

# Factors Affecting Time Served in Prison: The Overlooked Role of Back-End Discretion

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# Introduction

*When researchers, policymakers, and advocates examine the impact of long sentences, they typically focus on issues such as the statutory lengths of sentences or the roles that prosecutors and judges play in imposing sentences. While analyses of such “front-end” factors are important, they cannot sufficiently explain the role of “back-end” factors, specifically the laws and administrative rules that govern the awarding of different forms of sentence credit and prison release. This constitutes a significant gap in our understanding of how long sentences work.*

As research by Kevin Reitz and colleagues has documented,<sup>1</sup> state prison-release frameworks have far greater discretionary power over the time individuals actually serve—and, by extension, the size of prison populations—than has been previously understood.

To assess the impact of the use of long sentences of 10 or more years in the U.S., it is critical to appreciate how the interplay between the laws and administrative rules governing prison release affect the actual length of time individuals spend behind bars. Based on research conducted as part of the Robina Institute of Criminal Law and Criminal Justice’s Prison Release: Degrees of Indeterminacy project,<sup>2</sup> this brief’s first section provides an overview of the nation’s parole and non-parole prison release systems. This overview sets up an examination of how these systems’ statutory and administrative policy frameworks influence release decisions, sentence credit awards, and the actual time individuals serve against the sentence they receive in court (i.e., the judicial maximum term). In the second section, the brief uses Colorado as a short case-study to show how one state’s back-end laws and policies affect the time individuals serve. Finally, in the concluding section, the brief points to future research and policy work on prison-release decision making including other empirical factors other than statutory and administrative frameworks that influence how much time an individual serves.



# Key Takeaways

- + **U.S. states have varied and highly complex frameworks for sentencing and prison release**, which are enormously consequential for determining how much time an incarcerated person serves.
- + **While sentencing systems are characterized as “indeterminate” or “determinate,” these terms do not adequately describe the systems’ back ends**, which are far more indeterminate than has been previously recognized.
- + **Good time and earned time credits have significant influence over time served, but** the practices that govern their use are often not transparent on a systemwide basis.
- + **Within a state’s sentencing structure, there is variation in release discretion based on the type of commitment offense**. People serving time for violent offenses, on average, receive substantially longer sentences, serve a greater portion of their sentence before parole eligibility, and spend more time in prison past their parole eligibility date due to parole denials.
- + **Changing the statutes or administrative rules that govern parole release and good time or earned time accrual can have a significant impact on time served without any changes to sentencing**. For the population of individuals serving long sentences, relatively small changes to statute or policy may result in potentially dramatic effects on time served.

## GLOSSARY OF TERMS

- + **Judicial Maximum Term:** the maximum term of confinement that someone could serve under the terms of the judicial sentence
- + **Prison Release Indeterminacy:** unpredictability of time-to-be-served at the time of the judicial sentence
- + **Mandatory Release Date:** the date of automatic discharge after serving a specified term in prison. This date can be moved up and back in most states depending on the accrual and forfeiture of good time and earned time credits.
- + **Parole Eligibility Date:** the earliest point in the sentence at which someone is eligible to be released by the parole board
- + **Good Time:** sentence credits that reduce time served and are awarded for avoiding behavioral or disciplinary infractions
- + **Earned Time:** sentence credits that reduce time served and are awarded for participating in designated activities, such as work or specific programs

## **SECTION 1: DEGREES OF INDETERMINACY IN PAROLE AND NON-PAROLE RELEASE SYSTEMS**

Sentencing systems are traditionally classified as being either determinate or indeterminate, based on whether the timing of prison release is determined by a parole board, or if individuals are released after a set period of time. Thirty-four states are considered indeterminate and use parole boards to make release decisions for a majority of prison releases. Sixteen states, Washington, DC, and the federal government have abolished discretionary parole for the majority of releases and are therefore considered to be determinate. These determinate jurisdictions release individuals on their mandatory release date, which is calculated based on the judicial maximum term after taking into account sentence credit discounts such as good time. (See Table 1 for an outline of the predominant prison release systems in 52 U.S. jurisdictions.)

While the terms “indeterminate” and “determinate” are used to characterize the front-end of sentencing systems, they do not adequately describe the systems’ back ends, which are far more indeterminate than has been previously recognized. For the vast majority of prison sentences, including most long sentences of 10 year or more, varying degrees of indeterminacy are built in at the statutory and policy level. This is true even for the relatively small percentage of sentences that require people to serve their maximum judicial sentence, including life without the possibility of parole, and other sentences that mandate that individuals serve 100% of the judicially determined sentence; even these can be modified through executive clemency, changes in statute, or other factors that might decrease time served. For the remaining offenses, even in determinate sentencing systems, the portion of their judicial maximum term that individuals will actually serve is never completely certain at the front end.

This uncertainty stems from the fact that all jurisdictions offer sentence credit discounts to most incarcerated individuals; these discounts can reduce time served, based on varying levels of statutory and administrative decision making. Good time credits are statutory-based and enable people who avoid disciplinary or behavioral violations to reduce the time they serve against their judicial maximum term. Earned time credits are also statutory-based and are awarded when an individual completes designated programs or activities. Unlike good time credits, earned time credits depend upon the availability of specific programs or

activities, which typically include work, educational, vocational, and rehabilitative programs. We analyze these credits further below using several states as examples.

