



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

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

***STATE REPORT: MARYLAND***

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### 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 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 greatly across U.S. jurisdictions. One goal is to inform state governments how they may deliberately 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: Maryland<sup>1</sup>

#### *Executive Summary*

Overall, we rank the Maryland prison-sentencing system as one of *moderate indeterminacy*. Eligibility for discretionary parole release occurs at the 25 percent mark of the judicial maximum term for most nonviolent offenders, and at the 50 percent mark for most violent offenders. For a small subgroup of nonviolent prisoners, Maryland has an “administrative release” mechanism that allows for release at first parole-release eligibility without a hearing.

Maryland’s department of corrections administers “diminution credits” that may be deducted from judicial maximum terms to produce earlier dates of mandatory release. Total deductions may be as much as 50 percent of the statutory maximum term for prisoners convicted of nonviolent offenses and 40 percent for prisoners convicted of nonviolent offenses. Compared with most other states, these are generous allowances. Mandatory release dates are *movable milestones* in most Maryland prison sentences, and have the capacity to cut off a large percentage of judicial maximum terms.

At the back-end of Maryland’s prison-sentencing system, the department of corrections exerts definitive control over a larger segment of the prison-sentence timeline than the parole board, although both are important decision makers. The department’s ability to wield its full releasing power depends to a great extent on program availability, however, because awards of diminution credits often require program participation.

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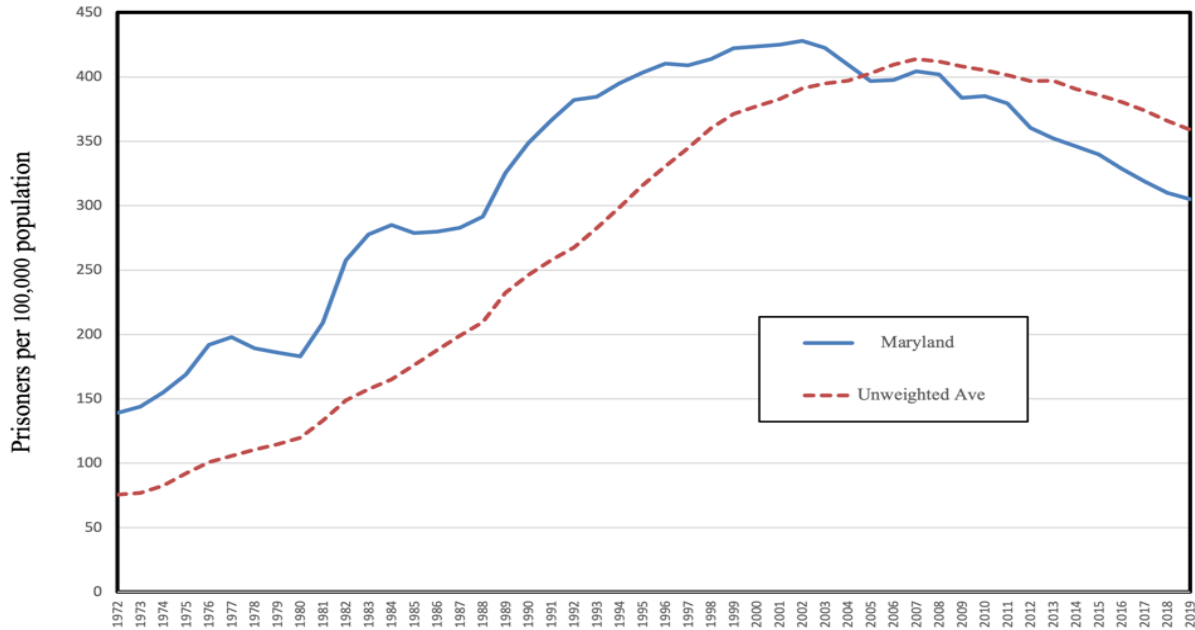
<sup>1</sup> This report was prepared with support from Arnold Ventures. The views expressed are the authors’ and do not necessarily reflect the views of Arnold Ventures. We thank David Blumberg and David Law for their comments on an earlier draft.

