures 3 and 4, most prison sentences in Rhode Island are 33.33 percent determinate (that is, one-third of time served is controlled by the judicial sentence) and 66.66 percent indeterminate. Within the indeterminate segment of the sentence, discretion over time served at the back end of the system is distributed more or less equally across the parole board and department of corrections. It is possible for the department of

corrections to bestow more credits for good conduct than depicted in Figure 4 (for “meritorious service”), but this would probably occur in a tiny fraction of all cases.

4.2. Prisoners outside the general rules of prison release

The main categories of prisoners in Rhode Island not subject to the general rules discussed above are those with life sentences, those sentenced as habitual criminals, and those serving mandatory minimum sentences.

As of yearend 2021, there were 233 life prisoners in Rhode Island, 31 of whom had sentences of life without parole. This was 15.7 percent of the state’s average monthly sentenced population in 2021 (1,484).⁴⁷ We lack data on the number of prisoners in the standing population who are sentenced as habitual prisoners or are serving mandatory minimum prison terms.

4.3. Overall assessment

Rhode Island has a system that operates with a *high degree of indeterminacy* according to our comparative ranking system (see pp. v-vi). Most prisoners are serving sentences that are one-third determinate and two-thirds indeterminate. For this large portion of the prison population, the decisions of back-end officials with prison-release discretion have a population-multiplier potential (PMP) of 3:1 (see p. vii). That is, the general-rules prison population in Rhode Island would be three times as large in a *longest-time-served scenario* (in which no one ever gets discretionary release or any credits toward release) than in an *shortest-time-served scenario* (in which everyone is released as soon as legally possible and everyone receives a full allocation of credits toward release). Given that general-rules prisoners appear to make up the large majority of all Rhode Island prisoners, 3:1 is probably a fair approximation of the PMP for the entire system.

Life sentences in Rhode Island are more indeterminate than in many other states because the minimum terms to parole-release eligibility for life prisoners are comparatively low.⁴⁸ In general, based on the average life expectancy of prisoners, parole eligibility for life sentences occurs at roughly the halfway point in the remaining life span of average-age prisoners serving life sentences.⁴⁹

⁴⁷ R.I. Department of Corrections, *Calendar Year 2021 Population Update* (2021).

⁴⁸ 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), at 116-20 table 11.

⁴⁹ For purposes of this project, across all states, we assume an average age at admission of 35 years with an average remaining lifespan of 45 years. Standard assumptions like this make it possible to compare state practices but overlook the fact that prisoner demographics vary somewhat from state to state.

Also, Rhode Island places elaborate procedural safeguards on the imposition of LWOP sentences. This probably reduces the absolute numbers of prisoners who are serving such sentences. Because LWOP sentences are fully determinate unless commuted, any element of system design that limits their numbers has the tendency to increase the degree of indeterminacy in the system. The degree of increase is small, however, in states that would not otherwise produce large numbers of LWOP sentences.

Rhode Island changed the degree of indeterminacy in its prison-sentencing system in 2008 by increasing the amount of credits for good behavior available to prisoners. This was done in the deliberate attempt to address unwanted prison growth, and there is some evidence that the effort succeeded:

Prior to May 2008, Rhode Island had one of the most conservative state sentence reduction formulas in the country. With the population reaching historically high levels in 2007 and 2008 and threatening to exceed prison capacity, the state's General Assembly, with overwhelming bipartisan support, enacted legislation designed to increase public safety, curb spending, and reduce recidivism of released inmates. The legislation increased the amount of behavioral good time credit and provided credits for program participation and completion. Increased levels of program participation, program completion, and good behavior time, we have experienced an overall decrease in prison population and no increase in recidivism.⁵⁰

⁵⁰ R.I. Department of Corrections, *Fiscal Year 2019 Annual Population Report* (2019), at 17 (footnote omitted).