**TABLE 1: PRESENCE AND ABSENCE OF PAROLE-RELEASE DISCRETION IN 50 STATES, THE DISTRICT OF COLUMBIA, AND THE FEDERAL SYSTEM**

States with parole-release discretion for a large percentage of prisoners, including life prisoners*	Alabama, Alaska, Colorado, Connecticut, Georgia, Hawaii, Idaho, Kentucky, Maryland, Massachusetts, Michigan, Mississippi (split system), Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York (split system), North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, and West Virginia
States with parole-release discretion for a large percentage of prisoners, but not for life prisoners	Arkansas, Iowa, Louisiana, Pennsylvania, South Dakota, and Wyoming
States with no parole-release discretion for the vast majority of prisoners, but some life sentences are parolable**	California (split system), Delaware, Kansas, Minnesota, New Mexico, Ohio (split system), Oregon, Washington, Wisconsin, and the District of Columbia
States with no parole-release discretion for the vast majority of prisoners, and no parolable life sentences***	Arizona, Florida, Illinois, Indiana, Maine, North Carolina, Virginia, and the federal sentencing system

\*Most states in this category have PRD for the majority of prison sentences, but two have "split systems" in which a substantial percentage of all prison sentences have PRD, but less than a majority.

\*\* In Minnesota, release discretion for lifers is held by the Commissioner of Corrections. In Wisconsin, it is held by sentencing courts. We apply the term "parolable life sentences" to these states even though the release decisionmaker is someone other than a parole board.

\*\*\*The LWOP-only designations in rows 2 and 4 of the table do not include parolable life sentences for juvenile offenders who were under 18 at the time of their crimes, which are constitutionally required in many cases even if not authorized in statute.

Note: Adapted from Reitz, K. et al. (2022). American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size. Final Report. Adapted with permission.

Source: Reitz et al. (2022). American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report. Robina Institute of Criminal Law and Criminal Justice.

Despite the significant influence that back-end laws and policies have over the time incarcerated individuals serve, they have received little attention from research and scholarship. In *American-Prison Release System: Indeterminacy in Sentencing and the Control of Prison Population Size*<sup>3</sup>, scholars at the Robina Institute of Criminal Law and Criminal Justice aimed to address the gap. Drawing from separate reports on all 52 U.S. jurisdictions, this report represents the first national-level analysis of degrees of indeterminacy in back-end release mechanisms. Its analysis provides new foundational concepts to identify and examine profound and complex differences among back-end laws and policies. In the discussion below, we distill some of this report's key findings to discuss how good time, earned time, the structure of parole, and the structure of sentencing in non-paroling systems influence time served. We then show how these factors affect long sentences.

### Good time and earned time credits

Forty-five states, Washington, D.C., and the federal government offer credit-based sentencing deductions, such as good time and earned time.<sup>4</sup> Good time credits are generally awarded to eligible individuals by default unless they receive behavioral or disciplinary infractions. This could include receiving a misconduct violation or simply not participating in required programming. Earned time credit is generally awarded for employment in prison, engaging in educational or vocational activities, or participating in specific treatment programs. In other words, earned time credits require some initiative on the part of the individual serving time. One key feature of earned time credits is that they depend on program availability, which is not the case for good time credits. If a certain institution lacks job openings or space in eligible programs, individuals can't earn those credits. It should also be noted that while states may use the term good time or earned time to describe their system of sentence credits, the requirements for each often overlap.

Both good time and earned time formulas vary considerably, sometimes even within the same state for different felony grades. Most commonly they are calculated as a credit per a certain number of days served. For example, Arizona awards one day of earned time credit per six days served<sup>5</sup> for most sentences, while Arkansas awards up to 30 days of good time credits per one month served for lower severity sentences.<sup>6</sup> Statute dictates whether sentence credits move up the mandatory release date, the parole eligibility date, or, in some cases, both. Whether states allow credits to move up the mandatory release date or the parole eligibility date has enormous implications for determining total time served. Credits in Arizona—a determinate sentencing state—move up the mandatory release date; because of this, individuals earning credits are guaranteed a release date earlier than their maximum judicial term. Credits in Arkansas, while much higher, only move up the parole eligibility date,

not the mandatory release date. This means that even with full credit earnings, an individual in Arkansas could serve the maximum judicial term if the parole board declined to release.

Many states also cap the amount of time that can be deducted from the sentence due to good time or earned time credits. When comparing the “generosity” of sentence credits across states, this cap can matter more than the rate of accrual. For states in which credits accrue at an established rate over time, Reitz and colleagues consider credit amounts that subtract 0-19% from sentence requirements to be “minimal,” 20-39% to be “average,” and 40% and above to be “generous.”<sup>7</sup> For example, while Arizona awards one day of earned time per six days served, the maximum deduction is 15% from the judicial maximum. Thus, individuals in Arizona earning the highest possible rate of sentence credits will still serve 85% of their sentence, minimizing the effect of credit earnings. In Arkansas, good time can move the parole eligibility date from the 33% mark of the maximum judicial sentence to the 17% mark (a 48% reduction), which makes the award quite generous.

