ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

Examining Prison Releases in Response to COVID:

LESSONS LEARNED FOR REDUCING THE EFFECTS OF MASS INCARCERATION

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Executive Summary

In response to the global pandemic in 2020, states and the federal government began to make non-routine releases from prison in order to reduce prison populations to allow for social distancing in prison facilities. This report is aimed at describing where such prison releases occurred, the legal mechanisms used to achieve these releases, and the factors within jurisdictions that made non-routine prison releases more or less likely to occur. We write this report, not to examine the national response to the pandemic, but to better understand when and how extraordinary measures may be used to effect prison release, and to determine whether there are lessons from this experience that can be applied to reducing the effects of mass incarceration.

Prevalence of Release:

- We estimate that a total of 80,658 people were released from prisons in 35 jurisdictions (34 states and the federal prison system) due to COVID-related policies, which was equivalent to about 5-1/2% of the total state and federal prison population in 2019.
- Most COVID-related releases were quite modest, amounting to the equivalent of less than 10% of the 2019 prison populations in 27 of the 35 jurisdictions in which releases occurred (Figure 2).

Legal Mechanisms:

- The legal mechanisms used most frequently to release people from prison during the pandemic were parole (11 jurisdictions), compassionate release (10 instances in 9 jurisdictions), home confinement (8 jurisdictions), commutation (7 jurisdictions), and good time or earned time credits (6 jurisdictions) (Figure 3).

Criteria for Release:

- Type of crime, COVID health risk, and time left to serve on one's sentence were the criteria most frequently used—either alone or in combination—to determine eligibility for release due to COVID-related policies.
  - » Most release groups (39 of 73) required that a person had to have been convicted of a non-violent offense (Figure 4).
  - » COVID health risks—addressing both medical vulnerability and age—were used as criteria in 38 of 73 release groups (Figure 6).
  - » Most release groups (37 of 73) required that a person have a short time left to serve on their sentence (Figure 7). Though the amount of time varied from 30 days in New Mexico to 5 years in Kentucky, the average was 9 months, and the most frequently used time period was 12 months.

Political and Structural Influences:

- Gubernatorial leadership played a larger role in whether the jurisdictions made releases, with fewer jurisdictions with Republican leadership making releases. However, determinacy may have affected how many releases were possible, with indeterminate jurisdictions making larger releases than determinate jurisdictions regardless of political leadership.
  - » All but three Democratic-led jurisdictions (21 of 24) made COVID-related prison releases while only about half of Republic-led jurisdictions (14 of 27) did so (Table 4).
  - » Nearly all of the jurisdictions (7 of 8) with the largest COVID-related releases—those greater than 10% of the 2019 prison population—were indeterminate in structure.

Lessons Learned and Recommendations:

1

States and the federal government have the tools to make large-scale releases, but some modifications are needed. When willing to do so, states and the federal government can accomplish large-scale prison releases – mainly using mechanisms already available to them. However, during the pandemic, this required addressing barriers to making these mechanisms effective for large-scale releases, such as expanding eligibility requirements, taking a top-down rather than case-by-case approach, or assigning resources to expediting considerations for parole and other pre-release reviews. Jurisdictions could consider making these modifications permanent.

2

The pandemic forced jurisdictions to think differently about technical violations of supervision. Several jurisdictions reduced sanctions for technical violations of community supervision or refused to admit people to prison for technical violations. All jurisdictions could use this as an opportunity to rethink whether prison is a necessary response to such violations.

3

Jurisdictions could reduce prison populations by increasing resources for back-end release procedures. In many jurisdictions, all that was required to achieve release was a more concerted effort to complete the steps needed for release. Thus, jurisdictions could reduce prison populations simply by putting more resources into make release processes flow faster.

4

Jurisdictions were risk averse in their approach to identifying people for release. Most releases focused on people who were convicted of "non-violent" crime or were very close to their release date. Rather than relying on this false dichotomy, corrections officials should focus on enhancing rehabilitative programming, and legislatures should fund those programs at the levels needed to address crime. Additionally, jurisdictions should learn more about public attitudes towards crime and public safety to better understand the feasibility of continuing or expanding second look provisions.

5

Efforts at using back-end release powers to reduce prison populations may have been hampered by politics. Our analysis showed that the political party of the governor in each state bore a relationship to whether the state chose to make COVID-related prison releases. Criminal justice is a hot button issue often characterized by the false dichotomy of being "soft on crime" or "tough on crime." Thus, in order to address mass incarceration, it may be necessary to redefine what it means to be "tough on crime."

6

Outside pressure may be needed to encourage back-end releases. In several jurisdictions, back-end prison releases were triggered by external forces. Thus, outside pressure may be needed to encourage, or make available, the broader use of back-end release discretion to reduce prison population size.

Conclusion:

Though jurisdictions had back-end release powers, they were hampered by procedural barriers in using them on a large scale. Finding ways to overcome those barriers was largely a product of political will. And in some cases, outside pressure in the form of litigation was necessary to prompt government and corrections officials to act. Even when they overcame the barriers to using back-end release mechanisms, jurisdictions took a very conservative approach to back-end releases, focusing on areas where they believed there was less risk to public safety or where they thought they could garner more public support, such as releasing people who committed non-violent offenses or who had very little time left to serve on their sentence. As a result, while some jurisdictions were able to release a sizeable number of people due to the pandemic, the people released tended to be individuals that were close to being released anyway. Thus, the experience from the pandemic informs us that jurisdictions are unlikely to tackle the issue of mass incarceration by using their discretionary back-end release authority unless we address their risk aversion by redefining what it means to be "tough on crime." Some suggested ways to do this include assessing public attitudes for institutionalizing second look processes and eliminating the false dichotomy of "non-violent" and "violent" offending and instead focusing on increasing the availability of rehabilitative programming and incentives for people in prison to engage in that programming.

Introduction

In 2020, life across the globe changed dramatically when the COVID-19 virus took root and began to spread, eventually growing into the most significant pandemic in the past century. As the number of people falling ill and dying from the virus began to grow, it quickly became apparent that society would have to make significant changes to slow its spread. Early evidence indicated that the virus spread more quickly when people were in close contact for 15 minutes or more and that people who were older or who had certain health conditions were more vulnerable to sickness, severe disease, and death. In response, the nation began to shut down. If close contact facilitated virus spread, then an action that governments and private companies could take would be to disrupt the systems that resulted in close contact. Schools and churches were closed, workers were sent home, and hospitals and nursing homes were closed to visitors, all in an effort to disrupt social gatherings and facilitate what came to be known as "social distancing." Despite the widespread concern, however, prison was one place where people remained closely gathered, and where people could neither be easily home sent nor could social distancing be easily achieved.

At the same time, prison populations remained historically high. Though prison populations have been decreasing since their all-time high in 2009, they have not yet returned to the levels experienced prior to the onset of mass incarceration.[1] And in many places, individual prison facilities were also overcrowded. Thus, the prison environment presented dramatic risk to those who were incarcerated. It is no wonder that activists began to call for people to be released from prison to reduce the population significantly enough to allow for some form of social distancing even within the prison walls. As some activists put it, without action, every prison sentence could become a death sentence.[2]

But as this paper will explain, prison release is a complicated business. The laws that govern prison sentences are designed to ensure that people are held accountable for their offenses by serving a fair portion of the sentence pronounced by the court. They are not necessarily designed to facilitate release from prison, especially prior to a person having served the minimum time required by state and federal laws. Nevertheless, 34 states and the federal government did manage to facilitate non-routine prison releases during the height of the pandemic. This report is aimed at describing where such prison releases occurred, the mechanisms used to achieve these releases, and the factors within jurisdictions that made non-routine prison releases more or less likely to occur. We write this report, not to examine the national response to the pandemic, but to better understand when and how extraordinary measures may be used to effect prison release, and to determine whether there are lessons from this experience that can be applied to reducing the effects of mass incarceration.

1. E. Ann Carson, *Prisoners in 2019*, Bureau of Justice Statistics, https://bjs.ojp.gov/content/pub/pdf/p19.pdf.
2. Lauren-Brooke Eisen and Ruth Sangree, Brennan Center for Justice, *COVID-19 is Turning Prison Terms into Death Sentences*, https://www.brennancenter.org/our-work/analysis-opinion/covid-19-turning-prison-terms-death-sentences#:~:text=By%20failing%20to%20act%2C%20Abbott,in%20prison%20from%20Covid%2D19, last visited March 24, 2022.

Prison Release Mechanisms

In order to understand how extraordinary COVID releases were, it is important to first understand how people are ordinarily released from prison. It is rarely the case that the prison sentence pronounced at sentencing is the length of time a person will actually serve in prison. Instead, all jurisdictions have complex rules for determining the first date at which a person is eligible for release and for ultimately releasing that person into the community.[3] In this section, we describe how people are ordinarily released from prison as well as several non-routine release mechanisms that commonly exist in state law. We then explain which mechanisms we assumed would be used to effect non-routine releases during the pandemic.

Routine Prison Release Mechanisms

Generally, prison release processes vary depending on whether the jurisdiction is determinate or indeterminate. The concept of determinacy refers to how definite the amount of time to be served in prison is based on the sentence pronounced at the time of conviction. As explained in the Robina Institute's Degrees of Indeterminacy project,

> **"Indeterminacy" means "unpredictability of time served." … 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.[4]**

As shown in Table 1, 34 states have an indeterminate sentencing system while 16 states and the federal government have a determinate sentencing system.

For those jurisdictions that are indeterminate, a parole board determines release for a majority of people in prison. State law will usually contain provisions requiring a person to serve a certain proportion of their pronounced sentence before being considered for release. The proportion of time that must be served may vary depending on the type of crime. For example, in Texas, people convicted of lower level offenses are eligible for release when their time served and any good time credit equals 25% of their pronounced sentence whereas people who have been convicted of more severe offenses, including kidnapping, sex trafficking, and assault, are required to serve 50% of their pronounced sentence before being eligible for release.[5] Once a person reaches this eligibility date, the person will undergo a review by the parole board to determine whether they can be released from prison to parole, which is a period of post-prison supervision.

3. Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, Melanie Griffith, *American Prison Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size*, Robina Institute of Criminal Law and Criminal Justice, forthcoming 2022.
4. This definition is included in a series of state reports on prison release discretion. See, e.g., Kevin R. Reitz, Allegra Lukac, & Edward E. Rhine, *Prison Release Discretion and Prison Population*, State Report: California at iii (2021), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/california_doi_report_10_8_21.pdf.
5. Tex. Gov't Code § 508.145 (d), (f) (2021).

Table 1. Sentencing and Prison Release System by State

Indeterminate				Determinate	
Alabama	Kentucky	Nevada	South Dakota	Arizona	Minnesota
Alaska	Louisiana	New Hampshire	Tennessee	California	New Mexico
Arkansas	Maryland	New Jersey	Texas	Delaware	North Carolina
Colorado	Massachusetts	New York	Utah	Federal	Ohio
Connecticut	Michigan	North Dakota	Vermont	Florida	Oregon
Georgia	Mississippi	Oklahoma	West Virginia	Illinois	Virginia
Hawaii	Missouri	Pennsylvania	Wyoming	Indiana	Washington
Idaho	Montana	Rhode Island		Kansas	Wisconsin
Iowa	Nebraska	South Carolina		Maine	

*Washington, D.C., which is a determinate system, is not represented on the table because all prisoners from that jurisdiction are housed by the Federal Bureau of Prisons.

The parole board will consider a variety of factors in determining whether a person is ready for release, including the circumstances and severity of the crime, the person's record of behavior in prison and any disciplinary actions for misconduct, whether the person has participated in or completed any treatment while in prison, risk assessment scores, and mental health evaluations.[6] Some states have instituted more routinized processes such as administrative parole, which allows for release without a hearing,[7] but for the most part, parole decisions generally involve discretionary decisions made on an individual basis.

