



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: OREGON

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Prison-Release Discretion and Prison Population Size

State Report: Oregon

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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.

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Overall, we place Oregon's prison-sentencing system in the category of *extremely low indeterminacy*, which is the same as saying that it operates with an *extremely high level of determinacy* (see pp. 4-5). Oregon is distinctive for having large numbers of prisoners who are serving mandatory minimum sentences that are 100-percent determinate.

For many Oregon prisoners, the main possibility of release before the expiration of their judicial maximum terms lies in the accrual of time credits. The effect of credits on sentence length is modest, however, and nearly half of all prisoners are ineligible.

There are several pockets of indeterminacy in Oregon's prison-sentencing system, but the numbers of affected prisoners are probably not large enough to change the character of the system as a whole. A small percentage of prisoners are eligible for discretionary parole release, including lifers, "dangerous offenders," and juveniles with extremely long sentences. Uniquely, juveniles sentenced as adults may also be released by sentencing courts after serving as little as half of their maximum terms.

In sum, the department of corrections, parole board, and trial courts all exercise different forms of back-end release discretion in discrete sectors of the Oregon prison-sentencing system, but all such powers are limited in scope and numbers of cases. Back-end officials with prison-release discretion can exert only minor influence on prison population size in the state.

Terminology note

This report will refer to the Oregon Board of Parole as the "parole board." The Oregon Department of Corrections will be referred to as the "department of corrections" or "DOC."

Introduction

Oregon's prison-rate history, 1972 to 2020

At yearend 2020, Oregon's prison rate was 300 per 100,000 general population, with a prison population of 12,747.² Oregon's prison rate was 27th highest among all states.

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

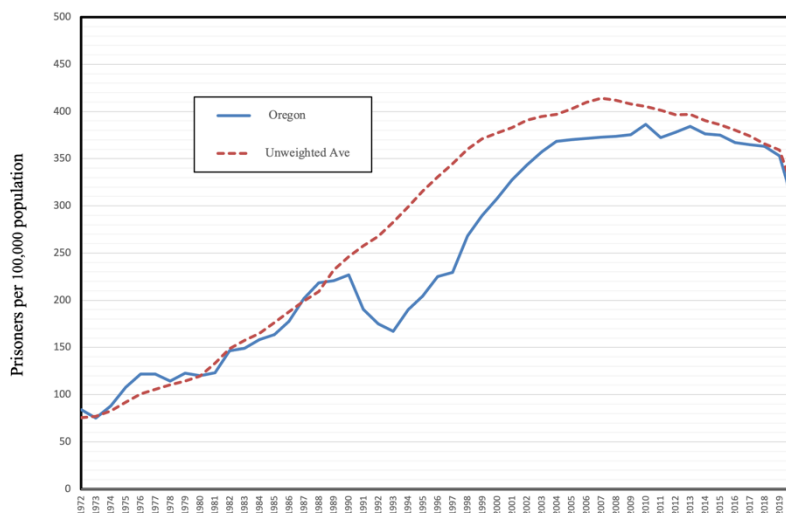
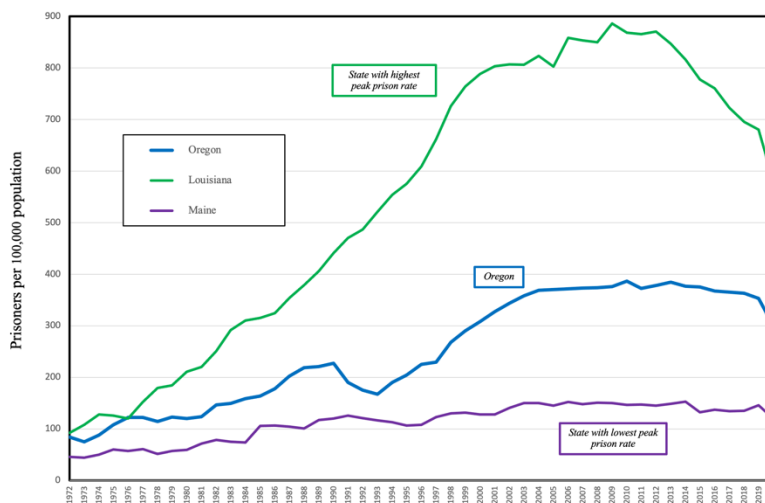


Figure 2. Prison Rate Change in Oregon, Louisiana, and Maine, 1972 to 2020



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

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

sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15-16 table 7 (for 2019-2020).

Oregon reached its peak prison rate during the national buildup period in 2010 at 386 per 100,000, which dropped to 300 per 100,000 in 2020. This is a net difference of -86 per 100,000, which was the 34th 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.

As recently as 1993, Oregon was a low-imprisonment state compared to other states, ranking 40th in its prison rate. Starting in 1994, Oregon's prison rate has consistently grown more quickly than the average state's (or has declined more slowly). As a result, Oregon's prison policy has transitioned from one of low prison rates by national metrics to one of average prison rates.

Observers of Oregon's prison growth after 1993 generally point to two causal factors: First, Oregon's voters passed an initiative called "Measure 11" in 1994 which instituted mandatory minimum sentences for most violent crimes (see section 1.1b). Second, in 1995, the state legislature discontinued the Oregon Criminal Justice Council, which before then had promulgated and monitored the state's sentencing guidelines.³

³ See Jeremy Travis et al., *The Growth of Incarceration in the United States: Exploring the Causes and Consequences* (The National Academies Press, 2014), at 77 ("In Oregon, the committee that had drafted and monitored the guidelines was disbanded, and the guidelines were trumped by a broad-based mandatory minimum sentence law enacted in 1994."); see also David Factor, *Life Cycle of a Sentencing Commission: The Oregon Experience*, 8 Fed. Sentencing Reporter 93 (1995) (recounting that the Oregon Criminal Justice Council was disbanded and its duties transferred to a less-independent and lower-resourced commission). Prior to 1994, in the first several years after the Oregon Criminal Justice Council's guidelines had taken effect, Oregon's prison rate dropped substantially. See Figure 1.