While good time and earned time credits can exert significant influence over time served, the practices that govern their use are often not transparent. The same is true for systemwide statistics on credit awards.<sup>8</sup> In all jurisdictions, individuals can lose credits for disciplinary or behavioral infractions, although most jurisdictions also allow credits to be restored—typically through the discretion of correction officials. At a national level, evidence from prison survey data shows that incarcerated individuals seldom lose good time due to disciplinary infractions.<sup>9</sup> But we have little knowledge about other aspects of credit administration, such as what percentage of the prison population is able to earn maximum credit amounts or whether there are significant differences in credit administration between, or even, within jurisdictions. In contrast to parole release, the awarding or rescinding of good time and earned time credits is not concentrated in a centralized decision-making body, but rather is decentralized among officials in individual correctional facilities. The lack of data, transparency, and centralized administration makes it difficult to know how good time and earned time credits are awarded, rescinded, and restored at either the jurisdiction or national level.

## Indeterminacy in Parole Release Systems

In the 34 states with parole release discretion, the law and policies governing how good time and earned time are awarded constitute the most consequential factor in shaping time served through their impact on two dates: the point at which an individual becomes eligible for release on parole (i.e., parole eligibility date) and the point at which an individual must be released from prison (i.e., mandatory release date). Generally, state laws set an initial parole eligibility date at a certain percentage of the judicial maximum term. In 17 of the 34 paroling

states,<sup>10</sup> good time and earned time credits can move parole eligibility earlier than initially set by the judicial maximum term. One often overlooked aspect of parole release policy are the rules and regulations surrounding wait times after a release denial.<sup>11</sup> Twenty states limit waiting periods after parole denial to one or two years for most people. Twelve states give parole boards discretion to set waiting periods of any length. In states that allow long wait times before parole reconsideration, waiting periods can add a significant amount to total time served for those who are denied parole.

Unlike the parole eligibility date, the mandatory release date is the date of automatic discharge after serving a specified term. In 24 of the 34 paroling states, good time and earned time credits can shift an individual's mandatory release date earlier than the judicial maximum term.<sup>12</sup>

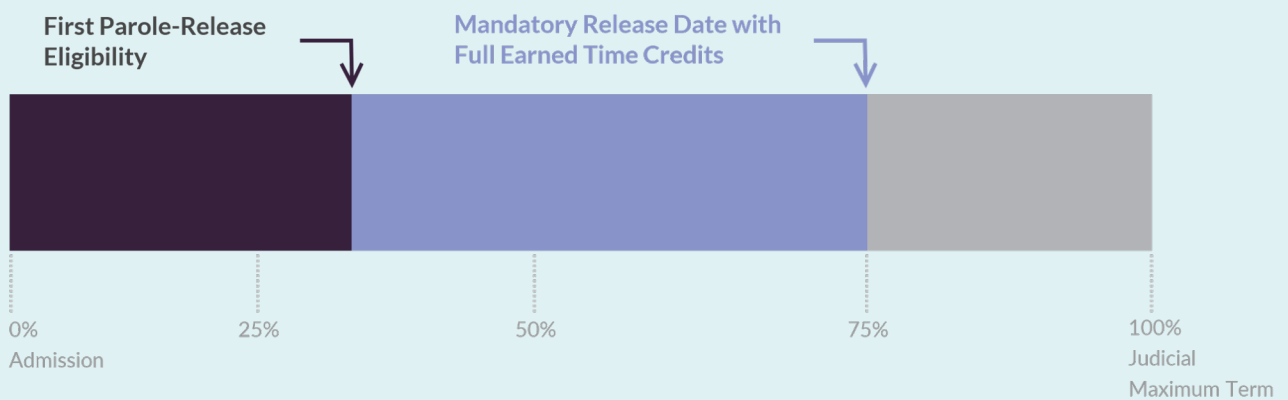
Colorado is an example of a parole-granting state that is considered highly indeterminate: back-end authorities such as the Colorado State Board of Parole and the Department of Corrections are given substantially more discretion over total time served than the front-end judicial authorities who issue the initial prison sentence. This results in a complex process when calculating potential release dates.

The vast majority of prison admissions in Colorado are convicted of offenses that make them eligible for parole release at the 50% mark of their judicial maximum term.<sup>13</sup> This 50% sentence discount is Colorado's version of good time credit; it can be lost only when an individual engages in serious misconduct during incarceration. Further, most people serving lower-level felonies are eligible to earn up 12 additional days per month off their judicial maximum term through earned time credits, assuming eligible programs and activities are offered and accessible in their institution.<sup>14</sup> There is also an additional credit of up to 120 days per sentence for completing specific risk reduction programs, known as milestone credits.