**Introduction**

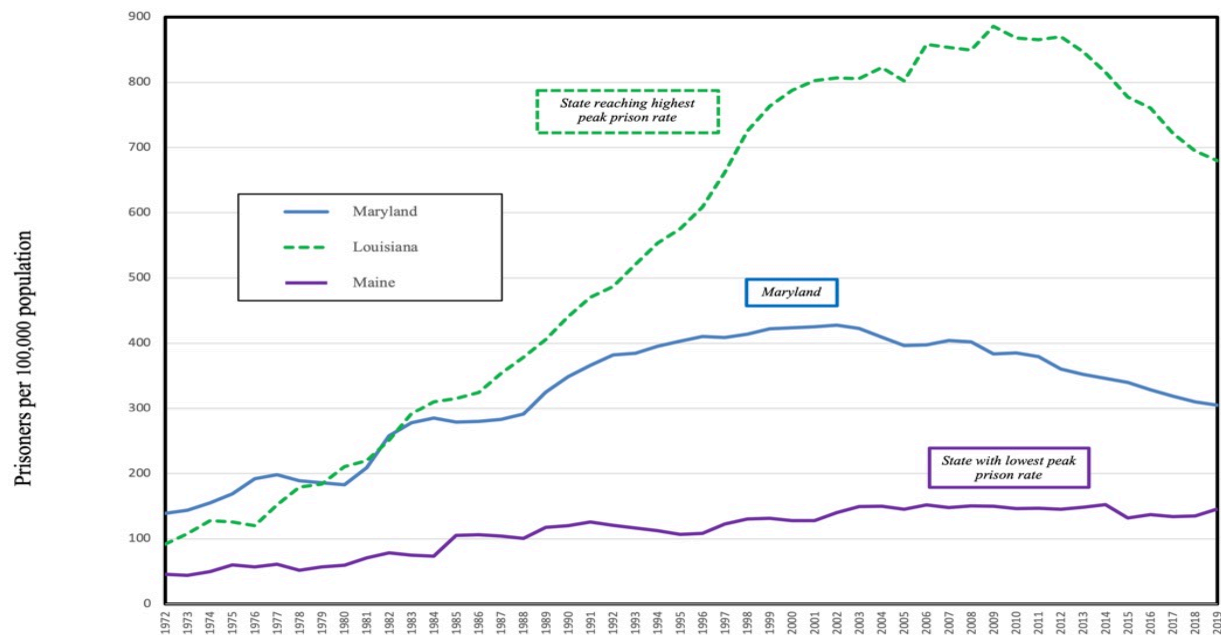
*Maryland’s prison-rate history, 1972 to 2019*

At yearend 2019, Maryland’s prison rate was 305 per 100,000 general population, with a prison population of 18,476. Maryland’s prison rate was 33<sup>rd</sup> highest among all states.<sup>2</sup>

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



<sup>2</sup> E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020) at 7 (table 4), 11 (table 7).

**Figure 2. Prison Rate Change in Maryland, Louisiana, and Maine, 1972 to 2019**

Sources: Timothy J. Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics*, 1990 at 605 (table 6.56), Rate (per 100,000 resident population) of sentenced 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), available 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 2017-2018).

Maryland reached its peak prison rate during the national buildup period in 2002 at 428 per 100,000, which dropped to 305 per 100,000 in 2019. This is a net difference of -123 per 100,000, which was the 14<sup>th</sup> largest prison-rate drop of all states.

Taking the entire time period of Figures 1 and 2 in view, Maryland has had a distinctive history of prison-rate change. It is surprising to note that Maryland's prison rate in 1972 was fifth highest among all states, at the outset of the nationwide prison buildup period that ran for the next 35 years. In 1972, Maryland had a higher prison rate than Louisiana and Texas, and a rate that was only one point per 100,000 lower than Oklahoma's. The scale of Maryland's prison system was comfortably within the high-incarceration norms of states in the Southern region of the country.

Maryland began to drop out of the "top" tier of high-imprisonment states in the early 1980s, however, and moved further and further from the prison-rate-growth trajectories of the top-tier states through the 1990s and 2000s. This might be characterized as a fundamental shift in

the *prison-policy identity* of the state. By the mid-2000s, Maryland's year-by-year prison-rate growth had fallen below that of the average state.

We know of no criminal-justice history of Maryland that investigates this discontinuity in prison-policy identity. Even without such analysis, Maryland shows that it is possible for an individual state to make major transformations in its punitive orientation relative to other states.<sup>3</sup>

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.

<sup>3</sup> Another state that has dramatically changed its prison-policy identity from 1972 to the present is North Carolina. North Carolina had the second highest prison rate among all 50 states in 1972 and rose to first position in the late 1970s and early 1980s. In 2019, North Carolina's prison-rate ranking had fallen to 31<sup>st</sup> among the 50 states.



### *Organization of this report*

This report is divided into four parts. Parts I through III describe the contours of Maryland’s prison-release system in some detail, with extensive citations and statutory analysis. Part I surveys the prison-release rules that apply to most prisoners. Part II then covers a number of important subgroups of prisoners who are not subject to the general rules. Part III catalogues some additional prison-release mechanisms that exist in Maryland but are infrequently used, such as medical release and the clemency power.

Part IV draws on the raw research in Parts I through III to analyze and model the degrees of indeterminacy that exist for the most important subgroups of prisoners who are serving different classes of sentences. Ultimately, if a large enough percentage of all prisoners are included, this allows for broad observations about the Maryland system as a whole. The overarching goal of Part IV is to explore the relationship between the various forms of prison-release discretion in Maryland and the size of the state’s prison population.

### *Terminology note*

This report will refer to the Maryland Parole Commission as the “parole board.” It will refer to the Maryland Department of Public Services and Correctional Operation as the “department of corrections.”