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.⁴

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 general population, for an average incremental downturn of -51 per 100,000.⁵ We believe this was the largest one-year decline in state prison rates in American history.⁶

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.⁷

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

⁴ 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).

⁵ 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.

⁶ 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).

⁷ 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).

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.⁸

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court commitments, fewer revocations from community supervision, and some prisons’ embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.⁹

The COVID period in Oregon

In a separate study, the Robina Institute found 253 releases in Oregon from June 2020 through December 2020 that were accelerated in response to the pandemic. This number was the equivalent of about two percent of Oregon’s pre-COVID prison population (at yearend 2019).

⁸ 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.

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

The COVID releases occurred through a series of group sentence commutations by Governor Kate Brown during 2020.¹⁰

In calendar year 2020, Oregon's prison rate fell from 353 to 300 per 100,000—a one-year decline of -53 per 100,000. This was the 22nd largest one-year drop reported among all 50 states for that year.¹¹ Measured in percentage terms, it was a 15-percent reduction in the state's prison rate. The state's total prison population fell by 2,196 people, from 14,943 to 12,747.¹²

Accelerated COVID releases were responsible for less than one-eighth of the state's reduction in prison population in 2020. Falling admissions were a far more important factor. The number of prison admissions in the state dropped by 36.3 percent in 2020 compared with the previous year (from 5,580 to 3,554). Total releases in 2020 fell by 12.6 percent over 2019 (from 5,885 to 5,139).¹³

Oregon's prison-rate drop continued at a slower pace in 2021. From yearend 2020 to December 2021, the Vera Institute reported that Oregon saw a decrease in its prison population from 12,753 to 12,002—or 5.9 percent.¹⁴ The Oregon Department of Corrections has forecasted prison population growth from late 2021 through late 2027 (projected growth from 12,113 to 13,075 prisoners).¹⁵

¹⁰ 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, 77 Appendix E. Through 2021, there were 953 prisoners who had their sentences reduced as a result of Governor Brown's commutations related to the COVID-19 pandemic. See Zane Sparling, *Commutations Granted to 1,000 Felons by Oregon Gov. Kate Brown were Lawful, Appeals Court Says*, Oregon Live (Aug. 11, 2022), <https://www.oregonlive.com/crime/2022/08/oregon-appeals-court-upholds-commutations-granted-to-1000-felons-by-gov-brown.html>.

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, 15 table 7.

¹³ *Id.*, at 18 table 8, 20 table 9.

¹⁴ See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 4 table 2. As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹⁵ Oregon Department of Corrections, *Issue Brief: Quick Facts*, at <https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>.

I. General Rules of Prison Release in Oregon

Oregon abolished discretionary parole release for the vast majority of all prisoners in 1989.¹⁶ The current parole board's release caseload is very limited (see section 1.2). Also in 1989, Oregon adopted judicial sentencing guidelines with presumptive legal force.¹⁷ Judicial sentences in most cases are expressed as judicial maximum terms subject to possible reduction by "time credits" (see section 1.3).

A. Determination of release eligibility

1.1. General rules of prison release

Oregon judges impose judicial maximum sentences with no stated minimum terms. Judicial maximum sentences must ordinarily be selected from within the presumptive ranges set by the state's judicial sentencing guidelines but, subject to the rules for guidelines departures, they may be as long as the *statutory maximum sentences* authorized for the offenses of conviction.¹⁸ There is no parole-release discretion for the vast majority of prison sentences in Oregon.¹⁹

¹⁶ Oregon Board of Parole, *About the Board: Board History*, <https://www.oregon.gov/boppps/Pages/About-Us.aspx> ("1989[:] ... Parole abolished and sentencing guidelines enacted for felonies committed after November 1, 1989.").

¹⁷ The Oregon Sentencing Guidelines went into effect as of November 1, 1989. Or. Admin. R. 213-020-0001. The "presumptive" character of the guidelines means that they are legally binding subject to judges' power to "impose a departure" from the guidelines for "substantial and compelling reasons." Judges must pronounce a sentence within the recommended guidelines range unless a departure is ordered, stating legally-valid reasons. Or. Rev. Stat. § 137.669; Or. Admin. R. 213-008-0001 (includes the "substantial and compelling reasons" standard). For the early history of Oregon's current system, see Laird C. Kirkpatrick, *Mandatory Felony Sentencing Guidelines: The Oregon Model*, 25 U.C. Davis L. Rev. 695, 696–98, 710 (1992); Kathleen M. Bogan, *Constructing Felony Sentencing Guidelines in an Already Overcrowded State: Oregon Breaks New Ground*, 36 Crime & Delinq. 467 (1990).

¹⁸ See Or. Admin. R. 213-008-0001 (departure sentences above or below the presumptive guidelines range may be imposed only when the judge finds that "substantial and compelling reasons" exist); Or. Admin. R. 213-008-0003(2) (2018) ("In no case may the sentence exceed the statutory maximum indeterminate sentence described in [Or. Rev. Stat. §] 161.605.").