Compared to other states, Colorado's credit earning formula is about average in its generosity. However, because Colorado's earned time can modify the mandatory release date *and* the parole eligibility date, its credit system has significant potential impact over time served.<sup>15</sup> Earned time credits and milestone credits can move the parole eligibility date to approximately the 31.5% mark of an individual's judicial maximum term, and the mandatory release date to about 70% of their initial sentence (See Figure 1). Therefore, individuals with 10-year judicial maximum terms could theoretically be released as early as 3 years and 2 months into their sentence. Alternatively, if the Department of Corrections decided to withhold credit-based sentence deductions, and the parole board declined to release, they could serve the full judicial maximum term of 10 years.

Now, let us consider how Colorado's prison-release system affects individuals serving long sentences. Based on calculations using the Bureau of Justice Statistics restricted National Corrections Reporting Program (NCRP) dataset,<sup>16</sup> only 1.7% of all individuals released in 2016 in Colorado had a judicial maximum sentence of 10 years or more (excluding people serving life sentences).<sup>17</sup> While the average judicial maximum sentence in this group was 33.4 years, the average time served was 14.6 years. In other words, individuals sentenced to long sentences in Colorado, on average, served 44% of their judicial maximum term.<sup>18</sup> This significant difference—between time sentenced and time served for long sentences—is due to the use of back-end discretion.

**FIGURE 1: COLORADO PRISON-RELEASE TIMELINE FOR GENERAL OFFENSES**



Note: Adapted from Reitz et al. (2022). Prison-Release Discretion and Prison Population Size State Report: Colorado. *Robina Institute of Criminal Law and Criminal Justice*. Adapted with permission.

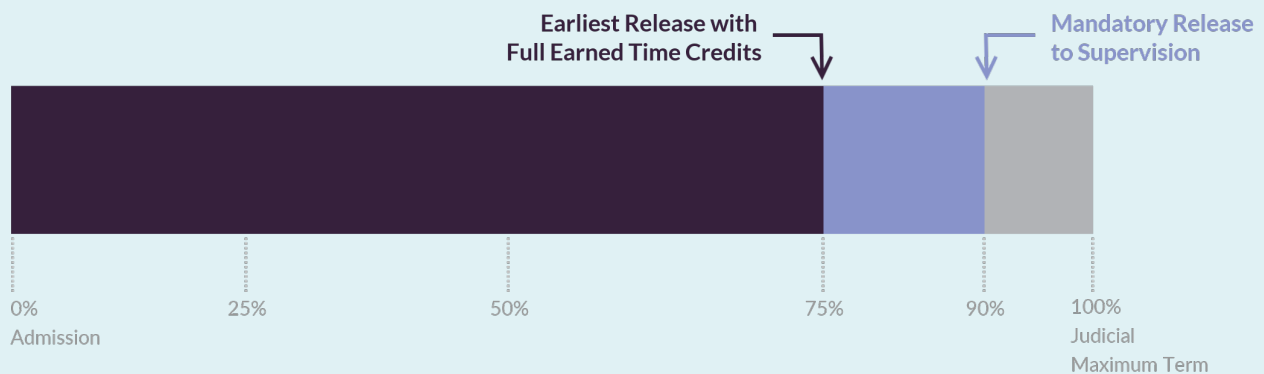
## Non-Parole Release Systems

In the 16 jurisdictions without discretionary parole, good time and earned time credits are the primary mechanism to shorten time served below the judicial maximum term.<sup>19</sup> Evidence suggests that credit-based deductions are rarely lost due to disciplinary infractions, so the differences in release times between non-paroling states depend on the statutory differences in the amount of credit an individual can accrue and the feasibility of earning the highest amount of credits.<sup>20</sup>



North Carolina is an example of an extremely low-indeterminacy, non-paroling state. Individuals receive a minimum sentence that is between 50% to 80% of the maximum sentence, depending on the felony level. For most felony sentences, or what might be called “general-rules cases”, the last nine or 12 months of a judicial sentence are served out on post-release supervision.<sup>21</sup> North Carolina has no good time, but earned time credits accrue at up to nine days per month and are given for maintaining full-time work and program activities.<sup>22</sup> With full earned credits, individuals can move their mandatory release date to the minimum sentence, but can be released at any time between the minimum and maximum term of imprisonment depending on how many earned time credits they receive.

**FIGURE 2: NORTH CAROLINA PRISON-RELEASE TIMELINE FOR GENERAL RULES CASES (10 YEAR SENTENCE)**



Note: Adapted from Reitz, K. (2022) Prison-Release Discretion and Prison Population Size. State Report: North Carolina. *Robina Institute of Criminal Law and Criminal Justice*. Adapted with permission.

Because the minimum and the maximum term of imprisonment are close together – particularly for longer sentences – and credits cannot move the release date prior to the minimum term, the effect of credits is somewhat limited in North Carolina. Figure 2 shows the point of release for individuals who have enough earned time credits to move their mandatory release date to their judicial minimum term. People who did not earn any of these credits, or who lost all earned time credits because of disciplinary infractions, would be released at the maximum term of incarceration (i.e., about 12 months before their maximum judicial sentence). On a 10-year maximum sentence, the minimum term of imprisonment would be seven and a half years and the maximum term nine years.