## *I. General Rules of Prison-Release Discretion*

### *A. General rules of parole-release eligibility*

#### *1.1. General rules of first release eligibility*

##### *a. Prisoners convicted of nonviolent crimes*

Prisoners convicted of nonviolent crimes who are serving sentences of more than six months become eligible for discretionary parole release after serving one-fourth of their judicial maximum sentence.<sup>4</sup>

##### *b. Prisoners convicted of violent crimes*

Prisoners convicted of an offense statutorily classified as a “violent crime” become eligible for discretionary parole release after serving the greater of: one-half their aggregate sentence for violent crimes, one-fourth of their total aggregate sentence, or any minimum term during which they are not eligible for parole.<sup>5</sup> Violent crimes are statutorily defined to include the following completed or attempted offenses:

Murder; rape; robbery; sexual offense in the first or second degree; child abuse in the first degree; sexual abuse of a minor under specified circumstances; continuing course of sexual assault of a child; felony sex trafficking; maiming; mayhem; manslaughter except involuntary manslaughter; assault in the first degree; assault with intent to murder, rape, or rob; assault with intent to commit a sexual offense in the first or second degree; kidnapping; abduction; arson in the first degree; carjacking; use of a firearm in the commission of specified felonies; home invasion; and burglary in the first, second, or third degree.<sup>6</sup>

In addition, prisoners with third or subsequent felony convictions involving controlled dangerous substances do not become parole eligible until serving one-half of their aggregate sentences.<sup>7</sup>

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<sup>4</sup> Md. Code, Corr. Servs. §§ 7-301(a)(1),(2).

<sup>5</sup> Md. Code, Corr. Servs. § 7-301(c)(1).

<sup>6</sup> Md. Code, Corr. Servs. § 7-101(m); Md. Code, Crim. L. § 14-101(a). Reading § 7-101(m) literally, an *attempt* to commit a burglary in the first, second, or third degree is not defined as a violent crime, but an attempt to commit any other offense on the list above is covered in the definition.

<sup>7</sup> Md. Code, Corr. Servs. § 7-301(e).

### *c. Prisoners eligible for administrative release*

Maryland has an “administrative release” mechanism that permits narrow classes of prisoners to be released at their parole eligibility dates without a hearing if certain conditions are met.<sup>8</sup> Prisoners eligible for administrative release include those whose most serious offense is a lower level drug crime or misdemeanor property crime involving a value of \$1,500 or less.<sup>9</sup>

The required conditions for administrative release are: (1) the prisoner has complied with their case plan, (2) the prisoner has not committed a “category 1 rule violation,” and (3) “a victim has not requested a hearing.”<sup>10</sup> In contrast with some other states, administrative release in Maryland requires affirmative action on the part of the parole board.<sup>11</sup> The board must make a finding that “a hearing [is] unnecessary considering the inmate's history, progress, and compliance.”<sup>12</sup>

#### *1.2. Reconsideration after denials of release*

When denying release, the parole board may set a date for rehearing of the prisoner’s case or may refuse parole release for the remainder of the sentence.<sup>13</sup> Prisoners refused parole release entirely must await their date of mandatory release, which is calculated as their judicial maximum term minus any diminution credits they earn (see section 1.3b).<sup>14</sup>

### *B. General rules on the effects of good time, earned time, and other discounts*

#### *1.3. Generally-available credits: types and amounts*

Most prisoners are eligible to earn “diminution credits” of four different kinds, which may be applied cumulatively to produce a mandatory release date that is earlier than the expiration of their judicial maximum sentence.<sup>15</sup>

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<sup>8</sup> Md. Code, Corr. Servs. § 7-301.1(g).

<sup>9</sup> Md. Code, Corr. Servs. § 7-301.1(a)(3). Prisoners are excluded from administrative release if they have a prior conviction of a violent crime or a registrable sex offense, or two prior convictions of certain drug offenses. *Id.* §§ 7-301.1(a)(3)(iii),(iv).

<sup>10</sup> Md. Code, Corr. Servs. § 7-301.1(g).

<sup>11</sup> Cite to other states here: South Dakota.

<sup>12</sup> Md. Code, Corr. Servs. § 7-301.1(g).

<sup>13</sup> Maryland Department of Public Safety and Correctional Services, *Maryland Parole Commission FAQs Index, Parole & Parole Hearings #3*, available at: <https://www.dpscs.state.md.us/about/FAQmpc.shtml>.

<sup>14</sup> Maryland Parole Commission, *FAQs Index, Parole & Parole Hearings #4*, available at <https://www.dpscs.state.md.us/about/FAQmpc.shtml>.

<sup>15</sup> Md. Code, Corr. Servs. § 3-702(a). Prisoners who have convictions of certain sexual offenses (most involving children) are not eligible to receive diminution credits. Inmates convicted of rape in the first or second degree wherein the victim was a child under the age of 16 are not eligible to receive diminution credits. Md. Code, Corr.

“Good conduct credits” are advanced to a prisoner at intake subject to their future good behavior.<sup>16</sup> Prisoners convicted of nonviolent crimes are eligible to receive 10 days of good conduct credits per month, while prisoners convicted of violent crimes or certain drug distribution offenses receive 5 days each month.<sup>17</sup>

“Work credits” are awarded for prisoners’ satisfactory performance of assigned work tasks. They accrue at a rate of 5 days per month.<sup>18</sup>

“Education credits” are dispensed in the amount of 5 days for each month in which the inmate manifests satisfactory progress in certain programs.<sup>19</sup>

“Special project credits” are awarded for satisfactory progress in “special selected work projects or other programs, including recidivism reduction programming” as approved by the department of corrections. Prisoners convicted of nonviolent crimes may earn special-project credits of up to 20 days per month, but prisoners convicted of violent crimes and certain serious drug offenses may earn up to 10 days per month.<sup>20</sup>

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Servs. § 3-702(b). Prisoners serving a sentence for a subsequent conviction of rape in the third degree wherein the victim was a child under the age of 16 years following an initial conviction of the same offense are not eligible to receive diminution credits. Md. Code, Corr. Servs. § 3-702(c). Prisoners confined for a lifetime sexual offender supervision violation are not eligible to receive diminution credits. Md. Code, Crim. Proc. § 11-724(c). *See generally* Guy G. Cherry and Claire E. Rossmark, *Maryland Diminution Credit System*, Department of Legislative Services at 3 (2011), available at <https://mdstatedocs.slrc.info/digital/collection/mdgov/id/2775>.