¹⁹ A separate term of "post-prison supervision" is appended to every prison sentence for a felony offender. The length of post-prison supervision (generally one, two, or three years) depends on the severity of the offense of conviction, not the amount of time credits earned by the prisoner or the unserved balance of the judicial maximum prison term upon release. The length of the supervision term is limited in a different way in Oregon: the judicial maximum prison sentence plus the post-release supervision term may not exceed the statutory maximum sentence for the offense. See Or. Admin. R. 213-005-0002(1),(2),(4). This means that, unlike in many other states, the judicial maximum sentence in Oregon does not place a ceiling on a defendant's "exposure" to time served under an individual sentence. It is possible for an individual offender to serve more time in prison than the judicial maximum term if the offender is released, revoked, and returned to prison for an additional post-revocation term of confinement. This project does not survey the diverse rules across the states that govern time served and re-release discretion following revocations of post-release supervision.

a. General-rules prisoners (“non-Measure-11 prisoners”)

Most prisoners convicted of nonviolent offenses, and many convicted of lower-level violent crimes, can reduce their judicial maximum terms by as much as 20 percent through the accrual of “time credits” (see section 1.2). Full time-credit earnings result in mandatory release dates (MRDs) at the 80 percent mark of the maximum term unless credits are forfeited.

b. “Measure-11” prisoners

Prisoners convicted of designated violent and sex offenses receive mandatory minimum sentences that are neither parolable nor reducible by time credits.²⁰ This regime originated with a voter initiative in 1994 called “Measure 11,” although the roster of offenses was later expanded by the legislature.²¹ Currently, 22 categories of offenses fall within the mandatory-minimum scheme created by Measure 11.²² These include:

Murder in the first and second degree; attempt or conspiracy to commit murder of any kind; manslaughter in the first or second degree; assault in the first or second degree; kidnapping in the first or second degree; sodomy in the first or second degree; unlawful sexual penetration in the first or second degree; sexual abuse in the first degree; robbery in the first or second degree; arson in the first degree when accompanied by threat of serious physical injury; using a child in a display of sexually explicit conduct; compelling prostitution; rape in the first or second degree; and aggravated vehicular homicide.²³

The mandatory-minimum prison terms associated with Measure-11 crimes vary from 70 to 300 months, although sentencing courts often have discretion to impose even longer terms.²⁴ As of September 2022, 47 percent of all prisoners in Oregon were serving mandatory minimum

²⁰ Or. Rev. Stat. § 137.700(1) (“The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 [“Reduction in term of incarceration; time credits”] or any other statute.”).

²¹ On the passage of Measure 11, see Kathleen Bogan and David Factor, *Oregon Voters’ Sentencing Initiative Creates Policy Dilemmas*, 6 *Overcrowded Times* 1 (1995).

²² Oregon Criminal Justice Commission, *Longitudinal Study of the Application of Measure 11 and Mandatory Minimums in Oregon* (2011), at vii (“In 1994, voters passed Ballot Measure 11 (M11), which created mandatory minimum prison sentences for 16 violent or sexual offenses Since 1994, the original M11 has been amended by the legislature, so that six additional crimes carry mandatory minimum sentences.”).

²³ The list of offenses in text is condensed from Or. Rev. Stat. § 137.700(2) (table). There is a judicial departure power for defendants convicted of certain second-degree Measure 11 offenses if the sentencing court finds that “substantial and compelling reasons” that justify a lesser penalty. Or. Rev. Stat. § 137.712(1)(a).

²⁴ Or. Rev. Stat. § 137.700(2) (table); *id.* § 137.700(1) (“The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.”).

sentences of this kind, including 68 percent of all violent offenders in Oregon’s prison.²⁵ The group is a large enough segment of the prison system that the department of corrections issues regular reports devoted exclusively to Measure-11 prisoners.

c. Cases in which the parole board has release discretion

The Oregon parole board has limited jurisdiction that includes legacy cases (parolable offenses committed before November 1, 1989),²⁶ prisoners convicted of aggravated murder who are serving life sentences with the possibility of parole,²⁷ prisoners sentenced as “dangerous offenders,”²⁸ and prisoners who were under age 18 at the time of their offenses who are serving life sentences or other sentences with extremely long maximum terms (who become eligible for parole release after 15 years unless earlier release is otherwise authorized by law).²⁹

1.2. Reconsideration after denials of parole release

For prisoners with parolable sentences who are denied release by the parole board, the board generally has discretion to set the next hearing date between two and 10 years from the date the petition for parole was denied.³⁰

²⁵ See Oregon Department of Corrections, *Research and Statistics: Adult in Custody Demographics* (“Offenders with M11 Convictions as of September 1, 2022”), at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx> (reporting 5,802 prisoners with “Measure 11” convictions as of September 1, 2022, or 47 percent of the total prison population of 12,226 reported separately for that same date); Oregon Department of Corrections, *Current Adults in Custody Population* (“AIC Population Profile for 09/01/2022”), at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx> (reporting total state prison population). The Measure 11 group includes most but not all violent offenders in Oregon’s prisons. As of September 2022, *The AIC Population Profile* reported that 70 percent of all Oregon’s prisoners were serving time for violent offenses.

²⁶ Or. Rev. Stat. § 144.050 (“Power of board to grant parole”).

²⁷ Or. Rev. Stat. § 163.105(2).

²⁸ Or. Rev. Stat. § 144.228 (“Parole consideration hearings for dangerous offenders”).

²⁹ Or. Rev. Stat. § 144.397(1).

³⁰ OAR 255-062-0006; OAR 255-062-0011. Factors to be considered in setting a subsequent parole hearing date more than two years after the initial hearing include: (1) whether the prisoner has a mental or emotional disturbance, deficiency, condition, or disorder predisposing them to crime; (2) infractions of institutional rules and discipline; (3) commission of subsequent crimes; (4) failure to demonstrate understanding of facts that led to the offense; (5) lack of effort to address psychological or emotional problems; (6) lack of effort to address substance abuse problems; (7) failure to seek and maintain appropriate work or training; (8) failure to seek out and benefit from programming; (9) inability to experience or demonstrate remorse or empathy; (10) demonstrated poor planning and foresight; (11) demonstrated impulsivity; (12) demonstrated lack of concern for others; (13) refusal to participate in Board-ordered psychological evaluations or hearing; and (14) whether the prisoner is serving a concurrent sentence with a release date 10 or more years from the projected parole release date. OAR 255-062-0016.