In contrast, release in determinate jurisdictions tends to be more routinized. In these jurisdictions, the law establishes the proportion of the pronounced sentence that must be served prior to release to post-prison supervision. When a person reaches the minimum required term, the person is usually released without any further review. For example, in Minnesota, a person must serve two-thirds of the pronounced sentence in prison, and one-third of the pronounced sentence on supervised release, which is Minnesota's version of parole.[8] In certain circumstances, the time served in prison may be extended in these determinate sentencing systems. For example, in Wisconsin, if a person violates any prison regulation or refuses or neglects to perform required or assigned duties, the Department of Corrections may extend the term of confinement in prison by 10 days for the first offense, 20 days for a second offense,[9] or 40 days for a third or subsequent offense. Most prisons also require development of a release plan, including an initial housing placement, so release can sometimes be delayed if a person is unable to finalize this plan before the expected release date.[10] But for the most part, within determinate systems, the release date is certain.

No system is purely indeterminate or determinate. For example, states that are considered determinate may have a group of offenses for which indeterminate life sentences are imposed, and release in those cases may

6. *See, e.g.*, Alaska Stat. § 33.16.110 (2021); Neb. Rev. Stat. § 83-1,115 (2022); Ark. Admin. Code 158.00.1-2 (2021).
7. *See, e.g.*, S.D. Codified Laws §§ 24-15A-38 to -39 (2022).
8. Minn. Stat. § 244.01, subd. 8 and 244.05, subd. 1b (2021).
9. Wisc. Stat. § 302.113(3)(a) (2022).
10. *See, e.g.*, Alaska Stat. § 30.30.011(a)(9) (2021) (requiring reentry plans that address housing, employment, treatment or counseling, and education or job training services).

closely resemble the parole process described above.[11] And both types of systems tend to have good time or earned time policies, which allow a person to earn time off from the pronounced prison sentence for good behavior or for participating in or completing programming or other requirements.[12] These good time or earned time credits will usually advance the date of release, allowing for earlier release than would otherwise be possible without the application of such credits.

Both indeterminate and determinate jurisdictions also frequently use work release. This type of release is typically a form of transition from prison to the community, allowing the individual to leave incarceration for employment purposes. Some forms of work release allow the person to leave the prison facility only during work hours. Other forms of work release involve transitioning from prison to a residential correctional facility or to home confinement and attending work from that location each day.[13] In indeterminate jurisdictions, work release may be a specific form of parole, requiring the same parole hearing process as any other form of parole.[14]

Additionally, both indeterminate and determinate jurisdictions frequently develop additional programs, incentives, and mechanisms for early release to address prison overcrowding or to provide further incentive for people in prison to engage in programming. For example, Colorado allows individuals who are within six months of their release date and who meet certain requirements to qualify for release into the Intensive Supervision Program.[15] Minnesota has a program allowing early release of people who have completed a chemical dependency treatment boot camp.[16] And Kansas has a provision allowing a person to be placed on home confinement, sometimes as an alternative placement to prison when a person has violated the conditions of probation or parole, and sometimes as a form of early release.[17]

Non-Routine Prison Release Mechanisms

Though most prison releases occur according to the ordinary mechanisms described in the section above, there are also occasions for more extraordinary forms of release. These mechanisms recognize that changes in circumstances occurring sometime after sentencing may overtake the need for deterrence or incapacitation and justify early or temporary release from prison. In this section, we identify and briefly describe some of the most prevalent non-routine release mechanisms. However, this is not an exhaustive list.

Compassionate Release:

This type of release, which may also be called medical parole, is for people who are suffering from a debilitating or terminal medical condition. For those with a terminal condition, release may be granted within a year or two of the person's expected death. For those with a debilitating condition, release may be permitted either because the person's condition is so severe that they are no longer considered a threat to public safety or because the prison is unable to provide appropriate medical care. When release is granted for the purpose of obtaining medical care, however, the release may be temporary, and the person may be required to return to prison once that care has been provided and their condition has been stabilized.

11. *See, e.g.*, Minn. Stat. § 244.05, subd. 4 (2021) (requiring a person sentenced to life imprisonment to serve at least 30 years before being considered for release from prison).
12. *See* Reitz et al., fn 3.
13. *See, e.g.*, Iowa Stat. § 906.4 (2022) (authorizing the Iowa Parole Board to order work release and requiring certain individuals to begin their work release from a residential facility).
14. *See, e.g.*, Iowa Stat. §§ 904.901-904.909 (2022) (establishing work release as a specific type of parole).
15. Colo. Stat. § 17-27.5-101 (2022); see also Colorado Department of Corrections, Intensive Supervision Program, https://cdoc.colorado.gov/parole-and-re-entry-services/supervision/community-corrections/intensive-supervision-program-inmate#:~:text=A%20residential%20offender%20who%20has,Parole%20Eligibility%20Date%20(PED).
16. Minn. Stat. § 244.0513 (2021).
17. Kan. Stat. § 21-6609 (2022).

Geriatric Parole: This type of release is for people who have reached an advanced age in prison—often mid-60's or older. In many jurisdictions, the person must also have served a significant portion of their sentence (i.e., 10 to 15 years), though people who have committed certain crimes, such as sex crimes or those resulting in a life sentence, are often not eligible for this type of release. Some jurisdictions also require that the person demonstrate a record of good behavior while in prison[18] or that the person must be suffering from health conditions associated with advanced age.[19]

Furloughs: This type of release is temporary. A person may be granted permission to leave the prison facility for a defined period of time and for a specific purpose. For example, a person may be granted permission to attend a close relative's funeral or to receive medical treatment that is not available in prison.[20]

Clemency / Commutation: This type of release involves reducing a person's sentence length.[21] The person's conviction remains on the record, but the sentence is reduced because it is no longer deemed appropriate or because the person has shown extraordinary growth and change during their prison stay, meriting an early release.[22] The power to commute sentences is traditionally held by the governor, however, some parole boards can also grant sentence commutations or make commutation recommendations to the governor.

Prison Overcrowding Valves: While all of the other release mechanisms highlighted in this section address release mechanisms that operate on an individual basis, some states also have prison overcrowding valves that allow them to reduce the prison population on a more systemic level. For example, in Kansas, if prisons reach 90% or more of their overall capacity, the Kansas Sentencing Commission must propose for consideration by the legislature and governor changes to the sentencing guidelines that will result in reduced sentences and alleviate overcrowding.[23] Similarly, Wisconsin has special action parole, which allows for larger-scale releases to relieve overcrowding when the prison population equals or exceeds capacity.[24]

18. *See e.g.*, La. Stat. Ann. § 15:574.4(A)(4) (requiring that applicants for geriatric parole are age 60 or older, have served at least 10 years of their sentence, and have not had major disciplinary offenses for twelve consecutive months).
19. *See e.g.*, S.D. Codified Law § 24-15A-55-68 (allowing an individual to qualify for one type of geriatric parole if they are at least 65 years old, have served 10 years of their sentence, and have a medical condition for which care will be at least double the average annual medical cost).
20. *See, e.g.*, 28 Vermont Stat. Ann. § 808 (2022) (authorizing furloughs to visit a critically ill relative, attend a funeral, or to obtain medical treatment, employment, or housing).
21. Another type of clemency is a pardon, in which a person's conviction is sealed or effectively erased. Pardons usually occur after a person has served their full sentence and are less often a type of release directly from prison.
22. *See, e.g.*, Colo. Stat. § 16-17-102 to -103 (2022) (establishing authority and process for commutation); Executive Clemency Advisory Board Application Eligibility Criteria Commutation of Sentence, https://drive.google.com/file/d/1f1zkG8A-FNvsu3t1UN4S0NVwpX0BiKSV/view.
23. Kan. Stat. § 21-6822 (2022).
24. Wisc. Stat. § 304.02 (2022).

Assumptions About How COVID Releases Would Occur

Given how prison releases ordinarily occur, we embarked on this study with two main assumptions about how prison releases would likely work in the context of the COVID-19 pandemic. Both assumptions were grounded in the belief that states and the federal government would be largely bound by the release mechanisms that were already in place, whether routine or non-routine.

Assumption #1: Jurisdictions with Indeterminate Sentencing Systems would be More Likely to Make Releases Than Jurisdictions with Determinate Sentencing Systems.

Our assumption was that jurisdictions with indeterminate sentencing systems would be more likely to make releases from prison due to COVID than jurisdictions with determinate sentencing systems. We had this expectation because we thought that the laws and structures that governed ordinary releases from prison in determinate systems were more tightly structured, and that there would be less opportunity for jurisdictions to refine or enact procedures to enable the swift release of prisoners. In other words, we assumed that the very structures that made prison release more definite in these jurisdictions would serve as barriers to making releases that did not follow those structures. In contrast, because there is more discretion to effect release in indeterminate sentencing systems, we thought indeterminate sentencing jurisdictions would have more flexibility to use that discretion to facilitate releases from prison.

Assumption #2: Jurisdictions would Rely on Existing Compassionate Release and Geriatric Parole Provisions to Effect Releases.

Our second assumption was that because the factors that increase the risk of severe illness from COVID are primarily related to health conditions and age, most jurisdictions would leverage their already existing compassionate release and geriatric parole mechanisms to reduce prison populations.[25] These statutory schemes already have built-in eligibility criteria and release procedures. Thus, as part of our second assumption, we assumed that the eligibility and exclusion requirements for people released from prison due to the pandemic would generally mirror the eligibility and exclusion requirements for compassionate release and geriatric parole. For that reason, we completed a detailed survey of the statutory frameworks for compassionate release and geriatric parole in the United States. The results of our survey are included in Appendix D.

25. *People with Certain Medical Conditions*, Ctr. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#:~:text=More%20than%2081%25%20of%20COVID,medical%20conditions%20they%20have%20increases (last updated May 2, 2022).

Understanding COVID Releases

In conducting this survey, our goal was to understand what factors allowed for the large-scale release of people from prison as a response to the pandemic, not to understand the effect of the pandemic, but to understand what lessons can be learned that might inform modern-day responses to the issue of mass incarceration. In this section, we begin by describing the number and scale of releases, and then dig into those releases by examining which legal mechanisms were used to effect release and what characteristics of incarcerated individuals were generally targeted in setting the parameters for release. We close this section by returning to our assumptions for release and examining whether releases to prison generally aligned with or ran in opposition to our expectations for release.

Prevalence of Release

In order to determine the size and scale of releases from prison due to the pandemic, we conducted a survey of publicly available information,[26] including data collected by UCLA's COVID Behind Bars Data project, news stories, court orders, executive orders, and information on agency websites. From these sources, we documented whether each state made releases from prison, the number of people released, whether release was prompted by external forces such as legal action, the legal mechanism(s) utilized, and the eligibility criteria for release. As will be shown in the next sections, we further parsed and analyzed the mechanisms and criteria for release. The information in this report represents the results of our public survey conducted through December 2021; some releases may have occurred after that date. Additionally, our survey focused only on releases from prison. Many jurisdictions also made releases from city and county jails and local correctional facilities, which are not chronicled or examined in this report. In some jurisdictions, publicly available information did not clearly differentiate between releases from prisons and jails. In those situations, we utilized what information we had to develop our best estimate of the size and scale of prison releases as distinct from any releases made from local jails.