Calculations using NCRP data from North Carolina show that 6.7% of all individuals released in 2016 had a sentence of 10 years or more (excluding those who had a life sentence).<sup>23</sup> The average judicial maximum sentence in this group was 16.7 years and the average time served was 11 years (including the period of post release supervision). In other words, people sentenced to long sentences in North Carolina, on average, served 66% of their judicial maximum term. If we exclude the 12-month period of post release supervision included in the judicial maximum in North Carolina, individuals sentenced to long sentences served 71% of their maximum term of imprisonment.<sup>24</sup> In determinate, non-paroling states like North Carolina, there are fewer opportunities for officials on the back end to increase or decrease the length of stay; as a result, the date of release is more certain.

## **SECTION 2. EXAMINING FACTORS AFFECTING TIME SERVED FOR VIOLENT OFFENSES AND LONGER SENTENCES IN COLORADO**

Research by Reitz and colleagues shows that, depending on the conviction offense and sentence type, back-end discretion not only differs across states, but within states.<sup>25</sup> For example, even in the most indeterminate states, there are classes of highly determinate sentences, such as life without parole. Many states also reduce back-end discretion for violent and sex offenses, making it more difficult to shorten these sentences. Individuals serving time for violent and sex offenses are more likely to be serving long prison terms; as a result, long sentences tend to be more determinate than short sentences.

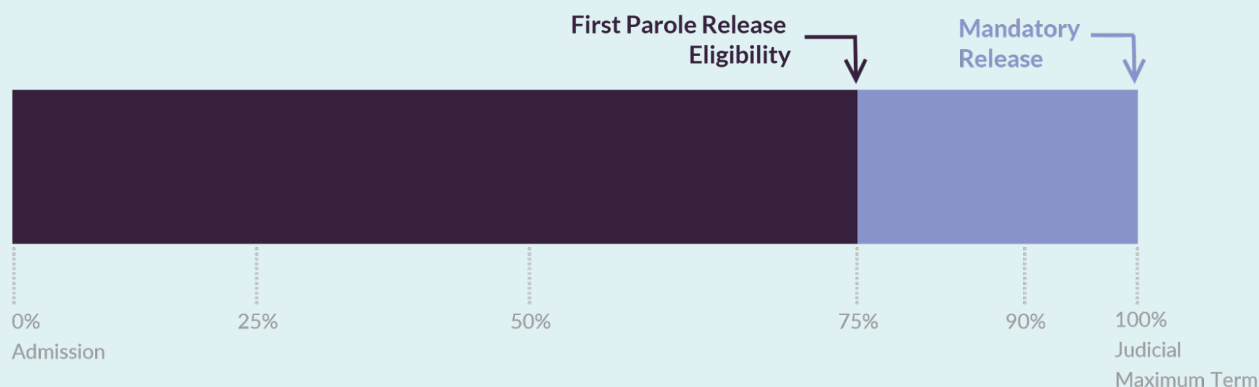
In particular, people who have committed violent offenses often have longer wait times before parole release eligibility (i.e., they must serve a larger percentage of the sentence due to statute), and they are less likely to be granted parole release once eligible.<sup>26</sup> Below is an analysis of the relationship between the judicial maximum term and time served for individuals convicted in Colorado using prison admission and release data from 1995 to 2020 provided by the Colorado Department of Corrections. This type of analysis makes it possible to assess the primary factors in law and policy that affect time served in prison for general and violent offenses. It should be noted that this type of analysis is limited to people who were *released*. Released individuals, as a group, are made up of a greater proportion of short sentences than the standing prison population. This analysis does not include an assessment of demographic disparities in sentencing or time served, which would require a different research design.

To investigate the impact of legal and policy factors that affect time served, this analysis differentiates between two major offense classes in Colorado. For the purposes of this brief, individuals convicted of general offenses (e.g., property and drug crimes) are subject to Colorado's 50% parole eligibility rule, meaning they are parole eligible after serving 50% of their maximum term. This group constitutes about 92% of the state's prison admissions. The analysis then compares people convicted of general offenses to those convicted of violent offenses (e.g., first- or second-degree assault, kidnapping, aggravated robbery, murder, arson, burglary, and crimes against at-risk adults or juveniles).

First, individuals serving time for violent offenses have significantly longer sentences lengths. The average sentence length for people imprisoned for violent offenses was 12.9 years, compared to 3.1 years for those serving terms for general offenses. Second, those convicted of violent crimes serve a greater portion of their sentence before being considered for parole release. Individuals convicted of violent offenses are subject to Colorado's 75% parole eligibility rule, which means they become automatically eligible for parole after serving 3/4 of their sentence. People serving time for most violent offenses can earn credits to bring their parole eligibility date earlier than the 75% mark. Those imprisoned for a repeat violent offense, however, are statutorily prohibited from accruing earned time. These individuals will serve at minimum 75% of their sentence before being eligible for parole release. If the parole board does not grant them release, they will serve the full judicial maximum term. Figure 3 depicts the timeline for release for individuals who are serving time for repeat violent offense.