A. General rules on the effects of good-time, earned-time, and other discounts

1.3. Generally-available credits: types and amounts

For most non-Measure 11 prisoners, judicial maximum terms may be shortened by the award of good-time credits called “time credits” in Oregon law. Credits are awarded for “appropriate institutional behavior” or “participation in the adult basic skills development program.”³¹ Unlike most other states, Oregon’s statute does not require the regular accrual of credits with the passage of time. Matters concerning earning rules and rates are left to the discretion of the department of corrections, but total reductions from prisoners’ maximum terms may not exceed 20 percent.³²

a. Effects of good-time credits on release eligibility

Time credits have no effect on prisoners’ dates of earliest release eligibility.

b. Effects of good-time credits on the judicial maximum term

For eligible prisoners, time credits are subtracted from their judicial maximum terms to establish earlier mandatory release dates (MRDs), but cannot reduce judicial maximum sentences by more than 20 percent.³³

1.4. Loss of good-time credits

The department of corrections has discretion “to establish a process for granting, retracting and restoring” time credits.³⁴

³¹ Or. Rev. Stat § 421.121(1)(a),(b).

³² Or. Rev. Stat § 421.121(2),(4).

³³ Or. Rev. Stat § 421.121(1),(3). On the use of changeable MRDs across the nation, see Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 7 (“Highlighted topic: Movable mandatory release dates”).

³⁴ Or. Rev. Stat § 421.121(4).

II. Life Sentences and Other Lengthy Sentences

2.1. Life sentences without parole

The sentence of life without parole (LWOP) is authorized but not mandated under Oregon law for the crime of aggravated murder. Defendants convicted of this offense may also be sentenced to life with the possibility of parole.³⁵

2.2. Life sentences with possibility of parole

The current parole board's release caseload includes prisoners convicted of aggravated murder who are serving life sentences with the possibility of parole.³⁶ For adults who receive parolable life sentences, first eligibility for discretionary parole release occurs after a minimum term of 30 years, not reducible by time credits.³⁷ Release decisions require a unanimous vote of a parole board panel that must include three or more board members.³⁸

Under Oregon law, prisoners with parolable life sentences are afforded the right to appointed counsel at their parole-release hearings.³⁹ Prisoners also have the statutory power to subpoena witnesses “upon a showing of the general relevance and reasonable scope of the evidence sought.”⁴⁰ Such procedural rights at discretionary release proceedings are extremely rare across the states, even for prisoners with life sentences.⁴¹

³⁵ Or. Rev. Stat. § 163.105(1)(a). The death penalty is also an authorized punishment for this offense, although there has been a moratorium on capital punishment since 2011, imposed by one governor and upheld by his successor. Death Penalty Information Center, *State and Federal Info: Oregon*, at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/oregon> (last visited Sept. 5, 2022).

³⁶ Or. Rev. Stat. § 144.050 (“Power of Board to Grant Parole”); Or. Rev. Stat. § 163.105(2).

³⁷ Or. Rev. Stat. § 163.105(1)(c).

³⁸ Or. Rev. Stat. § 163.105(3).

³⁹ Or. Rev. Stat. § 163.105(2)(b) (prisoners have “[t]he right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense”).

⁴⁰ Or. Rev. Stat. § 163.105(2)(c).

⁴¹ For other states that provide a right to appointed counsel to at least some prisoners in release proceedings, see Kevin R. Reitz, Allegra Lukac, & Edward E. Rhine, *Prison-Release Discretion and Prison Population Size, State Report: California* (Robina Institute of Criminal Law and Criminal Justice, 2021); Kevin R. Reitz, Allegra Lukac, & Edward E. Rhine, *Prison-Release Discretion and Prison Population Size, State Report: Hawaii* (Robina Institute of Criminal Law and Criminal Justice, 2022).

2.3. Juvenile life sentences or other extremely long sentences imposed on juveniles

Effective January 1, 2020, Oregon abolished LWOP sentences for offenders who were under age 18 at the time of their crimes.⁴² Juvenile offenders serving life sentences or other sentences with long maximum terms are eligible for discretionary parole release after 15 years, not reducible by time credits, unless their earlier release is otherwise authorized by law.⁴³

The parole board makes ultimate release decisions for prisoners convicted of juvenile offenses, subject to statutory rules governing process and release criteria.⁴⁴ Prisoners governed by this provision have the right to appointed counsel at release proceedings.⁴⁵

2.4. “Second-look” release for juvenile offenders

In 2019, Oregon enacted a novel process for a “second look hearing” for prisoners prosecuted as adults for crimes committed when they were under age 18.⁴⁶ At the halfway point of their judicial maximum sentences, such prisoners must appear before the sentencing court for a determination of “what further commitment or disposition is appropriate.”⁴⁷ After a hearing, the court may decide that the prisoner will serve out his or her remaining sentence, or may order that the prisoner be conditionally released at an earlier time fixed by the court.⁴⁸ Conditional release is deemed appropriate if the prisoner proves by clear and convincing evidence that he or she “has been rehabilitated and reformed; ... [is] not a threat to the safety

⁴² Or. Rev. Stat. § 161.740(1) (“A court may not impose a sentence of life imprisonment without the possibility of release or parole on a person who was under 18 years of age at the time of committing the offense.”).

⁴³ Or. Rev. Stat. § 144.397(1)(a) (“A person convicted of an offense or offenses committed when the person was under 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible for release on parole or post-prison supervision as provided in this section after the person has served 15 years of imprisonment.”). No reduction for time credits or “any other” reduction from the 15-year minimum is permitted, except credit for pretrial detention. Or. Rev. Stat. § 144.397(1)(c). On the other hand, § 144.397(1)(b) provides that “[n]othing in this section is intended to prevent a person from being released prior to serving 15 years of imprisonment under any other provision of law.” For more information for the juvenile justice reform measures passed in 2019, see Joe O’Leary & Nakeia Daniels, *Oregon Legislature Passes Historic Juvenile Justice Sentencing Reform* (Oregon Youth Authority, May 30, 2019), at <https://insideoya.com/2019/05/30/oregon-legislature-passes-historic-juvenile-justice-sentencing-reform/>.