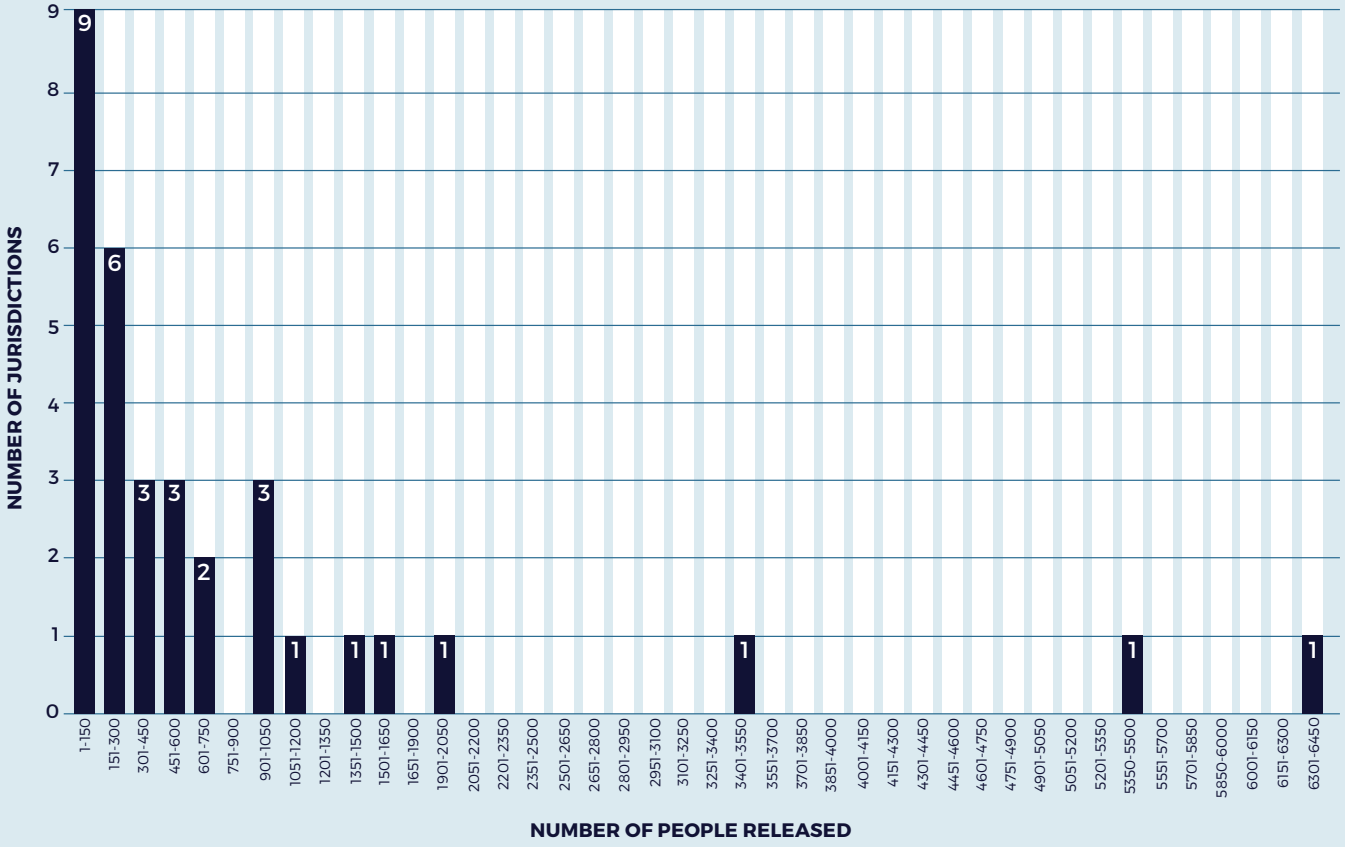
We also worked to separate COVID-related releases—that is, non-routine releases—from releases that occurred as a result of routine parole release or sentence expirations. This proved to be more difficult in some states than others. Jurisdictions would often report all prison releases within a certain timeframe, lumping together both routine and non-routine releases. In some cases, we had to determine typical release numbers based on historical data and compare it against the release numbers reported during the pandemic. For the purposes of this report, we are only focused on prison releases that can be directly tied to unique efforts, court orders, governor directives, etc. that were undertaken specifically to reduce prison populations due to the pandemic. We do not count releases that would have normally occurred during a non-pandemic year.

26. For each state, we first reviewed any data about prisons releases collected by UCLA's COVID Behind Bars Data project. We then conducted a Google search including the state's name, "prison," "release," and "COVID" (or "pandemic" or "corona" if the search with "COVID" did not yield results) for any additional source materials or information that might shed light on the releases, and to identify any releases that may not have been recorded by the UCLA project. If a state did not have an entry on the UCLA project website, we conducted the same Google search, and if no releases were located, we conducted further searches looking for articles stating or implying that the state had not released any prisoners. We also cross-checked our findings with the Prison Policy Initiative's list of pandemic-related criminal justice policy changes and the Crime and Justice Institute's list of how criminal justice systems were responding to COVID-19 to ensure we were not missing release information.

During the period covered by our survey, we estimate that a total of 80,658 people were released from prisons in 35 jurisdictions (34 states and the federal prison system) due to COVID-related policies. The total number of people released within each jurisdiction ranged from three in Florida to 39,588 in the federal system (see Appendix A. Prison Releases and Institutional Features by Jurisdiction for a complete list of releases by jurisdiction). As shown in Figure 1, 2000 or fewer people were released in 30 of the 35 jurisdictions that made releases due to the pandemic. Only five jurisdictions, including the federal government, made what we might classify as large releases of 3000 or more people. Instead, the most common number of releases in our survey was a 150 or fewer people (9 jurisdictions). Though we might have expected the numbers of people released to correlate with each jurisdiction's prison population size, when we ranked the states in order of prison release size compared to 2019 prison population size, there appeared to be no relationship (Appendix A. Prison Releases and Institutional Features by Jurisdiction).

Figure 1. Frequency of Total Prison Releases by Jurisdiction

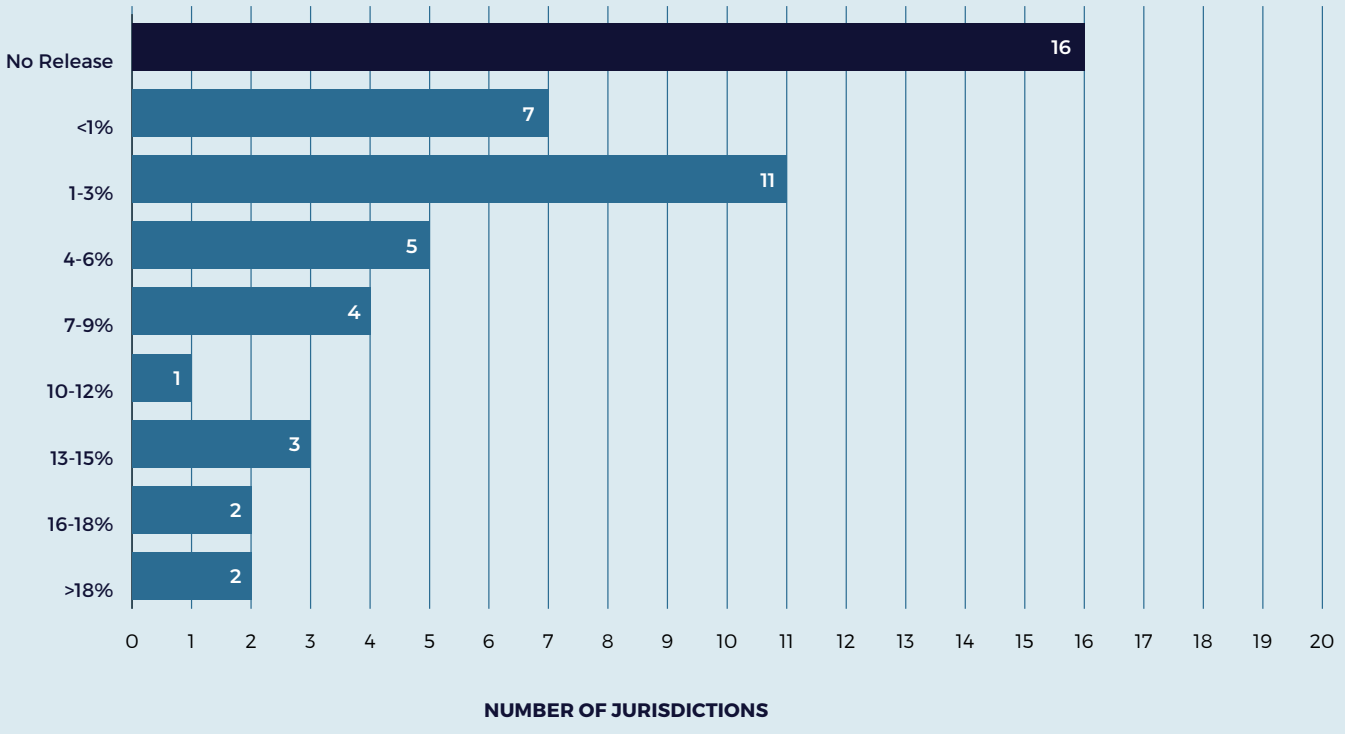
* California and Federal BOP, not shown, were outliers, releasing 11,104 and 39,588 people, respectively



Though there was great variation in the absolute numbers of people released from prison in each jurisdiction, we surmised that this variation might have been due to each jurisdiction's varying prison population size. In order to gain some sense of scale for the releases that were made, we used the 2019 prison population for each jurisdiction as a baseline estimate of the population at the start of the pandemic. We then divided the total number released in each state by that baseline to arrive at a rough proportion of the 2019 prison population that was released over the course of the pandemic. This measure was imperfect because though most prison releases occurred in the spring of 2020, some jurisdictions continued to make releases well into 2021. However, this measure, imperfect though it may be, allowed us to level the playing field among states to determine which states released a greater or fewer number of individuals relative to the size of their overall prison population.

The majority of releases were quite modest, amounting to the equivalent of less than 10% of the 2019 prison population in 27 of the 35 jurisdictions in which releases occurred (Figure 2). Seven states made releases that amounted to less than 1% of their 2019 prison population, and three of those states—Florida, Kansas, and Montana—released fewer than 10 people each. Only eight jurisdictions were bolder, releasing the equivalent of more than 10% of the 2019 prison population. New Jersey released the largest group proportionally, at 34%. And federal prisons released the equivalent of 23% of their 2019 prison population (Appendix A).

Figure 2. COVID Releases as Proportions of 2019 Prison Populations



Legal Mechanisms Used to Accomplish Release

While all jurisdictions continued to release individuals through routine means during the pandemic, 34 states and the federal government, made a number of non-routine releases directly due to the pandemic. These releases had two goals: to reduce the prison populations in order to facilitate more social distancing inside prison facilities, and to release individuals who were at an increased risk of serious complications from the COVID-19 virus. The legal mechanisms for these releases varied substantially. In some jurisdictions, executive power was used to relax requirements for work release or medical furlough. In other jurisdictions, the parole board simply made a concerted effort to process cases more quickly. In this section, we provide a high-level summary and analysis of the release mechanisms that were used to make non-routine releases during the pandemic. More detailed information about each jurisdiction's efforts can be found in the release events narrative (Appendix E. Narrative Descriptions of COVID Prison Releases by Jurisdiction).

Appendix B identifies the legal mechanisms employed by states to effect releases during the pandemic. In some jurisdictions, multiple mechanisms were used, so jurisdictions may appear in the table more than once. Again, our purpose here is not to provide a detailed survey of each non-routine release but to instead identify the administrative, statutory, and legal elements that allowed non-routine releases to occur. Most importantly, we note whether the mechanisms used required a significant modification to be effective. This allows us to determine what barriers and opportunities exist for future decarceration efforts.