As an example, an individual sentenced to a 10-year term for a repeat violent offense could serve a minimum of seven years and six months or, if the parole board declined to release, he or she could serve the 10-year judicial maximum term. This timeline is much more determinate than the one depicted in Figure 1 for people serving time for general offenses in Colorado.

**FIGURE 3: COLORADO PRISON-RELEASE TIMELINE FOR VIOLENT OFFENSES, WITH A PRIOR VIOLENT OFFENSE**



Note: Adapted from Reitz K. (2022) Prison-Release Discretion and Prison Population Size. State Report: North Carolina. *Robina Institute of Criminal Law and Criminal Justice*. Adapted with permission.

Although Colorado has a high degree of indeterminacy for individuals convicted of general offenses, the state's prison-release framework creates a comparatively determinate structure for violent offenses. This degree of indeterminacy for violent offenses has substantial implications for both administrative practice and the experience of incarcerated individuals. In Colorado, people admitted for violent offenses not only receive substantially longer sentences than individuals admitted for general offenses (at almost a 4-to-1 ratio), but they also serve more of their term before they have a chance to be considered for parole.<sup>27</sup>

### Violent Offenses and Parole Release Consideration

Colorado's framework also leads to different release decisions when comparing individuals convicted of violent offenses to those convicted of general offenses. Even when controlling for other factors that may have an effect on parole release decisions, such as age, gender, and criminal history, our analysis shows that people admitted for violent offenses spend significantly more time in prison after they become eligible for parole compared to those admitted for general offenses. This remains true even when these populations receive equivalent judicial maximum terms. Everyone in Colorado who is parole eligible receives consideration at the first eligibility date, and up to once a year after if parole is denied. Thus, individuals who are serving time for violent offenses are spending more time in prison past parole eligibility because they are being denied parole release.

Tables 2 and 3 compare the differences between the time individuals serve past initial parole eligibility based on their sentence length and whether they were admitted for a general or violent offense. These analyses take into account a large number of control variables, such as age, gender, and criminal history.

**TABLE 2: DAYS SPENT IN PRISON PAST THE PAROLE ELIGIBILITY DATE, BASED ON SENTENCE LENGTH FOR GENERAL OFFENSES (MARGINAL EFFECTS MODEL)**

Sentence Length	Days Past Parole Eligibility Date	Delta-Method Std. Error	t	P> t	95% Confidence Interval		N
Less Than 1 Year	169.2	2.8	60.8	0.000	163.7	174.6	17,184
1 to < 2 Years	268.8	2.2	124.6	0.000	264.6	273.0	28,103
2 to < 3 Years	323.1	2.1	153.8	0.000	319.0	327.2	29,735
3 to < 5 Years	271.3	3.5	78.7	0.000	264.5	278.1	11,111
5 to < 10 Years	347.7	14.1	24.7	0.000	320.1	375.3	659
10 Years or More	707.4	12.1	58.3	0.000	683.7	731.2	907

Note: Table adapted from Gaes et al. (2022). Factors Affecting Colorado Parole Release Decisions. Robina Institute of Criminal Law and Criminal Justice. Adapted with permission.

There are two main findings. The first is that individuals with longer sentence lengths are generally spending more time in prison past their parole eligibility date. For example, people convicted of general offenses with a judicial maximum term of less than one year spend an average of 169 days in prison past their parole eligibility date, compared to 707 days for someone serving a sentence of 10 years or more. Second, we see that individuals serving time for violent offense are spending more time beyond their initial parole eligibility date even when the sentence length is the same as that for people serving time for general offenses. For example, individuals serving a sentence of one to two years are spending 269

days past their parole eligibility date if they have a general offense, but 441 days past that date if they've committed a violent offense. For violent offenses in Colorado, individuals must serve a longer portion of their sentence before being eligible for parole (i.e., the 75% parole eligibility rule). Thus, the analysis shows that individuals imprisoned for violent offenses are serving a greater portion of their sentence prior to being eligible for parole *and* more days past the point they are eligible for parole compared to those serving time for general offenses.

**TABLE 3: DAYS SPENT IN PRISON PAST THE PAROLE ELIGIBILITY DATE, BASED ON SENTENCE LENGTH FOR VIOLENT OFFENSES (MARGINAL EFFECTS MODEL)**

Sentence Length	Days Past Parole Eligibility Date	Delta-Method Std. Error	t	P> t	95% Confidence Interval		N
Less Than 1 Year	231	40.1	5.8	0.000	152.5	309.6	188
1 to < 2 Years	440.8	15.0	29.4	0.000	411.4	470.2	1,326
2 to < 3 Years	526.1	9.8	54.0	0.000	507.0	545.2	3,073
3 to < 5 Years	479.2	12.8	37.5	0.000	453.1	504.2	1,866
5 to < 10 Years	550.5	58.6	9.39	0.000	435.6	665.5	86
10 Years or More	554.8	38.5	15.5	0.000	484.7	624.9	260

Note: Table adapted from Gaes et al. (2022). Factors Affecting Colorado Parole Release Decisions. Robina Institute of Criminal Law and Criminal Justice. Adapted with permission.