⁴⁴ Or. Rev. Stat. § 144.397(3)-(13).

⁴⁵ Or. Rev. Stat. § 144.397(12) (“A person has the right to counsel, including counsel appointed at board expense, at a hearing under this section.”).

⁴⁶ Or. Rev. Stat. § 420A.203. The provision applies only to prison sentences of 24 months or longer. Or. Rev. Stat. § 420A.203(1)(a)(A); Joe O’Leary and Nakeia Daniels, *Oregon Legislature Passes Historic Juvenile Justice Sentencing Reform* (Oregon Youth Authority, May 30, 2019), at <https://insideoya.com/2019/05/30/oregon-legislature-passes-historic-juvenile-justice-sentencing-reform/>.

⁴⁷ Or. Rev. Stat. § 420A.203(1)(b).

⁴⁸ Or. Rev. Stat. § 420A.203(4)(a).

of the victim, the victim's family or the community; and ... [will] comply with the release conditions.”⁴⁹

By statute, prisoners have the right to appointed counsel at second-look proceedings.⁵⁰ Significant additional safeguards are built into the process, resembling those that exist at judicial sentencing proceedings: “Except as otherwise provided by law or by order of the court based on good cause, the person must be given access to the records maintained in the person's case by the Oregon Youth Authority and the Department of Corrections.”⁵¹ Also, “[t]he person may examine all of the witnesses called by the state, may subpoena and call witnesses to testify on the person's behalf and may present evidence and argument.”⁵² Finally, the prisoner has a limited right to appeal an adverse ruling to an appellate court.⁵³

2.5. Mandatory minimum prison terms

Other than the extensive roster of mandatory minimum prison sentences under Measure 11 (see section 1.1b), Oregon has enacted a number of mandatory minimum prison penalties for repeat property offenders. In contrast with Measure-11 sentences, minimum terms under the Repeat Property Offenders Act are reducible by good-time credits.⁵⁴

2.6. “Dangerous offenders”

Oregon has a complex statutory regime for the imposition of “indeterminate sentences” on defendants found to be “dangerous offenders” according to statutory criteria. Such sentences

⁴⁹ Or. Rev. Stat. § 420A.203(3)(k); Or. Rev. Stat. § 420A.203(4)(a)(B).

⁵⁰ Or. Rev. Stat. § 420A.203(3)(b) (“The person has the right to appear with counsel. If the person requests that the court appoint counsel and the court determines that the person is financially eligible for appointed counsel at state expense, the court shall order that counsel be appointed.”).

⁵¹ Or. Rev. Stat. § 420A.203(3)(f).

⁵² Or. Rev. Stat. § 420A.203(3)(g).

⁵³ Or. Rev. Stat. § 420A.203(6) (limiting claims on appeal to those that “[t]he disposition is not authorized under this section; ... [t]he court failed to comply with the requirements of this section in imposing the disposition; or ... [t]he findings of the court are not supported by substantial evidence in the record.”). Equivalent safeguards do not exist in parole release proceedings for prisoners convicted of offenses while juveniles, although such prisoners do enjoy the right to appointed counsel (see section 2.3).

420A.203. Second look hearing; disposition order; appeal, OR ST § 420A.203.

⁵⁴ The Repeat Property Offender statute is Or. Rev. Stat. § 137.717. The court may deviate from the mandatory minimum sentences outlined in Or. Rev. Stat. § 137.717 if the parties stipulate or the court finds that: (1) the prisoner was not on probation, parole, or post-prison supervision for the requisite offense at the time of commission of the current offense; (2) the prisoner has not previously received a downward departure for the requisite offense; (3) the harm or loss caused by the offense is not more than is typical for that type offense crime; and (4) considering the nature of the offense and harm to the victim, a downward department will increase public safety, increase the likelihood of rehabilitation, and not unduly reduce the appropriate punishment. Or. Rev. Stat. § 137.717(6).

always carry judicial maximum terms of 30 years, but minimum terms are set according to a variety of formulas. Such prisoners become eligible for discretionary parole release at the expiration of their minimum terms.⁵⁵

A defendant's classification as a dangerous offender depends on a number of factors, including the severity of the current offense of conviction and the defendant's prior conduct. Further, the defendant must be found to be "suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another."⁵⁶ A finding is also required that, "because of the dangerousness of the defendant an extended period of confined correctional treatment or custody is required for the protection of the public."⁵⁷

Judicial maximum sentences for dangerous offenders are fixed at 30 years, reducible by good time credits.⁵⁸ Minimum terms are set with reference to the presumptive guidelines sentences for defendants' offenses of conviction. Sentencing courts have discretion to select minimum terms within case-specific statutory boundaries.⁵⁹ After expiration of the minimum term, the parole board may order release "if the board finds the prisoner no longer dangerous or finds that the prisoner remains dangerous but can be adequately controlled with supervision and mental health treatment and that the necessary resources for supervision and treatment are available to the prisoner."⁶⁰

⁵⁵ See Or. Rev. Stat. § 161.725 ("Sentencing of dangerous offenders"); Or. Rev. Stat. § 161.735 ("Determination of whether defendant is dangerous"); Or. Rev. Stat. § 161.737 ("Dangerous offender; sentence as departure from guidelines"); *id.*, § 144.228 ("Parole consideration hearings for dangerous offenders"). For a discussion of this statutory scheme, see *Nulph v. Board of Parole and Post-Prison Supervision*, 381 P.3d 948 (Or. Ct. App. 2016).

⁵⁶ Or. Rev. Stat. § 161.725(1)(a)-(c). Current offenses include Class A felonies or any "felony that seriously endangered the life or safety of another." For cases other than Class A felonies, the defendant must also have had a prior felony conviction or must have "previously engaged in unlawful conduct not related to the instant crime as a single criminal episode that seriously endangered the life or safety of another." *Id.* The determination that a defendant suffers from a severe personality disorder must be aided by the expert opinion of a mental health professional. Or. Rev. Stat. § 161.735(1) ("Upon motion of the district attorney, and if, in the opinion of the court, there is reason to believe that the defendant falls within ORS 161.725, the court shall order a presentence investigation and an examination by a psychiatrist or psychologist.").