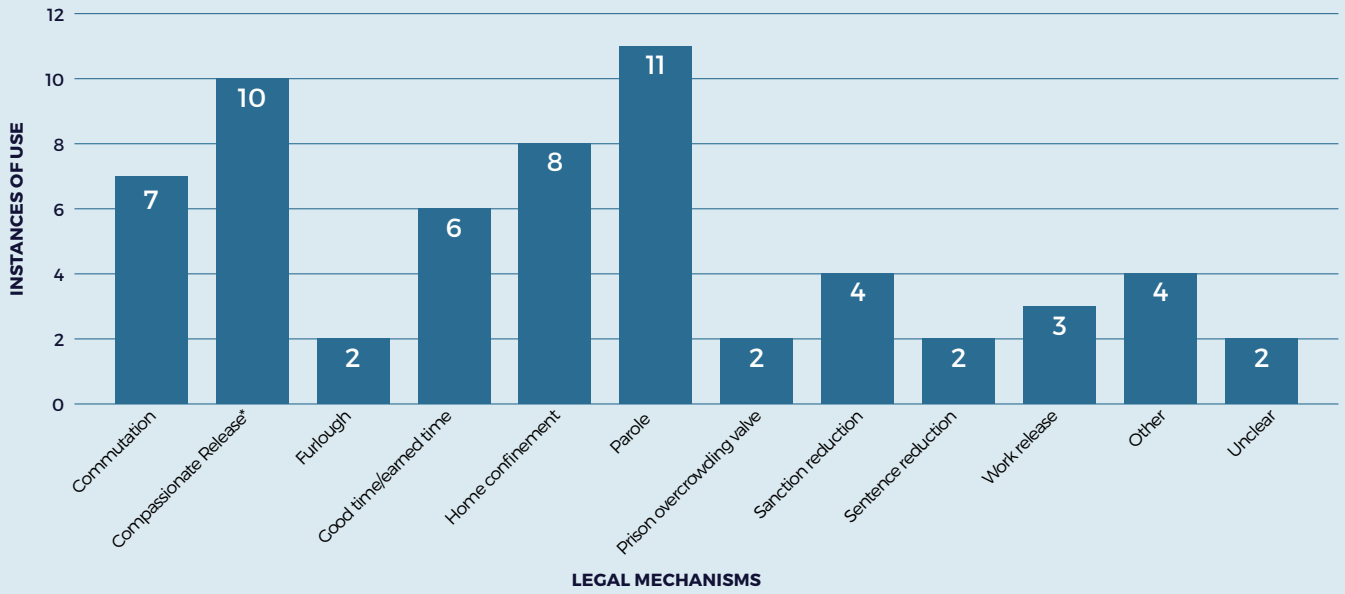
Many of the prison releases chronicled during this study were logistically complicated, multi-step events that required the cooperation of multiple agencies. For this reason, it was sometimes difficult to identify which legal mechanism or agency was ultimately responsible for the release. For example, in many states, Executive Orders broadened eligibility for existing legal mechanisms, but it was unclear if individuals were ultimately released due to the actions of the department of corrections or through discretionary parole release (or both). Similarly, it was sometimes difficult to determine how many individuals were released through each mechanism, as reports often concentrated on release events, without providing a breakdown of who was released through each mechanism. We do our best to summarize these events accurately based on multiple sources.

Overview of Mechanisms Used

Across all jurisdictions, there were 10 main legal mechanisms used to effect release during the pandemic (Figure 3). The most frequent mechanism used was parole, having been utilized in 11 jurisdictions. Generally, this meant that the parole board—sometimes in unison with officials from other criminal justice agencies—put resources toward releasing more people. For example, by increasing the pace of parole reviews or holding special panels to identify eligible individuals for release.

Figure 3. Frequency of Legal Mechanisms Used to Effect Prison Releases During COVID

*Compassionate release includes medical parole and medical furlough.



Compassionate release was used in 10 instances, spanning nine jurisdictions,[27] largely without modification to existing programs. Where this mechanism was used, the release numbers were quite modest compared to when states used other means. For example, the Oklahoma Department of Corrections recommended a group of individuals for medical parole that were at an increased risk of COVID-19 complications and who were not serving sentences for violent or sex crimes.[28] The parole board ultimately released 12 people from the list. The Louisiana Department of Corrections created a special panel consisting of representatives from various criminal justice agencies to identify individuals for medical furlough, prioritizing individuals serving time for nonviolent offenses and those with a short time left on their sentence. It ultimately released 68 individuals.[29] For an in-depth analysis of why compassionate or geriatric release mechanisms were underutilized as a response to the pandemic, see the section below revisiting our assumptions about Releases Due to Compassionate/Geriatric Provisions.

27. There were two distinct instances of compassionate release being used at the federal level.
28. 2001 OK. HB 2924, https://plus.lexis.com/document/?pdmfid=1530671&crid=963d660e-8557-4a0d-9685-d2a96306b197&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4J1B-8GH0-0033-41Y8-00000-00&pdcontentcomponentid=125155&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&prid=798894bf-b319-4587-8f64-108c9d0e480d&ecomp=-t4hk&earg=sr4; Chris Polansky, *Board Recommends Special Medical Parole For 12 State Inmates*, Public Radio Tulsa (May 13, 2020), https://www.publicradiotulsa.org/local-regional/2020-05-13/board-recommends-special-medical-parole-for-12-state-inmates#stream/0.
29. Julie O'Donoghue, *Louisiana Prisons Need To Do More COVID-19 Releases*, Advocates Say, La. Illuminator (Sept. 3, 2020), https://lailluminator.com/2020/09/03/louisiana-prisons-need-to-do-more-covid-19-releases-advocates-say/; Lea Skene, *Review panel to consider medical release for some Louisiana state prison inmates due to coronavirus*, The Advoc. (Apr. 14, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_62e9f822-7e79-11ea-bfb3-933881495eb6.html.

Commutation—shortening the period of time to be served in prison—was utilized in seven jurisdictions. In six jurisdictions, the governor commuted sentences while in Georgia, the parole board exercised its commutation power. Traditionally, commutation is based on case-by-case review of individual cases, and for a variety of reasons, such as to correct an unreasonably harsh punishment. The process varies from state to state, but generally requires multiple steps such as preparing lengthy individual applications, seeking input from criminal justice officials such as the prosecuting attorney, and multiple hearings to determine suitability for release. It is a bottom-up approach where each commutation is driven by each individual case. In the cases we chronicled in Appendix B. Release Mechanisms, this process was modified significantly by having the system drive the process (i.e., a top-down approach). In these cases, the governor or parole board commuted the sentences of large groups of people based on general membership in a group (e.g., individuals who were at an increased risk of complications from the virus). For example, Kentucky Governor Andy Beshear filed several Executive Orders in direct response to the pandemic, which commuted the sentences of 1,184 people in jails and prisons.[30] All of these individuals had been identified as being medically vulnerable to COVID-19 and/or were nearing the end of their sentence, as well as fulfilling other requirements, such as serving time for non-violent, non-sexual offenses.

A variation on the theme of commutation was sentence reduction, which was used in two jurisdictions. Here, courts were the main actors, revisiting and reducing previously imposed sentences. In Rhode Island, the Supreme Court took an active role, suspending the time limit for motions to resentence, and authorizing lower courts to reduce sentences for people within 90 days of release.[31]

Eight jurisdictions used existing authority to move incarcerated persons from prison to home confinement. Interestingly, nearly all of the home confinement releases—seven of eight instances—occurred in determinate jurisdictions, suggesting this mechanism is one way determinate jurisdictions can exercise back-end release discretion. Another seven used good time or earned time credit awards to speed up the release of eligible people. In these instances, jurisdictions often had to relax existing requirements, such as Colorado, which removed its cap on the number of credits that could be earned. Most notably, in New Jersey, the legislature enacted a new law establishing public health emergency credits, which moved up the release date of 5,181 individuals.[32] Though similar to good time or earned time credits in other states, New Jersey was the only state to create credits that would specifically be triggered by a public health emergency.

A handful of jurisdictions utilized other mechanisms as well. Four jurisdictions exercised what we refer to as "sanction reductions." In these jurisdictions, departments of correction utilized the power they already had to impose sanctions on people who violated parole to do the reverse; that is, to reduce the prison sanction previously imposed for the violation, and therefore release the person back onto parole. Two other jurisdictions—Arkansas and Ohio—used the power of prison overcrowding statutes that were already on the books to declare an emergency and identify individuals for release.

30. *Nearly 1,000 Kentucky prison sentences to be commuted, Beshear says*, FOX19 (Apr. 2, 2020), https://www.fox19.com/2020/04/02/watch-live-gov-beshear-provides-update-covid-kentucky/; Chris Williams, *Lawmakers question DOC officials on Governor Beshear's COVID-19 commutations*, WHAS11 (Dec. 3, 2020), https://www.whas11.com/article/news/kentucky/kentucky-governor-prisoners-released-covid-19-lawmakers-face-off-corrections-officials/417-84c107ff-50e3-452d-b050-31a7d3b5db05.
31. In re Req. for Prison Census Control In Resp. to COVID-19 (Apr. 3, 2020), https://www.courts.ri.gov/PDF/In%20re%20Request%20for%20Prison%20Census%20Control%20(Order).pdf; Mark Reynolds, *R.I. Supreme Court OKs release of 52 inmates*, Providence J. (Apr. 4, 2020), https://perma.cc/3JUV-NFLY.
32. Suzette Parmley, *Has 'COVID Time' Legislation Worked, and What Does It Mean for NJ's Criminal Justice Reform Future?*, Law.com: N.J. L. J. (May 11, 2021), https://www.law.com/njlawjournal/2021/05/11/has-covid-time-legislation-worked-and-what-does.

Modifications To Existing Mechanisms

Almost all jurisdictions relied on existing mechanisms of release to effect pandemic specific releases; however, many required significant modifications to be useful. Below, we highlight three common themes: expansion of eligibility criteria or suspension of specific rules or limits, expedited processes, and large-scale use.

Expansion of Eligibility Criteria or Suspension of Specific Rules or Limits

Across multiple different types of release mechanisms, jurisdictions needed to enact modifications in order to facilitate their use under tight time constraints. In each case, the goal was to increase the pool of individuals who would be eligible for release under the mechanism used. For example, both Maryland and Illinois suspended caps or limits on the amount of good time or earned time credits that could be accrued, thereby advancing release dates for a number of people in prison. And Minnesota broadened its work release eligibility criteria by including individuals who were within 3 months of their end of confinement date (versus 8 months prior to the modification), raising the risk assessment score cut off, and removing exclusions for specific offenses (e.g., weapons offenses).[33] A few jurisdictions were also able to expand their definition of medical vulnerability for compassionate release. For example, Oklahoma's compassionate release statute allowed the corrections department's medical director to request parole for any medical reason, thereby opening the door to develop a protocol for evaluating people who were more likely to be vulnerable to the effects of the virus.[34]

Expedited Processes

A second change to the functioning of existing mechanisms was to simply expedite their use. Often states would create review committees, empanel parole boards more frequently, or task personnel with identifying and reviewing individuals for release. In most cases, these activities were spurred by an executive order or court litigation. While existing mechanisms were used for release – such as parole – it does not appear the mechanisms would have been used to accomplish these releases without the issuance of a governor's order or court action. We counted nearly two dozen instances where an executive order or court order spurred the corrections department or parole board to either move faster to release people or to use a particular mechanism for release. For example, Maryland's governor issued an Executive Order instructing the parole board to accelerate consideration of parole for people 60 years of age and older (as long as they met other offense and re-entry planning requirements).[35] And in New Jersey, the governor instructed the Department of Corrections to expedite the release to emergency medical home confinement for older, medically vulnerable individuals who had a short time left on their sentence, resulting in the release of 300 individuals.[36] When executive orders started the chain of events, this probably represented one executive action among many taken within the jurisdiction to address the danger represented by the virus. In contrast, when court orders started the chain of events, this likely represented the presence of outside pressure to force corrections and/or the administration to act.

33. Mgmt. Analysis and Dev., *Research summary: Prison population management* (Dec. 21, 2020), https://mn.gov/obfc/assets/Appendix%20A%20Ombuds%20for%20Corrections%20COVID%20Report_tcm1157-470275.pdf.
34. 57 Ok. Stat. § 57-332.18 (2022).
35. Luke Broadwater, *With coronavirus spreading, Maryland Gov. Hogan signs order for expedited release of hundreds of prisoners*, The Balt. Sun (Apr. 19, 2020), https://www.baltimoresun.com/coronavirus/bs-md-pol-hogan-prisoners-20200419-7mzvooaoxfbyngowb2xdeucrme-story.html?utm_source=The+Marshall+Project+Newsletter&utm_campaign=f1efaf562f-EMAIL_CAMPAIGN_2020_04_20_11_35&utm_medium=email&utm_term=0_5e02cdad9d-f1efaf562f-166145513;
36. N.J. Exec. Order No. 124 (Apr. 10, 2020), http://d31hzlhk6di2h5.cloudfront.net/20200410/c0/64/ce/2c/0ef068b5d2c6459546c33a46/EO-124.pdf; Joe Atmonavage, *First wave of 50 inmates approved for release from N.J. prisons under Murphy's order*, NJ.com (Apr. 27, 2020), https://www.nj.com/coronavirus/2020/04/first-wave-of-50-inmates-approved-for-release-from-nj-prisons-under-murphys-order.html; Daniel Israel, *Curbing the spread of COVID-19 in state prisons*, Hudson Rep. (Oct. 20, 2020), https://hudsonreporter.com/2020/10/20/curbing-the-spread-of-covid-19-in-state-prisons/.

