



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

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# **PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE**

## ***STATE REPORT: MAINE***

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### Definitions and Concepts

“Indeterminacy” in a prison sentence means “unpredictability of time served.” Once a particular judicial sentence has been imposed, can we say with confidence how much time the defendant will actually serve before the sentence’s expiration? If actual time-to-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 small range of possibility, then the sentence has a low degree of indeterminacy—or, we might say—a high degree of determinacy. “Determinacy” means “predictability of time served” at the time of judicial sentencing.

Scaling up to the systemwide level, the degree of indeterminacy in prison sentences regulates which government officials have effective control over prison population size. Higher degrees of indeterminacy across individual sentences produce greater control over prison population size by “back-end” agencies such as parole boards and departments of correction.

These structural features vary greatly across U.S. jurisdictions. One goal of this project is to inform state governments how they may adjust their laws and practices of prison-release authority to achieve desired policy goals, such as reductions of prison populations in a manner consistent with public safety

### *Note on the project’s rankings of “degrees of indeterminacy”*

To compare the degrees of indeterminacy in individual prison sentences or across the prison-sentencing systems of different jurisdictions, we use a qualitative ranking framework based on our cumulative learning while preparing the project’s 52 jurisdiction-specific reports. To avoid false precision, we place all systems within one of five categories (see table below).

Each of the five categories can be expressed in alternative terms: either the *degree of indeterminacy* or *degree of determinacy* thought to be present. Our five tiers are based on the variations we observe in current American sentencing systems, not any absolute or theoretical conceptions of degrees of indeterminacy that could be imagined in hypothetical systems.

The ranking scale is subjective, although the reasoning that supports our judgments is laid out in each report. Ultimately, the rankings indicate only the rough position of specific prison-sentencing systems vis-à-vis each other. No two American prison-release systems are alike and all are highly complex, so nuanced comparative analysis requires closer inspection.

### *Rankings of “Degrees of Indeterminacy”*

<b>Ranking</b>	<b>Alternative terminology</b>	
1	Extremely-high indeterminacy	Extremely-low determinacy
2	High indeterminacy	Low determinacy
3	Moderate indeterminacy	Moderate determinacy
4	Low indeterminacy	High determinacy
5	Extremely-low indeterminacy	Extremely-high determinacy

## Prison-Release Discretion and Prison Population Size

### State Report: Maine<sup>1</sup>

#### *Executive Summary*

Maine's prison-sentencing system is *extremely high in determinacy* overall. In this project's alternative terminology, one could also say the system is *extremely low in indeterminacy*.

All prison-release discretion at the back end of Maine's prison-sentencing system is held by prison officials who administer the state's system of conduct and program credits. However, Maine's credit allotments are not markedly generous. The prison-release authority placed in the department of corrections allows for reductions that, at the very most, shave off 23 percent of prisoners' maximum terms.<sup>2</sup>

In Maine, prison population size is determined for the most part by decision makers at the front end of the prison-sentencing system, including judges and prosecutors. That is not to say that back-end decisions have no important impact. For the largest segment of Maine's prison population, prison officials have the power to drive prisoner numbers to low and high points that vary by as much as 30 percent. For serious violent offenders, the equivalent range of possibility is only 16 percent.