<sup>16</sup> Md. Code, Corr. Servs. § 3-704(a).

<sup>17</sup> Md. Code, Corr. Servs. § 3-704(b)(2). “Crime of violence” is defined here to include every offense listed above in section 1.1b except burglary in the first, second, or third degree. The drug offenses include distribution of controlled dangerous substances under Md. Code, Crim. L., §§ 5-612 and 5-613.

<sup>18</sup> Md. Code, Corr. Servs. § 3-705(a)(1). These credits are awarded monthly for the previous month’s work performance. Md. Code, Corr. Servs. § 3-705(a)(2) (2020), Guy G. Cherry and Claire E. Rossmark, *Maryland Diminution Credit System* (Department of Legislative Services, 2011) at 3, available at <https://mdstatedocs.slrc.info/digital/collection/mdgov/id/2775>.

<sup>19</sup> Md. Code, Corr. Servs. § 3-706(a). The qualifying programs are vocational courses; other educational and training courses; workforce development training; cognitive-behavioral therapy; substance abuse therapy; life skills training; and antiviolenace therapy, including anger management and conflict resolution.

<sup>20</sup> Md. Code, Corr. Servs. §§ 3-707(a)(1),(2) The lower-earning group is the same as for good-conduct credits, see note 11 above.

*a. Effects of good time credits on parole-release eligibility*

Diminution credits do not affect the date of first parole-release eligibility, except for prisoners serving parolable life sentences (see section 2.3).<sup>21</sup>

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

For prisoners with sentences of more than 18 months, diminution credits are deducted from the judicial maximum sentence to produce an earlier date of mandatory release.<sup>22</sup> Total deductions from judicial maximum terms are limited to 30 days per month for nonviolent offenders and 20 days per month for prisoners convicted of violent crimes and certain serious drug offenses.<sup>23</sup> Prisoners convicted of violent crimes are not eligible for release under this provision until they reach their date of parole eligibility.<sup>24</sup>

*1.4. Loss of good time credits*

If an inmate violates a rule of discipline, the department of corrections may “revoke” any or all good conduct credits and special projects credits.<sup>25</sup> Work credits and education credits may not be revoked.<sup>26</sup> The department has discretion to restore revoked credits.<sup>27</sup>

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<sup>21</sup> Md. Code, Corr. Servs. §§ 7-301(d)(1),(2) (2020) (parolable life prisoners become eligible for release after 15 or 25 years, depending on their offense; the time to parole eligibility may be shortened by “allowances for diminution of the inmate's term of confinement under [credit for time already served] and Title 3, Subtitle 7 of this article.”

<sup>22</sup> This is called “release on mandatory supervision.” Md. Code, Corr. Servs. § 7-501(a). Releasees are supervised “as if on parole” for the remainder of their judicial maximum sentence. COMAR § 12.08.01.13.

<sup>23</sup> Md. Code, Corr. Servs. §§ 3-708(1),(2). The prisoners with the lower 20-day ceiling upon earnings of diminution credits include those convicted of all the offenses listed in section 1.1b above except burglary in the first, second, or third degree, with the addition of prisoners convicted of a registrable sex offense or distribution of controlled dangerous substances under Md. Code, Crim. L., §§ 5-612 and 5-613.

<sup>24</sup> Md. Code, Corr. Servs. § 7-501(b). The definition of “violent crime” in this provision is the same as laid out in section 1.1b.

<sup>25</sup> Md. Code, Corr. Servs. § 3-709(a). Under this provision, the amount of credits revoked must be “according to the nature and frequency of the violation.”

<sup>26</sup> Md. Code, Corr. Servs. § 3-709(b).

<sup>27</sup> Md. Code, Corr. Servs. § 3-709(c)(1).

## II. Prisoners Outside the General Rules

### 2.1. Life without parole

Inmates convicted of first degree murder sentenced to life imprisonment are not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence.<sup>28</sup> Defendants who are convicted for a fourth time of a "crime of violence" as defined in statute must be sentenced to life without the possibility of parole.<sup>29</sup> Inmates convicted of certain violent sex crimes may also be sentenced to life without parole.<sup>30</sup>

A 2016 survey reported that 338 of Maryland's then 21,442 prisoners were serving LWOP sentences, or 1.6 percent.<sup>31</sup>

### 2.2. Life sentences with possibility of parole

Most inmates sentenced to life imprisonment become parole eligible after serving a minimum term of 15 years, which may be reduced by diminution credits.<sup>32</sup>

Inmates sentenced to life imprisonment when the death penalty had been sought for a first degree murder offense committed on or after July 1, 1983 do not become parole eligible until they have served a minimum term of 25 , which may be reduced by diminution credits.<sup>33</sup>

Life prisoners who have served a full 25 years without diminution credits may be released on parole only with the governor's approval.<sup>34</sup>

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<sup>28</sup> Md. Code, Corr. Servs. § 7-301(d)(3).