Large-scale Use

A third theme was large-scale use of procedures that had previously only been used on a case-by-case basis. The use of nearly all mechanisms fit this theme, but of particular note were the changes made to processes for commutation, compassionate release, home confinement, and accrual of good time or earned time credits. Commutation and compassionate release usually require a lengthy application and hearing process, with multiple layers of review. But instead, jurisdictions often tasked the department of corrections with identifying a cohort of individuals who fit specific criteria, and releases under these mechanisms were made en masse. Eligibility for release to home confinement or upon accrual of sufficient good time or earned time credits are determinations that jurisdictions routinely make as they process people through the final months of their prison term. But in order to respond to COVID, these reviews had to be completed on an expedited basis, and again, often involved review of a specifically identified cohort rather than on a case-by-case basis.

Criteria for Release

As noted above, in order to effect early release from prison, it was necessary to utilize some legal mechanism to permit release from prison prior to the time that would otherwise have been defined by law. In almost all cases, these mechanisms already existed, though they may have been sped up or modified through use of a triggering event such as an executive order or court order. In a few cases, early release was a new process developed whole cloth for the purpose of reducing prison populations in response to the pandemic. In each case, however, government officials typically took a targeted approach, identifying specific criteria to use in identifying people whose could be released from prison. In this section, we analyze those criteria in an effort to understand what they might tell us about the appetite and/or tolerances for back-end releases.

Overview of Release Criteria

Though 34 states and the federal government made releases during the pandemic, several jurisdictions established multiple pathways for release by either using more than one release mechanism, as detailed in the prior section, or by opening multiple channels for release based on different criteria. For example, when New Jersey instituted its expedited parole process, the state's eligibility criteria included those older than 60, those with high-risk medical conditions, those denied parole within the previous year, and those with short amounts of time left on their sentences. Thus, New Jersey had multiple release groups, each with different eligibility criteria.[37] In this section then, the unit of analysis is the release group rather than the jurisdiction. Looked at in this way, there were 73 distinct release groups across 35 jurisdictions.

In order to examine the criteria for releasing individuals from prison due to the pandemic, we combed through the source materials that comprised our survey of the states to find greater detail about each release group. The source materials included executive orders, court orders, news stories, agency websites, and other documents and sources detailing responses to the pandemic. From these source materials, we captured the text describing each release group, and then parsed that text to determine the unique sets of criteria governing each potential release from prison within the jurisdictions.

37. Lauren del Valle & Leah Asmelash, *New Jersey releases more than 2,200 eligible inmates under nation's first public health crisis sentencing law*, CNN (Nov. 4, 2020), https://www.cnn.com/2020/11/04/us/new-jersey-prisoners-covid-trnd/index.html.

It quickly became apparent that no two jurisdictions were alike in their release criteria. Some jurisdictions established wholly unique criteria. For example, though many jurisdictions used age and health as criteria for release, only North Carolina specifically targeted women over the age of 50 who had particular health problems.[38] And even where criteria were similar, there were small variations. For example, though both Georgia and Arkansas identified people who had committed "non-violent" crimes for release, Georgia did not further define that term while Arkansas specifically noted that non-violent included non-sexual and non-domestic abuse offenses.[39] Thus, it was necessary to develop a schema for comparison. We did this by first parsing the text into all possible criteria based on the actual wording of our sources, and then refining similar criteria into broader categories until we were satisfied that the final categories reflected the full range of release criteria. As a final step, we grouped the final criteria into high-level categories reflecting the overarching purposes of the release criteria within each grouping. Table 2 shows the schema we developed and our full analysis of criteria for release is shown in Appendix C.

Table 2. Schema for Comparing Release Criteria

High-Level Category	Individual Criteria
Type of crime	Non-violent / Low-level offenses
	Non-sexual offenses
	No crimes against a person
Risk to public safety	Low risk to public safety
	Low risk of recidivism
	Conduct in prison
	Technical violations of supervision
COVID health risks	Medically vulnerable
	Age based
Time Served	Accrual of sufficient good time credits
	Fulfilled a certain percentage/amount of sentence
	Short time left on sentence
	Already eligible for release
Reentry	Housing plan

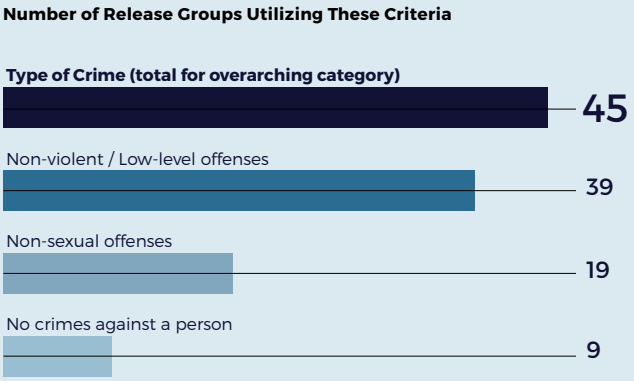
Our schema includes five overarching categories capturing a total of 14 individual criteria: type of crime, risk to public safety, time served, COVID health risks, and reentry. Four of the five categories included criteria that are traditionally considered in parole release. The fifth category, related to COVID health risks, while unique to this situation, was also not that unusual since most states have some form of compassionate release or medical parole and are accustomed to considering health concerns in some manner.

38. Pamela Walker, *Pandemic Prompts Department of Public Safety to Transition Some Offenders to Supervision in the Community*, N.C. Dep't of Pub. Safety (Apr. 13, 2020), https://www.ncdps.gov/news/press-releases/2020/04/13/pandemic-prompts-department-public-safety-transition-some-offenders.
39. Ninette Sosa, *ADC: 1,243 inmates considered for early release due to COVID*, KNWA Fox24 (Apr. 29, 2020), https://www.nwahomepage.com/lifestyle/health/coronavirus/adc-1243-inmates-considered-for-early-release-due-to-covid/; Press Release, State Bd. of Pardons and Paroles, Board Considering Releases to Address COVID-19 in Georgia Prisons (March 31, 2020), https://pap.georgia.gov/press-releases/2020-03-31/board-considering-releases-address-covid-19-georgia-prisons.

Type of crime

Criteria falling into the "type of crime" category set parameters regarding which conviction offenses, if any, would impact one's eligibility for release. Crimes described as "nonviolent" or "low-level" generally made individuals eligible for release while crimes described as sex offenses or person offenses generally excluded individuals from eligibility for release. "Nonviolent" and "low level offenses" had varying definitions across jurisdictions. Some jurisdictions targeted specific offenses, such as Oregon and Oklahoma, which specifically targeted those convicted of drug and property offenses.[40] Others defined non-violent offenses by exclusion. For example, Kentucky excluded anyone convicted of any crime higher than a class C or D felony, which are generally sexual or violent offenses,[41] and at least eight states excluded people convicted of domestic violence offenses.[42] The criterion for nonviolent / low-level offenses was the most prevalent in this category, appearing in 39 of 73 release groups. Nineteen release groups required that the person not have been convicted of a sex offense, and nine release groups required that the person not have been convicted of a person offense (Figure 4; Appendix C).

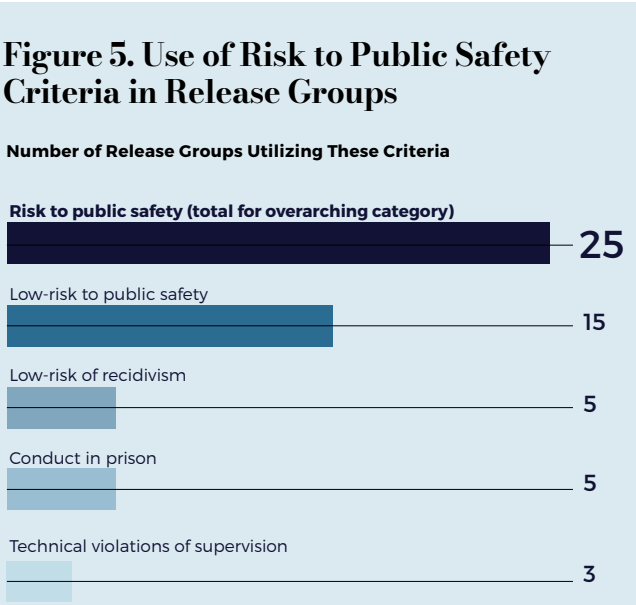
Figure 4. Use of Type of Crime Criteria in Release Groups



Risk to public safety

"Risk to public safety" included criteria that were aimed at identifying people who were deemed safe to release into the community. The criteria included low risk to public safety, low risk of recidivism, conduct in prison, and technical violations of supervision. "Low risk to public safety" was either broadly defined, representing a potentially qualitative judgement of the person's risk, or defined by the person's placement in prison. For example, Maine explicitly required that the person being considered for release must be in a "minimum security" placement.[43] In contrast, "low risk of recidivism" was usually expressly to

Figure 5. Use of Risk to Public Safety Criteria in Release Groups



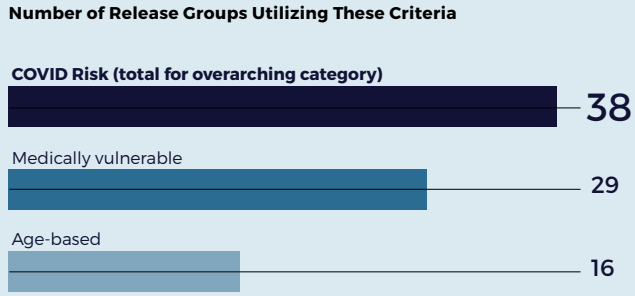
40. Shane Kavanaugh, *Oregon Gov. Kate Brown approves early release of 57 inmates vulnerable to coronavirus*, The Oregonian (June 25, 2020), https://www.oregonlive.com/coronavirus/2020/06/gov-kate-brown-approves-early-release-of-57-inmates-vulnerable-to-coronavirus.html; Hicham Raache, *Gov. Stitt approves hundreds of prison commutations to mitigate coronavirus spread*, KFOR (Apr. 10, 2020), https://kfor.com/news/coronavirus/gov-stitt-approves-hundreds-of-prison-commutations-to-mitigate-coronavirus-spread/?eType=EmailBlastContent&eId=07a90610-fdf3-4e1b-994a-712a02c5065c.
41. Ky. Exec. Order. No. 2020-267 (Apr. 2, 2020), https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf.
42. The jurisdictions include California, Colorado, Iowa, Maine, Maryland, New Mexico, Ohio, and Rhode Island.
43. Megan Gray, *Maine prisons pressured to release more inmates, and information, during pandemic*, Portland Press Herald (May 3, 2020), https://www.pressherald.com/2020/05/03/maine-prisons-pressured-to-release-more-inmates-and-more-information-during-pandemic/?rel=related

be determined by use of a risk assessment tool. "Conduct in prison" also tended to be broadly stated, either referring to people who had good conduct for a specified period of time or who did not have any disciplinary violations. Oregon, for example, required that an individual have a record of good conduct for the 12 months preceding their release.[44] Finally, "technical violations of supervision" appeared to be a proxy for risk, referring to the reason the person was incarcerated at the time of consideration for release rather than the offense for which the person was serving time in prison. Overall, none of these criteria were very prevalent, with only 25 of 73 release groups featuring these criteria (Figure 5; Appendix C).

COVID health risks

Within the category of "COVID health risks" we included criteria that mirrored the risk factors that made individuals particularly vulnerable to severe disease if they were to contract COVID: age and medical vulnerability. The minimum age for release eligibility ranged from 30 to 65 years old, though 60 and 65 were the ages most frequently utilized by jurisdictions. Only Ohio considered age in the abstract, without listing a number of years.[45] Medical vulnerability was often broadly defined, likely due to the evolving nature of the CDC guidelines. A few jurisdictions defined medical vulnerability to include chronic and serious conditions such as diabetes, cancer, or asthma. And a few jurisdictions defined medical vulnerability to include pregnancy.[46] COVID health risks was the third most prevalent category, with one or more of these criteria appearing in 38 of 73 release groups (Figure 6; Appendix C).