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

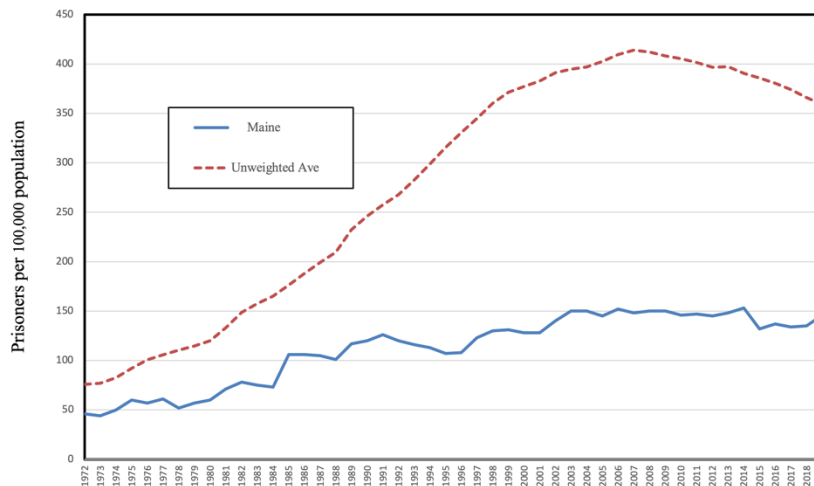
<sup>2</sup> Some other states allow for credit-generated MRDs that occur at or before the 50-percent mark of judicial maximum sentences. See Alabama, Iowa, Maryland, and Oklahoma reports. Other highly-determinate systems allow advancing MRDs that routinely cut 33 percent off maximum terms. See Minnesota, Virginia (law effective 2022), and Washington reports.

**Introduction**

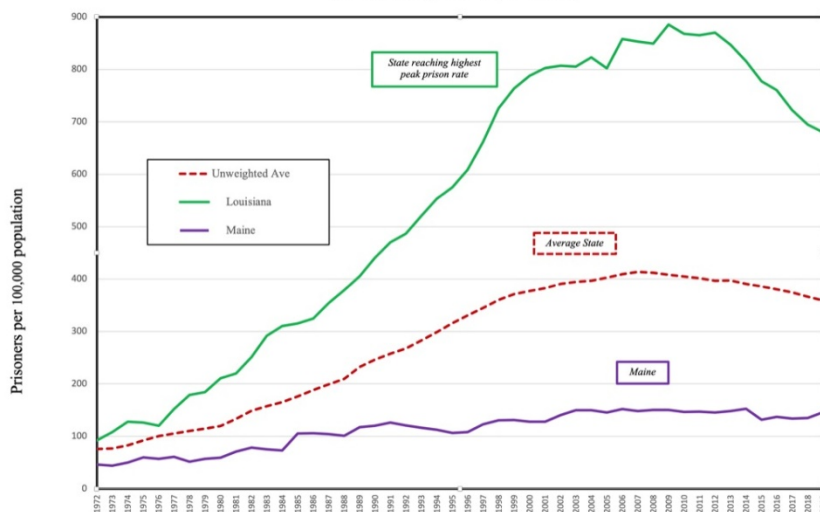
**a. Maine’s prison-rate history, 1972 to 2019**

In 2019, Maine’s prison rate was 146 per 100,000 general population, with a yearend prison population of 1,967.<sup>3</sup> Maine’s prison rate was 49th largest among all states.

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



**Figure 2. Prison Rate Change in Ohio, Louisiana, and Maine, 1972 to 2019 (standard 900 per 100K y-axis scale)**



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

<sup>3</sup> E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 7 table 4, 11 table 7.

sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016 (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps> (visited May 24, 2020); E. Ann Carson, Prisoners in 2018 (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, Prisoners in 2019 (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018-2019).

Maine reached its peak prison rate during the national buildup period in 2014 at 153 per 100,000, which dropped to 146 per 100,000 by the end of 2019. This is a net difference of -7 per 100,000, which was the 47<sup>th</sup> largest prison-rate drop of all states (measured from each state's peak through 2019).