⁵⁷ Or. Rev. Stat. § 161.725(1). The relevant findings must normally be made by a jury, although defendants may waive their right to a jury. Or. Rev. Stat. § 161.735(6); *see also* *State v. Warren*, 98 P.3d 1129, 1135 (Or. 2004) (holding defendant had a right to jury determination of whether he was "suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another").

⁵⁸ Or. Rev. Stat. § 161.725(1) ("[T]he maximum term of an indeterminate sentence of imprisonment for a dangerous offender is 30 years . . ."); Or. Rev. Stat. § 144.228(1)(b)(D) ("In no event shall the prisoner [sentenced as a dangerous offender] be held beyond the maximum sentence less good time credits imposed by the court.").

⁵⁹ For example, *see* Or. Rev. Stat. § 161.737(2) ("If the presumptive sentence that would have been imposed [in the absence of a finding that the defendant is a dangerous offender] is a prison sentence, the required incarceration term [i.e., the minimum term] shall be no less than the presumptive incarceration term and no more than twice the maximum presumptive incarceration term.").

⁶⁰ Or. Rev. Stat. § 144.228(1)(b)(A).

If a prisoner convicted as a dangerous offender is denied release, reconsideration must normally occur after two years, but the interval may be increased to as much as ten years if “the [parole] board finds that it is not reasonable to expect that the prisoner would be granted a release date before the date of the subsequent hearing.”⁶¹

III. Infrequently Used Forms of Prison Release in Oregon

3.1. Medical or “compassionate” release

Oregon has relatively broad statutory language authorizing the parole board to release prisoners “[s]uffering from a severe medical condition including terminal illness” or who are “[e]lderly and permanently incapacitated in such a manner that the prisoner is unable to move from place to place without the assistance of another person.” In order to release, the board must determine that “continued incarceration is cruel and inhumane and that advancing the release date of the prisoner is not incompatible with the best interests of the prisoner and society.”⁶² The only class of prisoners exempted from release under this provision are those serving life sentences without possibility of release.⁶³

3.2. Executive clemency

The Oregon Constitution grants the governor the “power to grant reprieves, commutations, and pardons, after conviction, for all offences except treason.”⁶⁴ The process for “application [made to the Governor] for a pardon, commutation or remission” is laid out in statute.⁶⁵

3.3. Emergency release for prison overcrowding

Oregon has no permanent statutory mechanism to respond to conditions of prison crowding.

⁶¹ Or. Rev. Stat. § 144.228(1)(b)(A),(B).

⁶² Or. Rev. Stat. § 144.126(1)(a),(b).

⁶³ Or. Rev. Stat. § 144.126(3).

⁶⁴ Or. Const., Art. V, § 14.

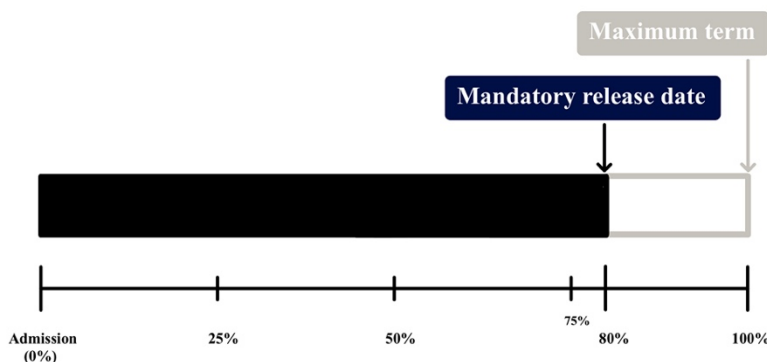
⁶⁵ Or. Rev. Stat § 144.650.

IV. Overall Assessment of Indeterminacy in Oregon's Prison-Sentencing System

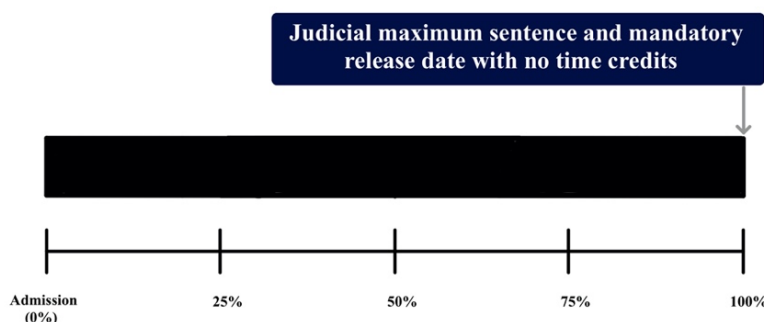
4.1. General-rules cases

About half of all Oregon prisoners are serving sentences subject to the general rules of prison release. These prisoners can reduce their judicial maximum prison terms by up to 20 percent through the earning of time credits.⁶⁶ Figure 3 depicts the scenario of general-rules prisoners who must serve at least 80 percent of the judicial maximum terms but can earn mandatory release at the 80 percent mark. Figure 4 illustrates the circumstance of general-rules prisoners who earn no credits, and thus must serve 100 percent of their maximum terms.

Oregon Figure 3. Prison-Release Timeline for General-Rules Cases with Full Time Credits



Oregon Figure 4. Prison-Release Timeline for General-Rules Cases with No Time Credits



General-rules sentences in Oregon are 80 percent determinate and 20 percent indeterminate. That is, measured against the full duration of the judicial maximum sentence, 80 percent of time actually served is “determined” by the judicial sentence, with the remaining 20 percent

⁶⁶ Or. Rev. Stat § 421.121(2).

of possible time served left to the decisions of back-end officials who exercise their authority after the judicial sentence has become final.