Figure 6. Use of COVID Risk Criteria in Release Groups



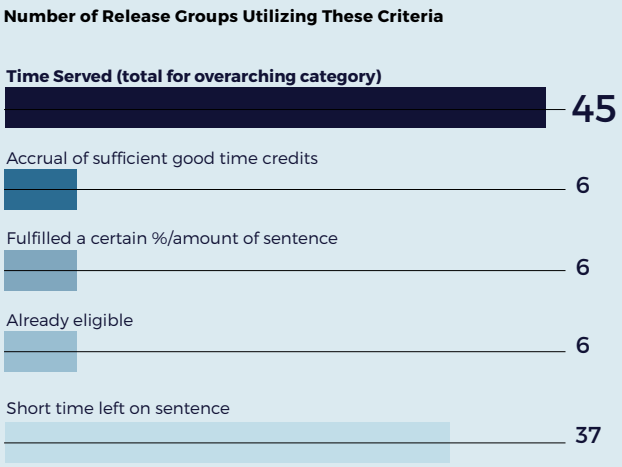
Time served

The "time served" category includes several criteria aimed at setting parameters around how much of their sentence a person must have served to be considered for release. The criteria are that a person served a certain percentage or number of years of the sentence, had a short time remaining on the sentence, was already eligible for release, or accrued sufficient good time credits to be released. Most jurisdictions that used the "percentage / amount served" criterion required the person to have served at least half of their sentence, though the percentages ranged from 25-50%. Wisconsin sought to address people with lengthy sentences by establishing a release group for people sentenced before 1999.[47] The most represented criterion in this category was "short time left on sentence," which appeared in 37 of 73

44. Conrad Wilson, *Oregon prisons to release more inmates as COVID-19 outbreaks continue*, East Oregonian (Dec. 15, 2020), https://www.eastoregonian.com/coronavirus/oregon-prisons-to-release-more-inmates-as-covid-19-outbreaks-continue/article_7f423606-3f12-11eb-b1ee-572e37fe342a.html.
45. *2 high-profile prisoners have sentences commuted by DeWine amid coronavirus crisis*, WTOL 11 (Apr. 17, 2020), https://www.wtol.com/article/news/health/coronavirus/ohio-prisoners-sentences-commuted/512-3786f7da-1d88-4d6f-b57c-6e18ce89e6c6;
46. For example, New York and Illinois each had a small release group focused on new mothers and those who were pregnant. Justin Bey, *8 pregnant women to be released from New York prison over virus fears*, CBS News (May 6, 2020), https://www.cbsnews.com/news/coronavirus-new-york-prisons-pregnant-women-freed-covid-19; Annie Sweeney, *Facing growing coronavirus threat, Illinois prison officials release moms jailed with their babies: 'Oh my goodness, there was no words'*, Chi. Trib. (Mar. 27, 2020), https://www.chicagotribune.com/coronavirus/ct-coronavirus-woman-babies-released-prison-20200327-t6rfew4m6jbuxmw4lrw5v47dfi-story.html.
47. Emily Hamer, *Wisconsin DOC has released nearly 1,600 inmates so far to combat COVID-19 spread*, Wis. State J. (May 8, 2020), https://madison.com/wsj/news/local/crime-and-courts/wisconsin-doc-has-released-nearly-1-600-inmates-so-far-to-combat-covid-19-spread/article_03537daa-e1ec-5fe8-ac68-f5cf38ce8be5.html (https://perma.cc/58WK-99UW

release groups. Jurisdictions used this to describe the amount of time left on a person's sentence before eligibility for release under established rules. The amounts varied from just 30 days in New Mexico to five years in Kentucky, which was an outlier.[48] Most jurisdictions required the person to be within one year of release, though a fair number required as few as 90 days remaining on an individual's sentence. A third criterion in this category was that a person was "already eligible for release." This criterion referred to situations where an incarcerated individual had already met the conditions of release, such as those who had served their minimum sentence but who had not yet gone before a parole board or individuals who had recently been denied parole, as in New Jersey.[49] Finally, "accrual of sufficient good time credits" also served to identify people who had served a sufficient proportion of their sentence. Colorado removed the caps on good time credits to increase eligibility for release[50] while New Jersey created an entirely new category of public health emergency credits in order to expand eligibility for release.[51] Time served was the second most prevalent category. Criteria within this group appeared in 45 of 73 release groups (Figure 7; Appendix C).

Figure 7. Use of Time Served Criteria in Release Groups



Reentry

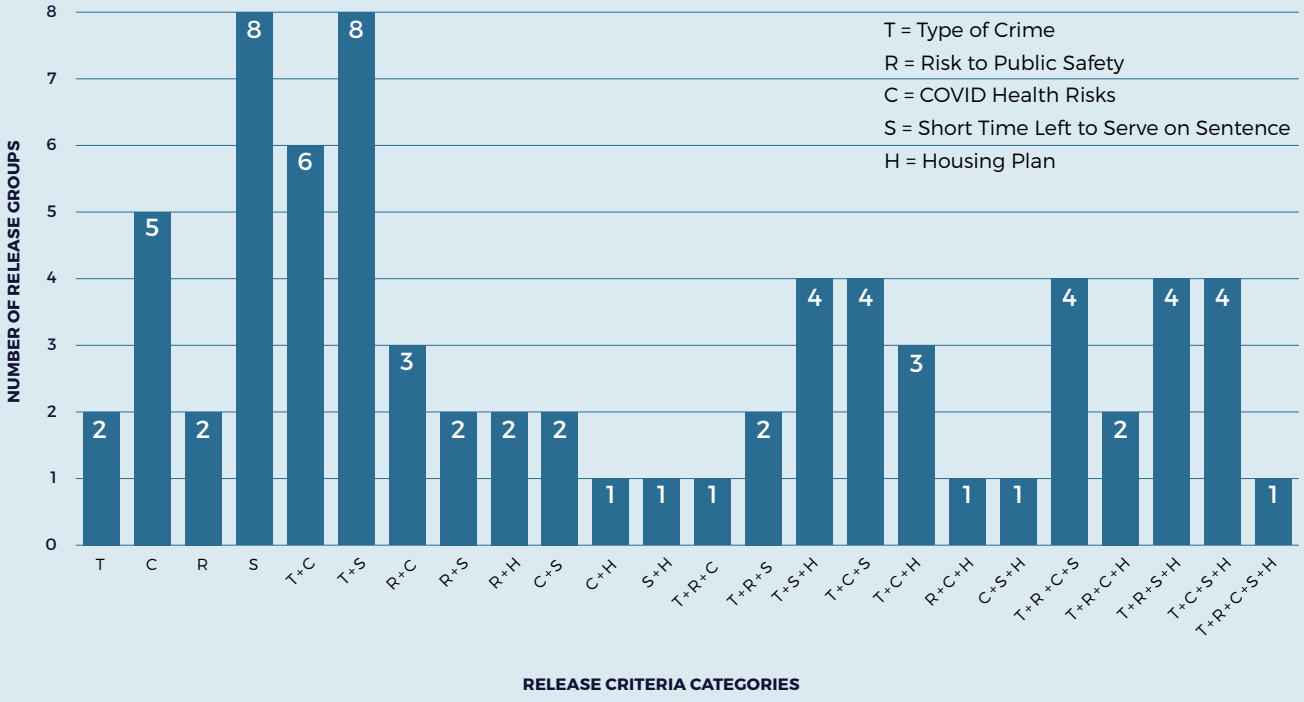
The least prevalent category, having been required for consideration in just 18 release groups, was reentry, which required that the person have a housing plan in place in order to be eligible for release. This number may be deceptive, however, as housing plans may have been an implicit consideration in all releases. Jurisdictions that explicitly included housing described it in different ways. Most required "stable" housing, while others required "safe housing," "a viable housing plan," "a plan for housing and well-being," or "access to housing and healthcare." The inclusion of this criterion suggests that, just as with standard prison release, institutions may have been hesitant to release individuals with nowhere to go, especially in a climate when many states were experiencing lock downs, and local jurisdictions were already struggling to implement social distancing standards community-wide, including by temporarily housing people who were homeless in hotels rather than shelters.[52]

48. Elise Kaplan, *Gov. orders early release of some inmates*, Albuquerque J. (Apr. 6, 2020), https://www.abqjournal.com/1440938/gov-orders-early-release-of-some-inmates-from-prison.html; *Kentucky's Response to COVID-19*, Kentucky.gov (Oct. 20, 2020), https://governor.ky.gov/Documents/20201020_COVID-19_page-archive.pdf.
49. Joe Atmonavage, *First wave of 50 inmates approved for release from N.J. prisons under Murphy's order*, NJ.com (Apr. 27, 2020), https://www.nj.com/coronavirus/2020/04/first-wave-of-50-inmates-approved-for-release-from-nj-prisons-under-murphys-order.html.
50. Colo. Exec. Order No. D 2020 016 (Mar. 25, 2020), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20016%20Suspending%20Certain%20Regulatory%20Statutes%20Concerning%20Criminal%20Justice_0.pdf
51. Lauren del Valle & Leah Asmelash, *New Jersey releases more than 2,200 eligible inmates under nation's first public health crisis sentencing law*, CNN (Nov. 4, 2020), https://www.cnn.com/2020/11/04/us/new-jersey-prisoners-covid-trnd/index.html.
52. *See, e.g.*, Nina Moini, *For Ramsey County Homeless Hotels Officer Safe Haven and Hope Amid the Pandemic*, MPR News (Feb. 18, 2021), https://www.mprnews.org/story/2021/02/18/for-ramsey-county-homeless-hotel-rooms-offer-safe-haven-and-hope-amid-the-pandemic.

Combinations of Release Criteria

Having parsed out the individual criteria used by jurisdictions in making release decisions, we then analyzed the relationship between criteria to see if certain combinations were more prevalent than others in establishing who might be eligible for release. Figure 8 shows how jurisdictions combined criteria from each category when defining eligibility for release. The information is organized by release group, which we define as each group within the jurisdiction that had distinct eligibility requirements for release from prison (see also Appendix C. Combinations of Release Criteria for combinations by jurisdiction).

Figure 8. Frequency of Release Criteria Combinations



About three-fifths of the release groups utilized eligibility criteria in just one or two categories. Type of crime, COVID health risks, and time served were the most common categories for release criteria, each appearing as a component in more than half of all release groups. But while COVID health risks and time served were frequently used on their own to determine eligibility for release, type of crime almost never was. Instead, it was often paired with criteria in these two other categories.

Only 17 of the 73 release groups utilized criteria in just one category, most frequently COVID health risks and time served. For release groups in which eligibility focused on COVID health risks alone, this indicates that jurisdictions were focused on preventing people from contracting serious disease, possibly out of concern for the individuals' health, but also likely out of concern for their ability to care for people if they

became seriously ill. In contrast, release groups in which eligibility focused solely on time served may have been prompted by those same health concerns tempered by risk aversion. In many cases, persons falling into the time-served category were already eligible for release under some existing mechanism—i.e., people who had earned sufficient good-time credits, who had served their minimum sentence but had not yet had a parole hearing—so there was little risk in expediting their release.

Twenty-five of the 73 release groups utilized criteria in two categories, most frequently adding a consideration for the type of crime for which the person was in prison to considerations for COVID health risks or time served. Because type of crime generally singled out people who had been convicted of nonviolent, non-sexual, non-person offenses, the addition of this criteria indicates a further concern for risk. Though people convicted of low-level crimes such as drug and property offenses are often more likely to recidivate,[53] they are also typically more likely to be perceived as less of a danger to public safety.[54] Thus, in terms of public perception, these were the individuals whom officials could be more likely to gain public support for releasing early.

Sixteen release groups required consideration of eligibility criteria in three categories, while 14 release groups required eligibility criteria in four categories. Only Kentucky had release groups requiring eligibility criteria from all five categories. Interestingly, type of crime appeared in all but two of these multi-category release groups, suggesting that these jurisdictions were less willing to consider releasing people convicted of crimes that might be labeled as "violent." Many of the release groups requiring criteria in four or five categories also included risk to public safety as an explicit consideration. For these release groups then, type of crime was not serving as a sole proxy for dangerousness. About half required use of a risk assessment tool to determine that the person had a low risk of recidivism, while about half relied on the less precise judgement that a person was "low risk to public safety." COVID health risks were still a prominent consideration in many of these release groups but layered within a set of criteria that required consideration of risk on multiple dimensions.