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

### *b. Terminology note*

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

## *1. General rules of prison release*

In 1976, Maine became the first state to abolish discretionary parole, and did so more completely than most other “parole-abolition” states. Under current law in Maine, there are no parolable sentences.<sup>4</sup>

When imposing prison sentences, sentencing courts in Maine generally have discretion to select judicial maximum sentences at or below the statutory maximum ceilings set for each grade of offense.<sup>5</sup>

Prison sentences are expressed as “definite terms.”<sup>6</sup> Prisoners must be released at the expiration of their judicial maximum sentences, or at earlier mandatory release dates (MRDs) earned by credit deductions from their maximum terms.<sup>7</sup> Most prisoners can acquire up to nine days of credit per month for good conduct and program participation.<sup>8</sup> Prisoners convicted of certain serious crimes are limited to five days of credit per month.<sup>9</sup>

MRDs are movable milestones that can advance (in favor of the prisoner), but not indelibly so. Good conduct and program credits may be forfeited after they are earned for disciplinary violations or new crimes, and may even be forfeited in advance.<sup>10</sup>

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<sup>4</sup> Compare California, which also abolished discretionary parole release for most prisoners in 1976, but retained parole release discretion for life sentences other than life without parole. See California Report.

<sup>5</sup> The statutory maximum terms are: Class A crime (30 years), Class B crime (10 years), Class C crime (5 years), Class D crime (less than one year), and Class E crime (six months). Me. Rev. Stat. tit. 17-A § 1604(1).

<sup>6</sup> Me. Rev. Stat. tit. 17-A § 1601. Maine retains a parole board for prisoners with parolable sentences imposed before May 1, 1976. Me. Rev. Stat. tit. 34-A § 5210.

<sup>7</sup> Me. Rev. Stat. tit. 17-A § 2314 (1).

<sup>8</sup> Generally, prisoners can earn up to 4 days per month from their sentence for good conduct. Me. Rev. Stat. tit. 17-A § 2307(2). They may also earn up to 5 days per month for fulfilling assigned responsibilities in their transition plan for work, education, or rehabilitation programs. Me. Rev. Stat. tit. 17-A § 2307(3),(4).

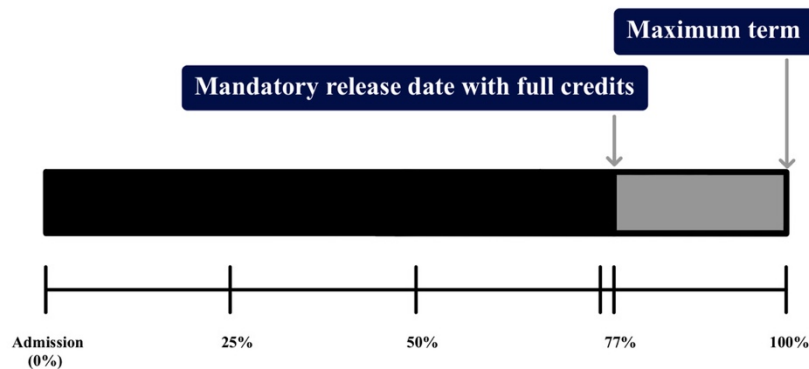
<sup>9</sup> Prisoners convicted of the following offenses are ineligible to earn standard conduct and program credits: murder; any crime listed under sexual assaults; any crime listed under sexual exploitation of minors; a crime against a family or household member that is a crime against the person, kidnapping, criminal restraint and criminal forced labor, violation of a protective order, endangering the welfare of a child, endangering the welfare of a dependent person, or obstructing a report of crime or injury; incest; or indecent conduct. Me. Rev. Stat. tit. 17-A § 2307(1). Instead, they are eligible to earn up to five days of credit per month for good conduct and program participation. Me. Rev. Stat. tit. 17-A § 2308 (2).

<sup>10</sup> Me. Rev. Stat. tit. 17-A § 2307(5) (allowing forfeiture of credits “for months already served or yet to be served by the individual up to and including the maximum authorized [credits] for that sentence.”). Prison officials have discretion to restore credits that have been forfeited. *Id.*, § 2307(6). The prison discipline process is governed by Me. Rev. Stat. tit. 34-A § 3032.

