

The Importance of Determinacy and Indeterminacy in the Back-End of Long Sentences

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Overview of Release Mechanisms

- Discretionary Paroling & Non-Paroling Systems
- Sentence Credits
- “Second Looks”

Release Mechanisms: Parole & Non-Parole Release

Discretionary Paroling Systems

- *Thirty-six* states use parole to make release decisions for a large percentage of prisoners

Non-Paroling Systems

- *Fourteen* states, Washington, DC, and the federal government do not use parole to make decision for the vast majority of prisoners

Release Mechanisms: Sentence Credits

Sentence credits:

- Conduct-based discounts that take time off time from incarcerated people's sentence based on conduct
- Created in statute, typically administered by Department of Corrections at the facility level
- Two primary kinds of sentences credits:
 - Good time
 - Earned time

Release Mechanisms: Sentence Credits

Good time

- Reduces time served through avoiding disciplinary violations
- Awards depend on eligibility, tend to be made by default
- Awards vary, from different percentages of sentence to day-for-day
- Available in 42 out of 52 U.S. jurisdictions
 - *25 U.S. jurisdictions allow individuals to receive both good time and earned time credits*

Earned Time

- Reduces time served through completing specified programs
- Awards depend on eligibility and program availability
- Awards vary considerably
- Available in 34 out of 52 jurisdictions

Release Mechanism: Second looks

Second looks:

- Wide range of active and proposed initiatives to review individuals sentenced to long periods of imprisonment
- Criteria based on myriad of factors, including:
 - Number of years served (e.g., eligible after 10, 15, 20 years)
 - Evidence of rehabilitation
 - Age at conviction (e.g., juveniles, emerging adults)
 - Health and age
 - Nature of the committing offense (e.g., eligibility/exclusion based on kind of offense, etc.)

Release Mechanism: Second Look Examples

Court-Based*

- Second Look (DC)
- Prosecutor-Initiated Resentencing (CA, IL, WA, OR)
- First Step Act “Compassionate release”

Clemency*

- In 33 states, and federal system clemency is vested in chief executive; in 9 states, power between government and clemency boards; in 4 states, power vested in boards
- In past several decades, clemency *rarely used* to address long sentences

Medical release*

- 46 states allow for medical parole, *though rarely used*
 - At least 18 states have geriatric parole laws
 - At least 16 state have elderly parole laws

Parole-Based

- Specialized parole created for individuals convicted at 21 (IL)
- In most paroling states, second looks are policy

Core Concepts

Determinacy (certainty)

- “Predictability of time served at the time of judicial sentencing”
 - Stems from laws and policies that fix or narrow the possible windows of release, for instance, through lack of parole. E.g., sentenced to 10 years, required to serve 9
 - *Note: important not to confuse determinacy with a necessary preference for longer sentences or severity*

Indeterminacy

- “Unpredictability of time served at the time of judicial sentencing”
 - Stems largely from laws and policies that widen the window of release, for example, through parole, sentence credits, etc. E.g., sentenced to 20 years, parole eligible in 10

The Importance of Back-End Determinacy & Indeterminacy: *Individuals Serving Long Sentences*

Determinacy

- Gives individuals hope in certain date of release and ability to plan
- Sentences crime, providing for similar penalties for similar offenses
- Promotes confidence/trust in fair, clear, criteria (vs. arbitrary criteria)

Indeterminacy

- Helps individuals become invested in their own rehabilitation
- Sentences individuals not crimes
- Recognizes individuals' unique needs and circumstances

The Importance of Back-End Determinacy & Indeterminacy: *Systems*

Determinacy

- Allows for resource management and release planning based on certain release dates
- Promotes safe & rehabilitative environments by rewarding/taking away time based on behavior & program completion
- Protects against abuse of discretion (over-sentencing)

Indeterminacy

- Puts pressure on back-end systems to be responsible for producing better outcomes
- Allows for rewarding of individual positive behavior and change
- Allows release decisions to be shaped by most up-to-date information/knowledge
- Protects against potential of unduly punitive sentences

Public Opinion Polling on the Importance of Certainty

The percentage of a sentence served seems more important than its length.

“Which of the following do you prefer as punishment for someone convicted of a non-violent crime?”

	Strongly favor	Total Favor
<i>Being sentenced to 5 years in prison and being released on parole after serving 4 years</i>	48 %	68%
<i>Being sentenced to 10 years in prison and being released after serving 5 years</i>	11 %	19%

The Importance of Back-End Determinacy & Indeterminacy: *Communities & General Public*

Determinacy

- Public polls show significant preference for determinacy over sentence length/severity
- Communicates to society how particular offenses will be punished
- Promotes legitimacy and trust to the degree judicial sentences match time served
- Prioritizes similar punishments for similar crimes

Indeterminacy

- Promotes opportunity to develop flexible systems that prioritize rehabilitation and safety
- Prioritizes justice to individuals over mere punishment of crimes

The Importance of Back-End Determinacy & Indeterminacy: *Victims & Survivors*

Determinacy

- Facilitates planning and peace of mind
- Promotes legitimacy, trust to the degree sentence matches time served
- Provides for similar punishments for similar crimes
- Protects against unduly lenient & unduly punitive sentences

Indeterminacy

- Creates opportunities for input, victim/survivor centered processes
- Facilitates opportunities to develop confidence and trust through active participation in the sentencing process
- Prioritizes individualized nature of offending & victimization, rehabilitation, safety over mere punishment

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