A more detailed table showing combinations of release by criteria by jurisdiction is shown in Appendix C. Because most jurisdictions developed multiple sets of criteria for release, they appear in the table multiple times for distinct release groups. This is significant because it shows that these jurisdictions were working multiple angles to facilitate the release of individuals from prison. For example, Illinois appears in the table with four different release groups, some of which focused on releasing women who were pregnant, people 55 years or older with less than a year left on their sentence, and others who were within 9 months of release.[55] Thus, Illinois was considering multiple types of criteria, including COVID health risks and time served. Over half of the jurisdictions (19) took this multi-pronged approach while 16 jurisdictions that made releases had just one release group.[56]

53. Nancy La Vigne & Ernesto Lopez, *Recidivism Rates: What You Need to Know*, Council on Criminal Justice (Sept. 1, 2021), https://counciloncj.org/recidivism_report/.
54. Joel M. Caplan, *What Factors Affect Parole: A Review of Empirical Research*, 71 Fed. Prob. (2007).
55. Ill. Exec. Order No. 2020-11 (Mar. 23, 2020), https://www2.illinois.gov/sites/coronavirus/Resources/Pages/ExecutiveOrder2020-11.aspx; Annie Sweeney, *Facing growing coronavirus threat, Illinois prison officials release moms jailed with their babies: 'Oh my goodness, there was no words'*, Chi. Trib. (Mar. 27, 2020), https://www.chicagotribune.com/coronavirus/ct-coronavirus-woman-babies-released-prison-20200327-t6rfew4m6jbuxmw4lrw5v47dfi-story.html; Ill. Exec. Order No. 2020-21 (Apr. 6, 2020), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-21.aspx; *Money v. Pritzker*, 453 F. Supp. 3d 1103 (N.D. Ill. 2020).
56. The states with one release group were Florida, Georgia, Hawaii, Kansas, Louisiana, Maine, Michigan, New Mexico, Rhode Island, Utah, Vermont, Virginia, Washington, and West Virginia.

Revisiting Our Assumptions About Release

In this section, we revisit the assumptions we made about how releases from prison would work during the pandemic. As discussed below, for the most part, releases ran contrary to our assumptions, suggesting that other factors were at play as jurisdictions worked to reduce their prison population size. These factors will be addressed more fully in the next section, examining lessons learned from the experience of the pandemic.

Releases in Determine vs. Indeterminate Jurisdictions

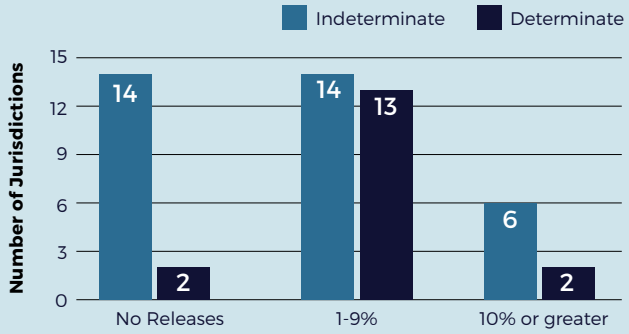
Our first assumption was that indeterminate systems, which have more built-in discretion and therefore more flexibility in their release processes, would be more likely to release people from prison due to the pandemic than determinate systems. However, we found this assumption to be at least partially incorrect. All but two jurisdictions with determinate sentencing (88%) made releases from prison in response to the pandemic. In contrast, nearly 60% of indeterminate jurisdictions made releases and just over 40% made no releases (Table 3). For more detailed information about which jurisdictions made releases by system type, see Appendix A. Prison Releases and Institutional Features by Jurisdiction.

Table 3. Release Decisions by System Type

	No Release		Release		Total
	#	%	#	%	
Indeterminate	14	41%	20	59%	34
Determinate	2	12%	15	88%	17

But though a greater share of determinate rather than indeterminate jurisdictions made releases, the scale of releases was larger in indeterminate sentencing systems. For both determinate and indeterminate jurisdictions, the majority of the releases were modest, amounting to the equivalent of 1-9% of the 2019 prison population. Only two determinate jurisdictions made releases that were greater than 10% of the 2019 prison population, compared to six indeterminate jurisdictions. In this sense then, the difference between structures may have been the reason why indeterminate jurisdictions were able to release more people. The more modest release proportions in determinate jurisdictions may have been reflective of the fact that determinate jurisdictions have a more definite structure for prison release, so they may have experienced two limitations: 1) they may have been limited by existing criteria for release when using existing release mechanisms; and 2) it may have been more difficult to develop procedures outside of those laws to effect release. At the same time, the greater discretion available in indeterminate jurisdictions may have more easily allowed for larger releases. Thus, while the system type may not have impacted whether the jurisdiction made releases, it may have affected how many releases were possible.

Figure 9. COVID Releases by Determinate/ Indeterminate Jurisdictions



Releases Due to Compassionate/Geriatric Provisions

Our second assumption was that existing compassionate release and geriatric parole mechanisms would be the primary means of releasing people from prison during the pandemic. We made this assumption because the persons most at risk for serious illness from COVID were people who were older or who had certain preexisting health conditions.[57] Thus, it seemed natural that jurisdictions would lean on these procedures, using existing eligibility and exclusion criteria, when making releases. However, that was largely not the case. Compassionate release and geriatric parole were use in just 10 instances spanning 9 jurisdictions. As explained in this section, this was largely due to an incompatibility in eligibility and exclusion requirements as well as procedural barriers.

Incompatibility in Eligibility and Exclusion Requirements

The statutes establishing compassionate release and geriatric parole provisions include both eligibility requirements—i.e., factors that must be present to qualify for consideration—and exclusion requirements—categorical factors that disqualify a person from eligibility to even apply for consideration. But as will be shown in this section, these factors were both simultaneously too narrow and too broad. Eligibility factors for compassionate release and some forms of geriatric release were too narrow to encompass the health risks for COVID, and even if they had not been, the exclusion factors would have resulted in a potential pool of people in prison that was too broad for serious consideration by state and federal corrections leaders and officials.

- **Eligibility factors for compassionate release and the forms of geriatric release based on medical condition were too narrow to encompass the health risks for COVID.**

Compassionate release programs generally require applicants to suffer from severe, terminal, debilitating, and/or chronic incapacitation, disease, or illness. Some require that the condition be so severe as to render the person with only a short time left to live. These statutes are reactive, intending to be used only after a severe medical diagnosis has been established. In contrast, COVID releases needed to be forward looking, intending instead to prevent severe illness.[58] Thus, instead of requiring severe incapacitation, jurisdictions that included medical vulnerability in their criteria for release focused on individuals having underlying health conditions or high risk of complications from COVID-19. Pennsylvania for example, considered risk to COVID based on age, autoimmune disorders, pregnancy, or other serious chronic medical conditions like heart disease, diabetes, cancer, and other medical conditions that placed people at higher risk for coronavirus.[59] Existing provisions for compassionate release or geriatric parole based on age and medical condition simply did not fit the situation. Where such statutes were used to effect release, they had to be altered in some way. For example, in Colorado, the governor issued an executive order that, among other actions, suspended the criteria for compassionate release and gave the department of corrections discretion to determine appropriate interim criteria.[60]

57. *People with Certain Medical Conditions*, Ctr. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#:~:text=More%20than%2081%25%20of%20COVID,medical%20conditions%20they%20have%20increases (last updated May 2, 2022).
58. It should be noted that some jurisdictions actually disallowed otherwise approved and/or eligible individuals from leaving prison if they tested positive for COVID-19 prior to release in order to protect the general public. (See e.g., Ninette Sosa, *Approx. 800 inmates approved for early release; COVID-19 precaution*, KNWA Fox24 (May 14, 2020), https://www.nwahomepage.com/lifestyle/health/coronavirus/approx-800-inmates-approved-for-early-release-covid-19-precaution/; Ky. Exec. Order. No. 2020-267 (Apr. 2, 2020), https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf).
59. Tom Wolf, *Order of the Governor of the Commonwealth of Pennsylvania Regarding Individuals Incarcerated in State Correctional Institutions*, Commonwealth of Penn. Off. of the Governor (Apr. 10, 2020), https://famm.org/wp-content/uploads/2020.4.10-TWW-SCI-reprieve-release-order-COVID-19.pdf.
60. Colo. Exec. Order No. D 2020 016 (Mar. 25, 2020), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20016%20Suspending%20Certain%20Regulatory%20Statutes%20Concerning%20Criminal%20Justice_0.pdf.

Even if the statutory provisions focusing on medical conditions had been broad enough to include the types of conditions that made people in prison vulnerable to severe disease from COVID, there was one other aspect to these laws that would have been problematic. Most jurisdictions maintain the ability to revoke compassionate release and geriatric parole if the individual's health status no longer makes them eligible for this extraordinary form of release. Ohio, for example, states that compassionate parole may be revoked "if an individual's health improves to the point that they are no longer medically incapacitated, in imminent danger of death, or terminally ill."[61] Another state, Kansas, takes this even further stating that compassionate parole can be revoked if, among other things, an individual's illness or condition significantly improves or if the person does not die within 30 days of release.[62] Such revocation provisions would have defeated the purpose of releases during COVID, which were designed to reduce the prison populations in order to facilitate some form of social distancing.

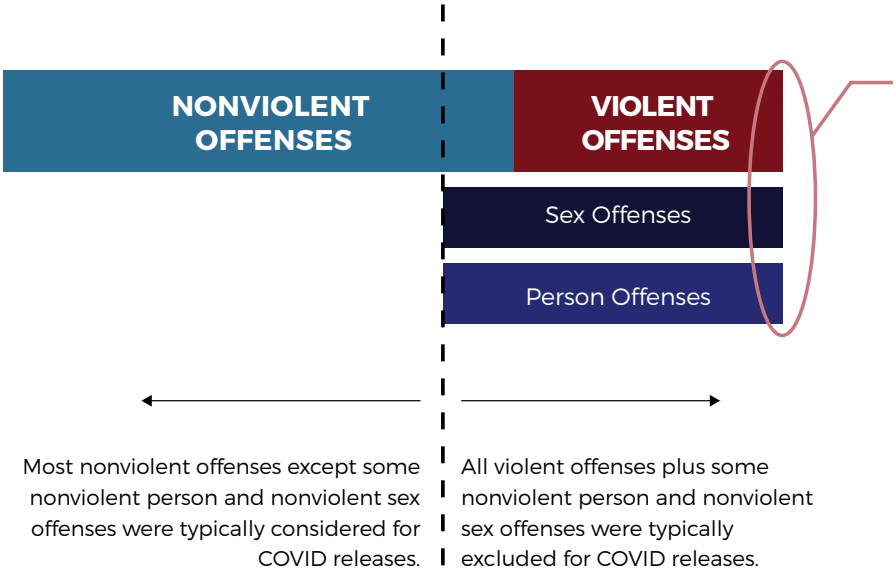
Given that the medical conditions in these statutes did not comport with the conditions surrounding COVID releases, one might have thought that states would turn to the other types of geriatric provisions based on age and time served. While 24 jurisdictions had geriatric parole provisions on the books, they did not appear to utilize them or even draw inspiration from them in setting release criteria. Many jurisdictions used age and time served as criteria for release. But while many geriatric parole provisions focus on time served, most often requiring that the person had served at least 10 years of their sentence, the time-served component of prison releases due to COVID focused on time left on the sentence, usually requiring that the person had less than a year left on their sentence. Geriatric time-served provisions were about accountability whereas COVID release time-served provisions were about minimizing risk. And to be fair, most geriatric parole statutes that had a time-served requirement were quite lengthy, suggesting the statutes were designed to address individuals serving lengthy sentences for more serious and violent offenses, which, as shown in the next section, were the very groups jurisdictions were looking to avoid releasing during COVID.

- **The exclusion groups for compassionate release and geriatric parole would have resulted in a potential pool of people in prison that was too broad for serious consideration.**

Both compassionate release and geriatric parole statutes have clear exclusion groups, that is, people who are not eligible to apply for such release because of their sentence or crime of conviction. Similar to the schema we developed for examining release criteria during the pandemic, exclusion groups in this context could be thought of as layering a consideration for the type of crime on top of the other eligibility criteria for compassionate release and geriatric parole.