Like many states, Colorado's prison release framework is more determinate for people serving time for violent offenses. These individuals, on average, get substantially longer sentences, serve a greater portion of their sentence before being eligible for parole, and spend a greater amount of time in prison past their parole eligibility date due to parole denials. Both the number of people serving time for violent offenses and the length of their

prison terms has increased dramatically over the last several decades, because of severe sentencing policies.<sup>28</sup> Additionally, individuals serving time for violent offenses have often been excluded from criminal justice reforms.<sup>29</sup> This exclusion reduces the impact reform efforts could have on a large portion of the prison population and on long sentences, in particular. Our research shows that there is tremendous potential to affect time served by focusing efforts on back-end policies of prison release, and that potential outcomes can be magnified by focusing on more determinate sentences.

## **CONCLUSION: FUTURE RESEARCH AND POLICY DEVELOPMENT**

This research highlights the often complex formulas that affect length of stay, which vary across and within states, as well as the tremendous discretion over time served afforded to officials at the back end of the system. In parole release states, discretion over time served is typically greater than judicial sentencing discretion. In determinate sentencing states, the discretion of prison officials in charge of awarding and retracting good time and earned time plays a major factor in determining time served. From a policy perspective, this project provides insight into levers for reform available to policymakers. Each jurisdiction has the potential to expand or reduce its prison population size through changes in prison-release laws, rules, policies, conventions, and practices that affect time served. If jurisdictions were interested in shortening time served, they could do so by enhancing good time and earned time credits—specifically against mandatory release dates rather than parole eligibility dates. Sentence credits could be made more generous by increasing the credit earning rate and/or by removing the caps on the maximum amount that can be taken off a sentence. Policies aimed at expanding correctional program availability and accessibility could also reduce existing barriers to maximizing earned time credits. It's also evident that changes to these policies in the other direction, by reducing available sentence credits, for example, would result in longer prison stays and larger prison populations. These considerations are particularly important for individuals serving long sentences, as these types of policy changes will have an outsized impact on those serving the longest terms.

Paroling jurisdictions interested in reducing time served could advance parole eligibility dates to earlier in the sentence term. However, given that this moves up parole eligibility and not mandatory release, this still leaves a high level of unpredictability about release. The “administrative parole release” model is one that can guard against unnecessary indeterminacy for individuals who are following their correctional plans and avoiding serious infractions, and can produce predictable release patterns for large portions of a state's

prison population.<sup>30</sup> These models vary between states, but all are designed to present a more routinized and predictable path to release that reduces the typical steps required for discretionary parole release. Generally, individuals are assigned a correctional plan at admission; if they follow that plan (and avoid serious misconduct) they are released without needing to go through the traditional parole hearing and approval process. Twelve paroling states have adopted administrative parole release models for some levels of offenses. And while administrative parole release is generally aimed at nonviolent or lower-level offenses, some states have expanded it to include all but the most serious offenses.

The research presented here shows that people authorized to make parole decisions often have greater power to determine time served than the judge who issued the initial sentence. This fact has enormous implications for how we evaluate the parole board model of prison release. The greater the parole board's power over time served, the more scrutiny should be applied to their operations. Our research zeroed in on two factors—offense type and sentence length—that affect parole release decisions. An older body of research has also shown that parole release decisions are influenced by a range of empirical factors, such as severity of the offense for which an individual is sentenced, in-prison disciplinary infractions, the presence of mental illness, and criminal history.<sup>31</sup> It's important to evaluate the weight of these factors in light of the utilitarian goals, such as rehabilitation and protection of the public, as well as the retributive goals of incarceration. Additionally, many of these factors vary by race and ethnicity; thus, understanding their influence may help explain how race and ethnicity shapes back-end decisionmakers' actions and contributes to disparate outcomes.

Given the enormous variation in prison release frameworks across the U.S., the findings presented in this brief raise questions about the factors that drive states to adopt a particular framework and what an ideal framework might entail. For example, future research should explore if an indeterminate system—particularly where most of the power is concentrated in one agency—is well-designed to yield patterns of proportionate sentences over most or all cases. Also of interest is whether a particular determinate system is well-designed to effect utilitarian goals such as the rehabilitation of people who are incarcerated or protection of the public from individuals who would be dangerous if released. For individuals serving long sentences, the policy choices around how much discretion is afforded to back-end authorities and who gets to wield power over time served have the largest implications.



# Endnotes

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<sup>1</sup> Reitz, K., Rhine, E., Lukac, A., & Griffith, M. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>2</sup> Reitz, K., Rhine, E., Lukac, A., & Griffith, M. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>3</sup> Reitz, K., Rhine, E., Lukac, A., & Griffith, M. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>4</sup> For a national overview of these frameworks, see Chapter 6, Variations in the use of good-time and earned-time discounts, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>5</sup> See Ariz. Rev. Stat. § 41-1604.07(B)(2).