<sup>29</sup> Those offenses that qualify as a "crime of violence" are listed in Md. Code, Crim. L., § 14-101(a). The mandatory sentence of life without parole on a fourth conviction of a crime of violence is required by *id.*, § 14-101(b).

<sup>30</sup> Maryland State Commission on Criminal Sentencing Policy, *Maryland Sentencing Guidelines Manual Version 12.2* (2020) at Appendix A, p. 47.

<sup>31</sup> Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (The Sentencing Project, 2017) at 10 (table 2).

<sup>32</sup> Md. Code, Corr. Servs. § 7-301(d).

<sup>33</sup> Md. Code, Corr. Servs. § 7-301(d)(2) (2020), COMAR § 12.02.06.02(A).

<sup>34</sup> Md. Code, Corr. Servs. § 4-305(b)(4)(i)-(ii).

In July 2018, Maryland reported that there were 2,328 prisoners serving life sentences out of a total population of 18,365, or nearly 13 percent.<sup>35</sup> No breakdown of LWOP versus parolable life sentences was provided.<sup>36</sup>

### 2.3. Juvenile life sentences

Despite recent Supreme Court cases, Maryland has been reticent to implement statutory changes reflecting an updated parole eligibility scheme for this class of offenders.<sup>37</sup> Therefore, an offender sentenced to life without parole as a juvenile can only be released from prison through pardon or remission of their sentence by the Governor.<sup>38</sup> Notably, three life without parole offenders who commit their crimes as juveniles were released by the Governor in November of 2019.<sup>39</sup>

### 2.4. Other sentences with limited or no parole-release eligibility

Maryland statutes creating mandatory minimum prison sentences generally do not allow for parole-release eligibility during the required minimum terms. For example, prisoners with mandatory minimum sentences for second and third convictions of crimes of violence have no parole eligibility until their mandatory minimum terms have expired. The minimum terms are 10 and 25 years, respectively.<sup>40</sup> Prisoners with mandatory minimum sentences for the use of an assault weapon in the commission of a felony or crime of violence have no parole eligibility until their mandatory minimum terms have expired. The statute prescribes a five-year mandatory minimum term for a first violation and a 10-year mandatory minimum for subsequent violations.<sup>41</sup>

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<sup>35</sup> Maryland Department of Public Services and Correctional Operation, *Maryland Division of Correction Operations: FY 2018 Annual Report* at 40.

<sup>36</sup> A 2016 survey reported that 2,803 of Maryland's then 21,442 prisoners were serving LWOP sentences, or 13 percent of the total at that time. Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (The Sentencing Project, 2017) at 10 (table 2).

<sup>37</sup> Scott Broom, *Do people sentenced to life without parole as juveniles deserve a second chance?*, WUSA9 (Nov. 25, 2019), available at <https://www.wusa9.com/article/news/local/maryland/juvenile-parole-sentences-maryland/65-e8aabd39-93aa-43ca-ac02-f5f5dd0313f4>.

<sup>38</sup> Md. Code, Corr. Servs. § 7-601(a) (expressly permitting the Governor to pardon or remit any part of an inmate's sentence if sentenced to life without parole for a first degree murder conviction); see *id.*, § 7-301(d)(3)(ii)

<sup>39</sup> Scott Broom, *Do people sentenced to life without parole as juveniles deserve a second chance?*, WUSA9 (Nov. 25, 2019).

<sup>40</sup> Md. Code, Crim. L., §§ 14-101(c),(d). See *Taylor v. State*, 634 A.2d 1322, 1325 (Md. 1993) (resolving statutory ambiguity to allow for discretionary parole release after mandatory minimum term had been served).

<sup>41</sup> Md. Code, Crim. L., § 4-306(b); Maryland State Commission on Criminal Sentencing Policy, *Maryland Sentencing Guidelines Manual*, 12.1 (April 2, 2020) at app. p. 6, available at <http://www.msccsp.org/Files/Guidelines/MSGM/guidelinesmanual.pdf>; Maryland Division of Correction, *Inmate Handbook*, (2007) at 33, available at

### ***III. Other Forms of Prison-Release Discretion (not routinely used)***

#### ***3.1. Medical or “compassionate” release***

Any inmate (including those serving life sentences) who is so chronically debilitated or incapacitated by a medical or mental health condition as to be physically incapable of presenting a danger to society may be released on medical parole at any time during the term of their sentence.<sup>42</sup> Requests for medical parole must be filed with the Maryland Parole Commission, who may either deny the request in the best interests of public safety or request additional information for formal consideration of parole release.<sup>43</sup> Information required to release an inmate on medical parole includes a recommendation by a medical professional treating the inmate as well as the inmate’s medical, discharge, and case management information.<sup>44</sup>

The Maryland Parole Commission reported that it had processed 47 medical parole applications in FY 2018, but no statistics were given concerning the number released on medical parole.<sup>45</sup>

#### ***3.2. Eligibility for parole after age 60***

Prisoners with mandatory sentences for second, third, and fourth convictions of crimes of violence have limited or no parole eligibility.<sup>46</sup> Nonetheless, they may “petition for and be granted parole” if they are at least 60 years old and have served at least 15 years of a mandatory sentence imposed under the crimes-of-violence provision.<sup>47</sup>

#### ***3.3. Special rules for inmates expecting a child or with a newborn child***

There is open-ended authority to release certain inmates who are expecting a child or have a newborn child: “An inmate may be released on parole *at any time* in order to undergo drug or alcohol treatment, mental health treatment, or to participate in a residential program of treatment in the best interest of an inmate’s expected or newborn child ....”<sup>48</sup>

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<https://www.law.umich.edu/special/policyclearinghouse/Documents/Maryland%20-%20Inmate%20Handbook%202007.pdf>.