In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence on prison-population size that is ceded by law to back-end decision makers such as parole boards and departments of corrections (see p. vi). To give an oversimplified 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*).⁶⁷

The general-rules class of sentences shown in Figures 3 and 4 carry a PMP of 1.25:1. That is, if all general-rules prisoners were held for their full judicial maximum terms, the total number of general-rules prisoners would eventually reach a size that is 25 percent larger than if all general-rules prisoners were to earn full credits and be released at the 80-percent mark of their maximum terms. Under the subjective ranking scheme of this project, sentences that are 80 percent determinate, and with a low PMP of 1.25:1, are classified as carrying an *extremely low degree of indeterminacy* (bordering on low indeterminacy) (see pp. iv-v). Alternatively, they can be described as sentences with an *extremely high degree of determinacy*.

4.2. Prisoners serving Measure-11 sentences

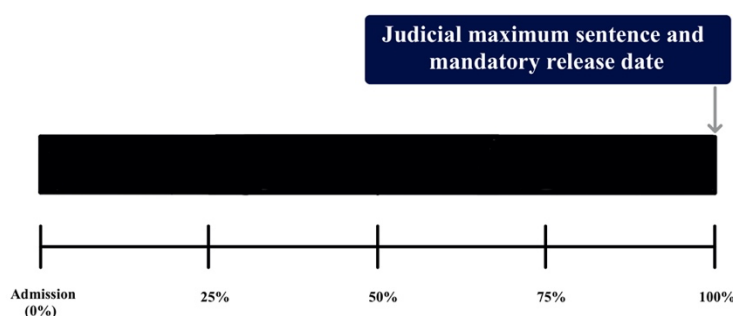
A remarkably large percentage of Oregon’s prisoners are serving mandatory minimum sentences that bar them from receipt of good-time credits. Measure-11 prisoners added up to 45 percent of the prison population in 2020.⁶⁸ For the 22 crime classifications that carry

⁶⁷ This highly simplified illustration does not consider the possible effects of good-time or other discounts. Moreover, unlike the illustration, there is no real-world system in which all prisoners are serving sentences subject to the same prison-release formula. In every prison population, there are various subpopulations of prisoners who are serving different classes of prison sentences, including some who are serving revocation sentences. Each sentence class must be analyzed separately; there is no single PMP that reaches uniformly across the prison population. It may be possible to calculate a single weighted average PMP for an entire prison system, but this would require fine-grained information about the composition of the prison population and the mix of sentences different groups of prisoners are serving. For a more complete discussion of the calculation and uses of the PMP measure, 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 21-25.

⁶⁸ The Oregon Department of Corrections reported 5,802 prisoners with “Measure 11” convictions as of September 1, 2022, or 47 percent of the total prison population of 12,226 reported separately for that same date. Oregon Department of Corrections, *Research and Statistics: Adult in Custody Demographics (“Offenders with M11 Convictions as of September 1, 2022”)*, at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx>; Oregon Department of Corrections, *Current Adults in Custody Population (“AIC Population Profile for 09/01/2022”)*, at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx> (reporting total state prison population). These reports also reveal that the violent-offender

Measure-11 sentences, there is no prospect of release short of expiration of the judicial maximum sentence except through infrequently used avenues of release such as the clemency process or medical parole (see Part III). The situation of Measure-11 prisoners is shown in Figure 5. Unlike the general-rules sentences in Figures 3 and 4, there is no indeterminacy in this class of sentence. Setting aside rarely exercised release mechanisms such as clemency and medical parole, Measure-11 sentences are 100 percent determinate.

Oregon Figure 5. Prison-Release Timeline
for “Measure-11 Cases



The PMP for the Measure-11 group is 1:1. That is, the size of this group within Oregon’s prison population is purely a function of the judicial sentences they have received. From the point of view of back-end decisionmakers, each Measure-11 sentence is an immovable object.

The sheer size of the Measure-11 group has meaningful impact on the degree of indeterminacy in Oregon’s prison-sentencing system as a whole. We have already ranked Oregon’s sentencing scheme for general-rules prisoners as having an *extremely low degree of indeterminacy*, but at the borderline of low indeterminacy. The 45 percent of Oregon’s prisoners who are serving Measure-11 sentences pushes our evaluation decisively in the direction of extremely low indeterminacy. If we were to combine the PMPs for general-rules and Measure-11 prisoners, we would estimate a weighted average PMP of about 1.12:1 or 1.13:1.⁶⁹ This falls in the same

population in Oregon extends well beyond Measure-11 prisoners. As of September 2022, *The AIC Population Profile* reported that 70percent of all Oregon’s prisoners were serving time for violent offenses.

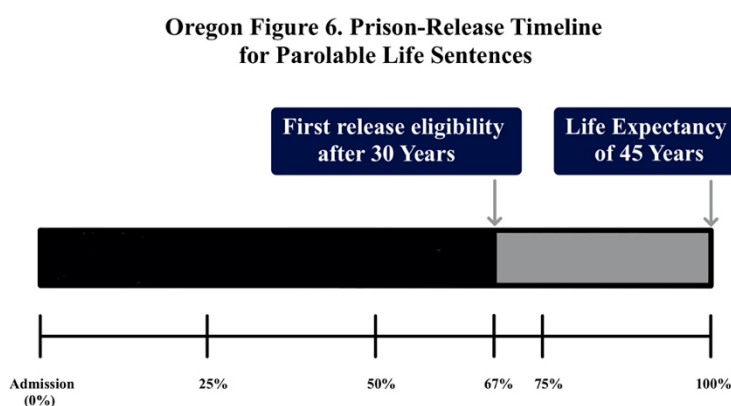
We do not know of any other state in which there is such a large presence of prisoners serving mandatory minimum sentences as a percentage of all prisoners. We do not put too fine a point on this observation, however. In most states, given the scope of the current project, we were unable to investigate the impact of mandatory sentencing laws on the prison-sentencing system as a whole. Oregon is unusual in providing easily-available statistics, at least with respect to Measure 11’s impact.