<sup>6</sup> See Ark. Code §§ 12-29-201(a-b)

<sup>7</sup> See Chapter 6, Variations in the use of good-time and earned-time discounts, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

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<sup>8</sup> See Chapter 6, Variations in the use of good-time and earned-time discounts, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

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<sup>9</sup> At a national level, evidence shows that incarcerated individuals seldom lose good time. According to data from the Bureau of Justice Statistics, 3.5% of incarcerated individuals in the survey reported that they had lost good time credits for disciplinary violations. See: Bureau of Justice Statistics. *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], 2021- 09-15.

<https://doi.org/10.3886/ICPSR37692.v4>

<sup>10</sup> Two additional states, California and Ohio, are considered determinate, but use parole release discretion for a minority of prison releases and also have movable parole eligibility dates.

<sup>11</sup> See Chapter 4, Variations in the structure of parole-release discretion, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>12</sup> See Table 8, (p. 66), in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice.

<https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>13</sup> Colo. Rev. Stat. § 17-22.5-403(1). Note: In this brief, the two major offense classes in Colorado are differentiated: (1) General offenses subject to the 50% parole eligibility rule, and (2) Violent offenses subject to

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the 75% parole eligibility rule. These offenses are typically subject to the 75% rule in Colorado: first- or second-degree assault, kidnapping, aggravated robbery, murder, arson, burglary, and crimes against at-risk adults or juveniles. Other than sex crimes, all other crimes would be in the general offense class. Individuals serving time for sex offenses made up 0.5% of the admission pool.

<sup>14</sup> Colo. Rev. Stat. § 17-22.5-405(1)– (1.5).

<sup>15</sup> See Chapter 4, Variations in the structure of parole-release discretion, in Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice. <https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>16</sup> Bureau of Justice Statistics. (2018). *National Corrections Reporting Program, 2000-2016*. Institute for Social Science Research at the University of Michigan.

<https://www.icpsr.umich.edu/web/NACJD/studies/37692/versions/V4>

<sup>17</sup> It is important to note that this percentage is not reflective of the standing prison population, which contains a significantly greater portion of long sentences. In 2016, 29% of Colorado's prison population was serving a sentence of 10 years or more (excluding life sentences).

<sup>18</sup> NCRP data does not capture time spent in local jail before transfer to prison, which is given to people as a credit against the maximum judicial term. This is generally several months, and in some cases – years. Thus, the total prison time served and the proportion of sentence served calculations are an underestimate of how long someone was actually incarcerated.

<sup>19</sup> See Chapter 7, Highlighted topic: Movable mandatory release dates, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice. <https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>20</sup> At a national level, evidence shows that incarcerated individuals seldom lose good time. According to data from the Bureau of Justice Statistics, 3.5% of incarcerated individuals in the survey reported that they had lost good time credits for disciplinary violations. See: Bureau of Justice Statistics. *Survey of Prison Inmates, United States, 2016*. Inter-university Consortium for Political and Social Research [distributor], 2021- 09-15.

<https://doi.org/10.3886/ICPSR37692.v4>

<sup>21</sup> See N.C. Gen. Stat. § 15A-1340.17(c)-(e) (containing minimum/maximum tables and formulas for computation).

<sup>22</sup> State of North Carolina Department of Public Safety. (2021). *Policy and procedure: Sentence credits*.

<https://www.ncdps.gov/media/5981/download>

<sup>23</sup> Bureau of Justice Statistics. (2018). *National Corrections Reporting Program, 2000-2016*. Institute for Social Science Research at the University of Michigan. <https://www.icpsr.umich.edu/web/NACJD/studies/37007>

<sup>24</sup> NCRP data does not capture time spent in local jail before transfer to prison, which is given to people as a credit against the maximum judicial term. This is generally several months, and in some cases – years. Thus, the total prison time served and the proportion of sentence served calculations are an underestimate of how long someone was actually incarcerated.

<sup>25</sup> See Chapter 4, Variations in the structure of parole-release discretion, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice. <https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>26</sup> Gaes, G., & Laskorunsky, J. (2022). *Factors affecting colorado parole release decisions*. Robina Institute of Criminal Law and Criminal Justice. <https://robinainstitute.umn.edu/publications/factors-affecting-colorado-parole-release-decisions>

<sup>27</sup> Colo. Rev. Stat. § 17-22.5-403(2.5)(a)

<sup>28</sup> Ghandnoosh, N. (2019). *The next step: Ending excessive punishment for violent crimes*. The Sentencing Project. <https://www.sentencingproject.org/wp-content/uploads/2019/04/The-Next-Step.pdf>

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<sup>29</sup> Jones, A. (2020) *Reforms without results: Why states should stop excluding violent offenses from criminal justice reforms*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/violence.html>

<sup>30</sup> See Chapter 5, Highlighted topic: Administrative parole release, in: Reitz et al. (2022). *American prison-release systems: Indeterminacy in sentencing and the control of prison population size. Final Report*. Robina Institute of Criminal Law and Criminal Justice. <https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population>

<sup>31</sup> Caplan, J. M. (2007). What factors affect parole: A review of empirical research. *Federal Probation*, 71(3), 16-19. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedpro71&div=29&id=&page=>