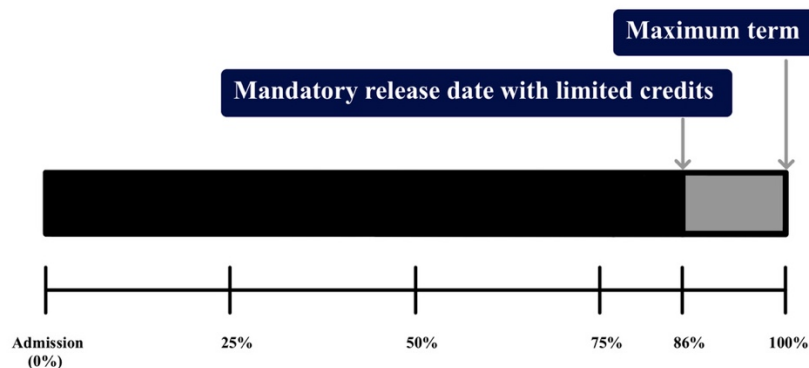


Figure 3 illustrates the timeline for prisoners with definite sentences who are eligible for standard credit earnings. With full credits of nine days per month throughout confinement (and no forfeiture), MRDs occur at the 77-percent mark of prisoners’ judicial maximum terms. Figure 4 shows the somewhat different situation of prisoners convicted of especially serious crimes. With limited credit earnings of five days per month, MRDs come at the 86-percent mark of maximum terms.

**Maine Figure 3. Prison-Release Timeline for Definite Sentences with Full Credits**



**Maine Figure 4. Prison-Release Timeline for Definite Sentences with Limited Credits (Serious Violent Offenders)**



In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence over prison population size that is ceded by law to back-end decision makers such as parole boards and prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board’s release decisions is 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *never-release scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (an *always-release scenario*).

The standard definite sentences in Maine in Figure 3 are 77 percent determinate and 23 percent indeterminate. That is, the judicial maximum term “determines” 77 percent of actual time-to-be-served by prisoners with such sentences, while 23 percent of actual time served remains undetermined pending the actions of back-end agencies—in this case the department of corrections through the administration of conduct and program credits. The PMP for such sentences is 1.3:1. That is, if all available credits were consistently denied to all prisoners over an extended period, the prison population serving this type of sentence would eventually grow to be 30 percent larger than if all prisoners were uniformly granted all available credits.

For serious violent offenders, the lower credit earning rate renders their sentences 86 percent determinate and 14 percent indeterminate, with a PMP of 1.16:1. That is, the most draconian credit-denial practices by prison officials would over time yield a subpopulation (with this type of sentence) 16 percent larger than it would be under the most generous credit-award practices.

Under this project’s subjective ranking system (see page iii), standard definite sentences in Maine can be classified as *extremely high in determinacy*, albeit not at the furthest extreme we have encountered nationwide. (In the alternative terminology of this project, we could also say that this sentence type is *extremely low in indeterminacy*.)<sup>11</sup>

<sup>11</sup> Maine’s standard definite sentences are near the lower boundary of sentence types that we have classified as extremely high in determinacy. See also Kansas report. General-rules sentences in Minnesota and Washington, which are 67 percent determinate, have been classified in this project as high in determinacy.

For serious violent offenders as depicted in Figure 4, definite sentences are among the most determinate in the nation, and are also placed in our ranking scale among those that are *extremely high in determinacy* (or *extremely low in indeterminacy*).

## 2. Life sentences

### a. Adults

All life sentences in Maine are life without parole (LWOP). Imposition of a life sentence requires proof of enumerated aggravating factors, which must be weighed against mitigating factors by the sentencing court.<sup>12</sup> Some judges take the alternative route of imposing maximum terms of years that approximate or exceed defendants' life expectancies.<sup>13</sup>

The Sentencing Project reported that fewer than three percent of prisoners in Maine in 2016 were serving LWOP sentences (64 of 2,243). In the same year there were 72 prisoners serving “virtual life sentences” of 40 years or longer.<sup>14</sup>