<sup>42</sup> Md. Code, Corr. Servs. §§ 7-309(a)-(b).

<sup>43</sup> Md. Code, Corr. Servs. § 7-309(d).

<sup>44</sup> Md. Code, Corr. Servs. § 7-309(e).

<sup>45</sup> Maryland Parole Commission, *Fiscal Year 2018 Annual Report* (2018) at 10.

<sup>46</sup> Md. Code, Crim. L., §§ 14-101(b),(c),(d).

<sup>47</sup> Md. Code, Crim. L., § 14-101(f)(2). Sex offenders subject to registration requirements are excluded from parole eligibility under this special “over-60” provision, *see id.*, § 14-101(f)(1).

<sup>48</sup> Md. Code, Corr. Servs. § 7-301(a)(3).



### *3.4. Executive clemency*

The Governor has the power to change a sentence of death into a sentence of life without the possibility of parole, pardon an individual convicted of a crime subject to any conditions the Governor requires, or remit any part of an inmate's sentence, except in cases of impeachment.<sup>49</sup>

The Maryland Parole Commission reported that it had processed 147 pardon applications in FY 2018, but no statistics were given concerning the number of pardons granted.<sup>50</sup>

### *3.5. Emergency release for prison overcrowding*

There is no statutory emergency release system in Maryland to respond to correctional overcrowding.

### *3.6. COVID release*

As of late April 2021, Maryland's Governor had acted by executive order to speed up the release of over 700 inmates in response to the Covid-19 pandemic.<sup>51</sup>

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<sup>49</sup> Md. Code, Corr. Servs. § 7-601(a) (2020), Md. Const. Art. 2, § 20.

<sup>50</sup> Maryland Parole Commission, *Fiscal Year 2018 Annual Report* (2018) at 10.

<sup>51</sup> Phillip Jackson, *Maryland said it has released 2,000 inmates from prisons and jails to slow spread of the coronavirus*, The Baltimore Sun (Apr. 21, 2020), available at <https://www.baltimoresun.com/coronavirus/bs-md-maryland-prisons-release-inmates-coronavirus-20200421-yc52bbol5jevnbkgeqbnbn47hgy-story.html>.

#### *IV. Modeling the Relationship Between Prison-Release Discretion and Prison Population Size in Maryland*

Maryland's published corrections data for FY 2018 allow for only crude estimates of the prison population's breakdown into discrete subgroups subject to the state's different rules of prison release. In that year, it was reported that 54.5 percent of all prisoners were serving sentences for homicide, sexual assault, robbery, or kidnapping.<sup>52</sup> Most of these prisoners would be classified as persons convicted of "violent crimes"—a subpopulation governed by its own set of prison-release rules. This suggests that prisoners convicted of nonviolent crimes make up less than 45 percent of the total prison population.

Maryland's FY 2018 report reveals that 12.5 percent of all prisoners were serving life sentences.<sup>53</sup> Life sentences carry their own prison-release rules or, depending on the type, have no prospect of release. This 12.5 percent overlaps entirely with the larger "violent crime" group, and therefore cuts into the numbers of prisoners who are subject to the general rules of release for violent crimes.

Putting these observations together, we can estimate (roughly) that as many as 45 percent of all Maryland prisoners are subject to the general rules of release for nonviolent offenders, and as many as 42 percent are subject to the general rules for violent offenders.

These estimates support the conclusion that the prison-release rules governing the two major general-rules groups of Maryland prisoners are high-priority areas of policy concern. To the extent that back-end discretion over time served contributes to prison population size in Maryland, the activity that matters most is occurring within the two general-rules groups.

##### *4.1. The two major general-rules groups*

###### *a. Prisoners convicted of nonviolent crimes*

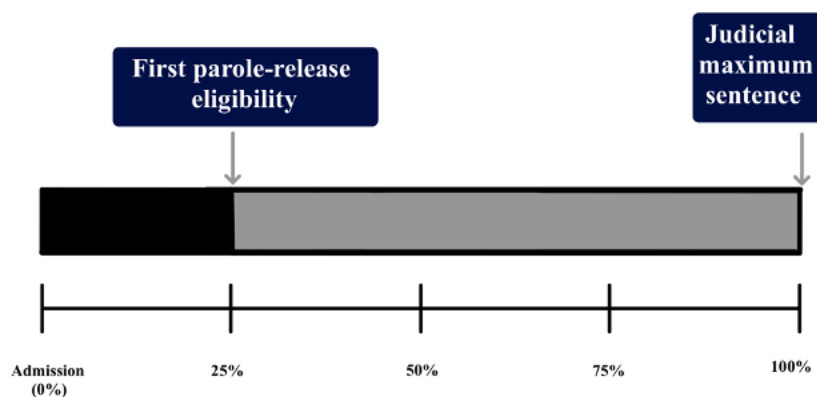
As a general rule, prisoners convicted of nonviolent crimes become eligible for discretionary parole release after serving 25 percent of their judicial maximum sentences, as charted in Figure 3. Statutorily, they may earn diminution credits in amounts as high as 30 days per month, which are subtracted from the judicial maximum sentence to produce an earlier mandatory release date. Diminution credits have no effect on parole eligibility dates in Maryland. Figure 4 shows the timeline for prisoners who earn the full allocation of available credits.