⁶⁹ On the theory of composite PMP calculations, 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 24-25.

ballpark as the most determinate systems in the nation. Indeed, by this composite measure, Oregon may have the most determinate prison-sentencing system in the U.S.⁷⁰

4.3. Parolable life sentences

For the 5.7 percent of all Oregon prisoners who are serving sentences of life sentences with the possibility of parole,⁷¹ the generally-applicable minimum term before eligibility for discretionary parole release is 30 years. We can roughly estimate the degree of indeterminacy in such sentences by adopting the convention that the average life expectancy of a newly-admitted prisoner is about 45 years.⁷² Figure 6 shows the prison-release timeline produced by this assumption.



We should note that parolable life sentences for prisoners who committed their crimes as juveniles are far more indeterminate than those shown in Figure 6 for adults. Parole-release eligibility for this group occurs after 15 years and the average life expectancy of newly-admitted juvenile offenders is probably longer than for adults.⁷³ We were unable to obtain recent counts of juvenile lifers in Oregon’s prisons, but we assume the number is small.

⁷⁰ For comparisons across 52 American jurisdictions, see *id.*, at 136-42 Appendix Table A-2 (“Degrees of Indeterminacy in 52 American Prison-Sentencing Systems (General-Rules Sentences Only)”).

⁷¹ As of September 1, 2022, the Oregon Department of Corrections reported that 701 of 12,226 prisoners were serving sentences of life with the possibility of parole, or about 5.3 percent of the total prison population. Oregon Department of Corrections, *Current Adults in Custody Population* (“AIC Population Profile for 09/01/2022”), at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx>.

⁷² For an explanation of this methodology, see Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), Ch. 9 (“Life sentences”), at 111-13.

⁷³ By current national standards, a minimum term of 15 years for juvenile lifers is in the bottom decile.

4.4. Distribution of time-served discretion

The two largest groups in the Oregon prison system are general-rules prisoners and Measure-11 prisoners. Combined, we estimate that these two groups make up as much as 90 percent of Oregon's total prison population. In general-rules cases the department of corrections holds a modest degree of time-served authority given the state's relatively low ceiling on sentence-length reductions that may be achieved with time credits. For Measure-11 prisoners, even this modest power does not exist.

Meaningful parole-board authority extends only to small groups of prisoners. There are no published data on the board's release decisions, so it is hard to quantify the role of parole release discretion within the system as a whole.⁷⁴ The most important category of cases is probably life sentences with possibility of parole, which made up more than five percent of the state's prison population in 2020. Juvenile lifers are included in this group, but are probably a small subset. We are curious about the numbers of "dangerous offenders" who come within the parole board's release authority, but have no way to estimate the size of this caseload.

For juvenile offenders sentenced as adults, Oregon has a novel second-look process that employs sentencing courts as back-end release decisionmakers. This is an unaccustomed role for courts to play in the United States. The judicial second-look power springs into life at the 50-percent mark of juvenile offenders' maximum sentences, and applies even to juvenile offenders who are serving mandatory minimum sentences. The second-look process creates a defined zone of indeterminacy within Oregon's prison-sentencing system, but we are unable to estimate its dimensions.

4.5. Overall assessment

We classify Oregon's prison-sentencing system as having an *extremely low degree of indeterminacy* on the scale developed for this project (see pp. iv-v). Alternatively, one might say that the system has an *extremely-high degree of determinacy*. Indeed, Oregon may have the most determinate prison-sentencing system in the country.

Oregon is distinctive for having large numbers of prisoners who are serving mandatory minimum sentences that are 100 percent determinate (that is, not reducible by good time or other generally-available release mechanisms). This by itself tilts the state's prison-sentencing system heavily toward extreme determinacy.

For many Oregon prisoners, the main possibility of release before the expiration of their judicial maximum terms lies in the accrual of time credits. The effect of credits on sentence

⁷⁴ The board's annual reports do not contain information about numbers or types of cases considered for release, or statistics concerning rates of release. See Oregon Board of Parole and Post-Prison Supervision, *Annual Performance Progress Report: Reporting Year 2020* (2020), at <https://www.oregon.gov/bopp/Reports/Documents/Stats%20and%20Reports/APR2020.pdf>.

length is modest, and nearly half of all prisoners are ineligible. A small percentage of prisoners are eligible for discretionary parole release. Uniquely, juveniles sentenced as adults may be released by sentencing courts after serving as little as half of their maximum terms.

In sum, the department of corrections, parole board, and trial courts all exercise different forms of back-end release discretion in discrete sectors of the Oregon prison-sentencing system, but all such powers are limited in scope and in numbers of cases.

Compared to many other states, the exercise of prison-release discretion in Oregon cannot do much to effect large changes in prison-population size. There is no official actor at the back end of the prison-sentencing system who can greatly shorten or lengthen average prison stays for the vast majority of prisoners.⁷⁵ Prison population size is largely function of judicial sentences pronounced at the front end of the prison-sentencing system. (In saying this, we must note that judicial sentences are not purely a product of judicial discretion. They reflect many other forces that precede the judicial sentencing hearing, such as the provisions of Oregon's sentencing guidelines, the charging discretion of prosecutors, and the plea-bargaining negotiations of defendants and prosecutors.)

⁷⁵ For example, 56 percent of Oregon's prisoners were more than two years from their mandatory release dates as of September 1, 2022, and 74 percent were more than one year out. Oregon Department of Corrections, *Current Adults in Custody Population* ("AIC Population Profile for 09/01/2022"), at <https://www.oregon.gov/doc/research-and-requests/pages/research-and-statistics.aspx>. Given Oregon's extremely determinate system, prisoners' releases occur with a relatively fixed cadence.