### b. Juvenile life sentences

It is possible in Maine for a person convicted of a murder committed before age 18 to be sentenced to LWOP. However, the state has never imposed such a sentence on a juvenile defendant.<sup>15</sup>

## 3. Infrequently used forms of prison release

### a. Compassionate release

The department of corrections may transfer prisoners to “supervised community confinement” if they are suffering from a “terminal or severely incapacitating medical condition.” The prisoner may be released to “a hospital or other appropriate care facility, such as a nursing facility, residential care facility or a facility that is a licensed hospice program,” or may be allowed to receive hospice services at home.<sup>16</sup>

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<sup>12</sup> *State v. Shortsleeves*, 580 A.2d 145, 150 (Me. 1990).

<sup>13</sup> Judy Harrison, *A life sentence in one murder, 58 years in another: Sentences are “more art than science,”* Bangor Daily News, Sept. 14, 2019.

<sup>14</sup> Ashley Nellis, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* (The Sentencing Project, 2017), at 10 table 2.

<sup>15</sup> New England Juvenile Defender Center, *Maine State Profile*, at <https://njdc.info/newengland/states/maine/>.

<sup>16</sup> Me. Rev. Stat. tit. 34-A § 3036-A(10).

### *b. Clemency*

Maine's governor has authority to grant reprieves, commutations, and pardons in all cases except impeachment.<sup>17</sup> The governor may request that the parole board investigate cases and offer recommendations.<sup>18</sup>

The clemency power has not been used frequently in Maine. Former Governor Paul LePage pardoned a total of 112 people in his eight years in office.<sup>19</sup>

### *c. Release during overcrowding emergencies*

There is no standing statutory process in Maine for addressing circumstances of prison overcrowding.

## **4. Overall assessment**

Maine's prison-sentencing system is one of *extremely-high determinacy* overall. Maine has one of the nation's most unvarying determinate systems, with no parolable sentences of any kind in current law.<sup>20</sup> All life sentences are LWOP sentences. Even compassionate release is not a parole function but solely a matter in the discretion of the department of corrections.

All prison-release discretion at the back end of Maine's prison-sentencing system is held by prison officials who administer the state's system of conduct and program credits. Maine is among the minority of states that apply such credits against prisoners' maximum terms to generate advancing dates of mandatory release rates. This is a notable feature of system design. However, Maine's credit allotments are not markedly generous. The prison-release authority placed in the department of corrections allows for reductions that, at the very most, shave off 23 percent of prisoners' maximum terms.<sup>21</sup>

In Maine, prison population size is determined for the most part by decision makers at the front end of the prison-sentencing system, including judges and prosecutors. That is not to say that back-end decisions have no important effect. For the largest segment of Maine's prison

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<sup>17</sup> Me. Const. art. V, § 12.

<sup>18</sup> 03-208 C.M.R. 1 § 1 (C)(1)(d).

<sup>19</sup> Marina Villeneuve, *Former Governor LePage pardoned 112 people before leaving office*, WGME, Mar. 28, 2019, <https://wgme.com/news/local/former-governor-lepage-pardoned-112-people-before-leaving-office>.

<sup>20</sup> In 2014, the media reported that there were four prisoners in Maine who were serving parolable sentences imposed before the state's determinate sentencing laws became effective in May 1976. Stephen Betts, *Number of Maine prisoners under parole authority down to 4*, Bangor Daily News, June 7, 2014.

<sup>21</sup> Some other states allow for credit-generated MRDs that occur at or before the 50-percent mark of judicial maximum sentences. See Alabama, Iowa, Maryland, and Oklahoma reports. Other highly-determinate systems allow advancing MRDs that routinely cut 33 percent off maximum terms. See Minnesota, Virginia (law effective 2022), and Washington reports.

population, prison officials have the power to drive prisoner numbers to low and high points that vary by as much as 30 percent. For serious violent offenders, the equivalent range of possibility is only 16 percent.