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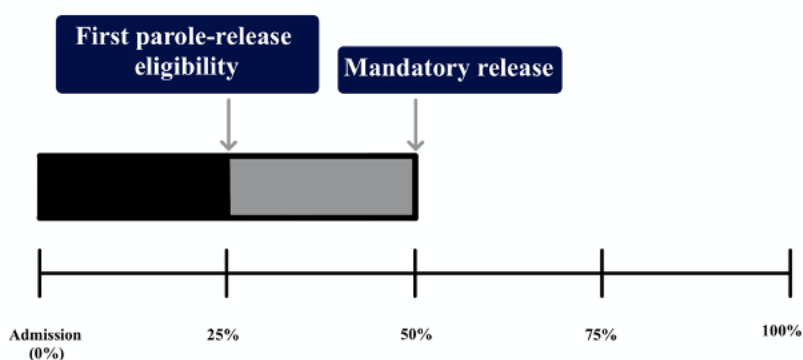
<sup>52</sup> Maryland Department of Public Services and Correctional Operation, *Maryland Division of Correction Operations: FY 2018 Annual Report* at 43 (table).

<sup>53</sup> Maryland Department of Public Services and Correctional Operation, *Maryland Division of Correction Operations: FY 2018 Annual Report* at 41 (table).

**Maryland Figure 3. Prison-Release Timeline for Ordinary-Rules Offenders Without Diminution Credits**



**Maryland Figure 4. Prison-Release Timeline for Ordinary-Rules Offenders With Maximum Diminution Credits**



In total, general-rules sentences in Maryland are 25 percent determinate and 75 percent indeterminate. That is, 25 percent of their potential duration is “determined” by the judicial sentence at the front end of the prison-sentencing system and 75 percent of potential time served remains uncertain pending decisions at the back end of the prison-sentence chronology by the parole board and corrections officials.

Which government officials regulate prison population size in such a system? 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 departments of corrections. To give an 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*).<sup>54</sup>

Looking at the combined back-end discretions of the parole board and department of corrections, the PMP at the back end of Maryland’s prison-sentencing system is 4:1 for the group of nonviolent offenders who fall within the general rules of prison release. After judicial sentences are finalized for this subpopulation of the state prison system, their count can be pushed upward or downward within a broad range of possibility. For this subgroup, back-end officials have far more influence over actual numbers in prison than front-end officials such as judges, prosecutors, and the sentencing commission.

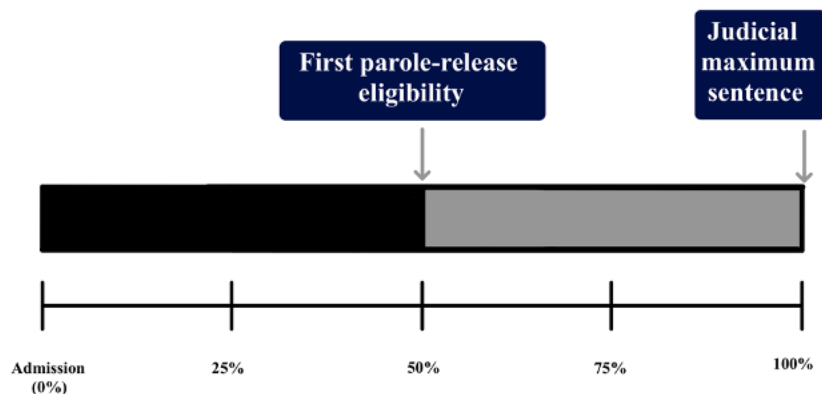
### *b. Prisoners convicted of violent crimes*

As a general rule, prisoners convicted of “violent crimes” (see section 1.1b) are eligible for discretionary parole release after serving 50 percent of their judicial maximum sentences—a minimum length of stay that cannot be shortened through the award of diminution credits. Figure 5 shows the prison-release timeline in such cases without taking account of the possible effects of diminution credits.

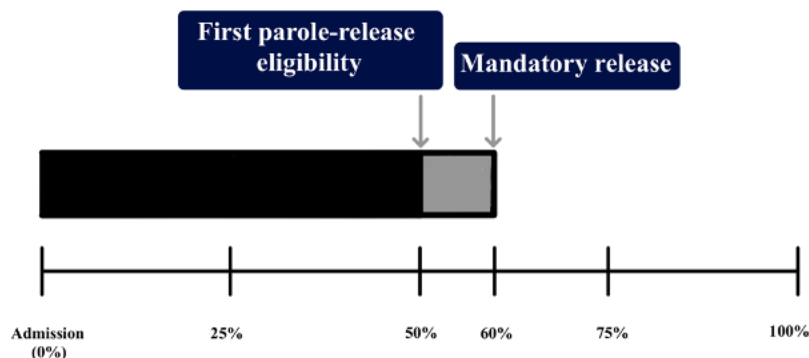
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<sup>54</sup> This highly simplified illustration does not consider the possible effects of good time or other discounts. Moreover, unlike the illustration, there is no real-world system in which all prisoners are serving sentences subject to the same 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 this project’s Final Report.

**Maryland Figure 5. Prison-Release Timeline for Prisoners Convicted of Violent Crimes Without Diminution Credits**



**Maryland Figure 6. Prison-Release Timeline for Prisoners Convicted of Violent Crimes With Maximum Diminution Credits**



Diminution credits operate to create a mandatory release date earlier than the full judicial maximum term, with a deduction of as much as 20 days per month possible for this class of prisoners. Diminution credits do not affect the timing of eligibility for discretionary parole release. Full credit earning at the rate of 20 days per month results in a mandatory release date at 60 percent of the judicial maximum term, as shown in Figure 6.

*Illustration.* A prisoner is serving a 4-year sentence for a violent crime. If the prisoner earns the full reduction of their judicial maximum term through diminution credits, their mandatory release date will come at the conclusion of 29 months of the 48-month sentence—slightly more than 60 percent. The prisoner’s first eligibility for discretionary parole release occurs at the 24-month mark, 5 months prior to mandatory release.

General-rules sentences for violent offenders in Maryland are 50 percent determinate and 50 percent indeterminate. Summing the back-end discretions of the parole board and department of corrections, the PMP for this subgroup is 2:1. This is an example of broadly distributed discretion across both the front and back ends of the prison-sentencing system. The size of this subpopulation is equally a function of actions taken by back-end officials such as the parole board and prison officials; and front-end actors such as judges, prosecutors, and the sentencing commission.

#### *4.2. Distribution of authority*

Our reports give special attention to the allocation of prison-release discretion at the back end of prison-sentencing systems. Usually this is an inquiry into the relative powers of the parole board and corrections officials.

In Maryland, the department of corrections has theoretical control over a larger segment of the prison-sentence timeline than the parole board, although both are important decision makers. In Figures 3 and 4, for example, the parole board has unchallenged authority over time served for 25 percent of the prison-sentence timeline while the department of correction has statutory authority to cut off 50 percent of the judicial maximum term. In Figures 5 and 6, the parole board's unilateral authority exists for only 10 percent of the timeline while the department of correction's releasing authority spans 40 percent. Looking only at the timeline diagrams, the department of corrections appears to be the dominant player at the back end of Maryland's prison-sentencing system.

It is important to note, however, that many of the diminution credits administered by Maryland's corrections officials require prisoners to engage in specific types of programming (see section 1.3). To the extent that such programs are unavailable or oversubscribed, the department's theoretical release discretion can be reduced or even nullified. Thus, the department's "greater" authority in the timeline diagrams is mechanically constrained in a way that the parole board's discretionary release authority is not.

Without data, it is hard to say which back-end agency is currently more important in driving Maryland's prison population size. The appearance is a system in which both the parole board and prison officials must take overlapping release-denial decisions in order to keep prisoners deep into their maximum terms. In other words, neither agency acting alone can force a prisoner to "max out" or even get close. This might be described as a checks-and-balances framework that provides some insulation against overlong prison stays.<sup>55</sup>

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<sup>55</sup> Only a small number of states take a similar approach for large number of prisoners in their systems. These include Iowa and Oklahoma.

### 4.3. Overall assessment

Overall, Maryland’s prison-sentencing system is one of moderate indeterminacy by American standards. For the two groups of general-rules prisoners who make up 80 percent or more of Maryland’s prison population, the combined population-multiplier potentials of the parole board and department of corrections “average out” to about 3:1. That is, in a hypothetical never-release scenario, the size of the general-rules prison population would be determined one-third by prisoners’ judicial sentences and two-thirds by the discretionary decisions of back-end releasing authorities. In the always-release scenario, the general-rules prisoner population would be one-third the size it would attain in a never-release environment.

The allocation of back-end releasing authority in Maryland is a striking design feature of the prison-sentencing system as a whole. The state places an unusually large amount of time-served discretion in its department of corrections, whose power over prison-sentence length can outstrip that of the parole board in individual cases if used to its utmost extent. Relatively few states authorize credit earning rates of 30 days per month for a large segment of the prison population, and 20 days per month is also on the generous side. Importantly, these credit earnings are taken off the judicial maximum term to hasten prisoners’ dates of mandatory release. The combination of generous earning rates plus their use to produce advancing mandatory release dates is a noteworthy element of Maryland’s system. Compared with most jurisdictions, Maryland makes forceful use of the mandatory-release milestone as a means to limit prison-sentence length.

Because of the checks and balances in the Maryland system, there is a reduced risk that shifts in back-end decision-making patterns will cause runaway prison growth. Although the PMP in Maryland is 3:1 (averaged across all general-rules cases), it would require the sustained and coordinated actions of *both* the parole board and the department of corrections to push average sentence lengths to their longest extremes. The board would have to stop releasing all prisoners *and* corrections officials would have to completely cut off all good time awards. It is relatively unlikely that two separate agencies would lurch toward such extreme behavior at the same time—at least, compared with the chances that any single agency might do so.