61. Ohio Rev. Code §§ 2920 (A)(5), (N)-(S); Ohio Rev. Code § 2967.05 (2021).
62. Kan. Stat. §§ 22-3728-3729 (2021).

Figure 10. Visualization of Crime Type Eligibility and Exclusions



Compassionate release exclusions are typically narrow, only preventing people who have been sentenced to death, life without parole, or life from applying for release due to having a terminal illness or serious medical condition. The same types of exclusions are often present for geriatric parole when eligibility is based on age plus a serious medical condition (Appendix D). These severe sentences are most often imposed for murder or repeat violent offenses, or for people determined to be predatory or habitual offenders. Thus, for these types of statutes, the only people who are excluded from applying are people who would not be eligible for parole anyway. That is, people for whom the expectation at the time of sentencing was that they would serve the remainder of their life in prison.

In contrast, exclusions for geriatric parole when paired with time served are often broader, encompassing people who have been convicted of sex offenses or crimes of violence in addition to those with sentences of death, life without parole, or life. Thus, in these statutes, other considerations such as accountability for the offense, likely play a larger role in determining who can and cannot apply for release. In other words, for a person convicted of kidnapping and sexual assault, lawmakers in the jurisdiction may have thought it more appropriate to ensure that the person serve a significant portion of the pronounced sentence, even if that means the person would be quite elderly upon release.

In comparison to these statutory exclusion groups for compassionate release and geriatric parole, the exclusion groups for releases from prison due to COVID were even broader (Figure 5). The offenses for which a person could be considered for release due to COVID were primarily those considered nonviolent, and in many jurisdictions, also had to be considered non-sexual and non-person, thereby excluding all violent offenses as well as some person and sex offenses that might be labeled as nonviolent.[63] Thus, one of the reasons states may not have relied on their compassionate release and geriatric parole provisions may have been because those statutes would have permitted consideration of too many people who had been convicted of crimes labeled as "violent." Had jurisdictions not focused solely on nonviolent offenses, they may have thought they would be overwhelmed with applications from people in prison seeking release through these mechanisms. Or jurisdictions may have been risk averse, not wanting to be placed in the position of releasing people they or the public might perceive as being more dangerous. In either case, notwithstanding the eligibility criteria discussed above, the exclusion groups

in compassionate release and geriatric parole provisions would not have been sufficiently narrow to address decision makers' concerns—and likely, what they perceived the concerns of the public to be[64]—for accountability and public safety.

Procedural Barriers

Additional reasons compassionate release and geriatric parole were not widely used during the pandemic may have been procedural. Compassionate release and geriatric parole provisions did not lend themselves to the scale of response needed to significantly reduce prison populations. Under these statutes, release is considered on a case-by-case basis after significant scrutiny and individualized assessment. In most jurisdictions there are at least three different approvals and/or checkpoints that individual applicants must survive – any of which have the discretion to take an individual out of consideration.[65]

Statutory provisions also vary as to the timing of review. In Oklahoma, for example, after approval of one's initial application materials, a final decision must be rendered within four business days,[66] while in South Dakota, the statute ensures only that a hearing will take place within three months.[67] The three-month timeline would have been excruciating for individuals in prison who had no control over their circumstances, especially when the virus was spreading quickly, and so little was known about treatment and prevention. But even the seemingly quick turnaround in Oklahoma may have been challenging because the clock starts after initial approval and thus fails to account for slowdowns in starting the application process and gathering the requisite application materials.

Thus, the procedural provisions inherent in compassionate release and geriatric parole that make review highly layered, individualized, discretionary, and slow create a tool that is useful in some, but not all (or even most) situations, and which is difficult to deploy for making largescale rather than case-by-case releases.

63. Examples of nonviolent person offenses might include some forms of theft or burglary and violation of an order for protection. Examples of nonviolent sex offenses might include possession of child pornography or failure to register as a sex offender.
64. See, e.g., Research Summary: Prison Population Management, Responses to Covid-19 in Minnesota Prisons at 52 (Dec. 21, 2020), https://mn.gov/obfc/assets/Appendix%20A%20Ombuds%20for%20Corrections%20COVID%20Report_tcm1157-470275.pdf (documenting concerns by corrections officials that there was a public perception that the Department of Corrections was being reckless with early release).
65. *See e.g.*, N.C. Gen. Stat. § 148-4 (which includes review by five different individuals within the DOC system); Vt. Stat. Ann. tit. 28, § 502a (d) and Vt. Stat. Ann. tit. 28, § 808 (which requires review by three different departments within the DOC system before an application is submitted to the Board of Parole).
66. *See, e.g.*, Ok. Stat. § 332.16 (2021).
67. *See, e.g.*, S.D. Codified Laws §§ 24-15A-56 (2022).

COVID as a Political Issue

One assumption we did not make was that politics might affect releases. This was due in part to the fact that at the start of the pandemic in 2020, political leadership across the United States was nearly evenly split, with 24 states being headed by Democrats, and 26 states and the U.S. Presidency being headed by Republicans (Appendix A. Prison Releases and Institutional Features by Jurisdiction). Moreover, given that the point of releasing people from prison due to COVID was to facilitate social distancing for those that remained, we expected that the jurisdictions with larger prison populations would be more inclined to pursue releases as a strategy for protecting the health of the individuals in their charge. And we anticipated that this public health concern would be great enough to transcend politics.

Table 4. Prison Releases by Gubernatorial Political Party

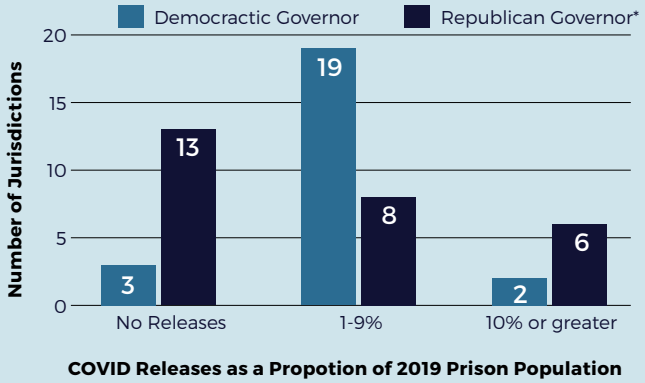
	No Release	Release	Total
Democratic Governor	3	21	24
Republican Governor*	13	14	27

*Includes federal prisons, which are under the jurisdiction of the U.S. President, and which was Republican at the start of the pandemic.

But over the course of the pandemic, the management of COVID itself became a highly polarized political issue. States headed by Democratic governors were more likely to impose statewide mask mandates and other more extreme measures to manage the spread of the virus while states headed by Republican governors were less likely to impose such measures.[68] These differences in approach may have also affected prison releases. Of those jurisdictions that released people from prison, three-fifths were in jurisdictions headed by Democratic governors and two-fifths were in jurisdictions headed by Republican governors (or the Presidency). In contrast, of those states that did not release people from prison due to the pandemic, all but three were headed by Republican governors (Table 4).

But though politics may have played a role in which jurisdictions chose to make releases to reduce their prison population size, it does not appear to have played as great of a role in the proportion of people released. For both Democratic and Republican jurisdictions, the majority made releases amounting to less than 10% of the 2019 prison population. Only eight jurisdictions released the equivalent of more than 10% of their 2019 prison populations, and these favored jurisdictions with Republican leadership (Figure 11).

Figure 11. Prison Release Proportions by Gubernatorial Political Party in 2020

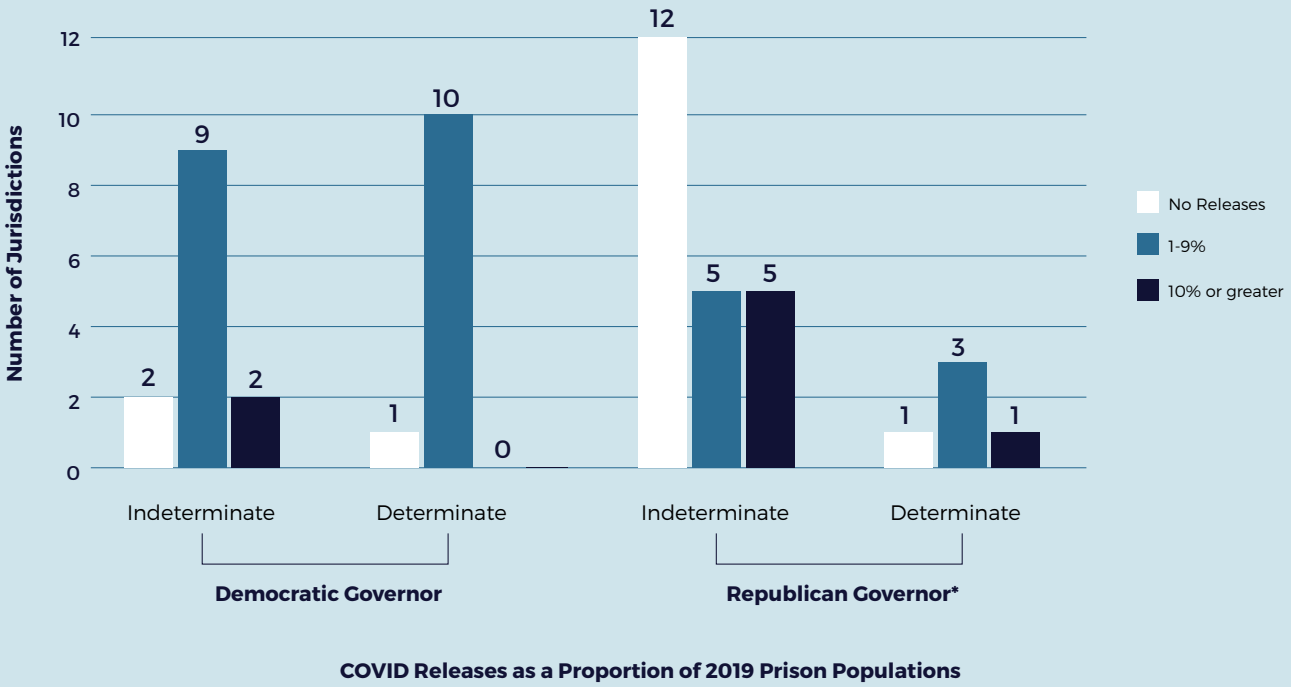


*Includes federal prisons, which are under the jurisdiction of the U.S. President, and which was Republican at the start of the pandemic.

68. Brian Neelon et al., *Associations Between Governor Political Affiliation and COVID-19 Cases, Deaths, and Testing in the U.S.*, 61 Am. J. Preventative Med. 115, 116 (2021).

When we overlay gubernatorial leadership with the system type (i.e., indeterminate vs. determinate), a further pattern develops. As shown in Figure 12, jurisdictions with Democratic leadership were nearly evenly split between determinate and indeterminate sentencing. Yet nearly all of these jurisdictions had modest releases of just 1-9%. In contrast, almost all of the jurisdictions with Republican leadership were indeterminate systems. In these states, the more common response was not to make a release at all. But for those that did, the indeterminate jurisdictions were evenly split between modest and large releases while the determinate systems made mostly modest releases. But across all groups, 7 of the 8 jurisdictions with the largest releases—those greater than 10% of the 2019 prison population—were indeterminate in structure. Thus, overall, we can conclude that whether a system was determinate or indeterminate did not affect whether a jurisdiction made releases due to COVID. Instead, gubernatorial leadership played a larger role in that decision, and fewer jurisdictions with Republican leadership made releases. However, determinacy appears to have contributed to the scale of releases with indeterminate jurisdictions making larger releases than determinate jurisdictions regardless of political leadership.

Figure 12. COVID Releases as a Function of Gubernatorial Leadership and System Type



*Includes federal prisons, which are under the jurisdiction of the U.S. President, and which was Republican at the start of the pandemic.

Effect on Prison Population Size

Several studies have examined the effects of the pandemic on the size of the incarcerated population in the US. Some estimates show a reduction of 71,030 in the number of individuals incarcerated in state and federal prison during the first half of 2020, when states made the majority of releases.[69] Another estimate shows that that during the first year of the pandemic, roughly March 2020 to July 2021, the number of people in state prison decreased by about 16.3%, from approximately 1.23 million to 1.03 million people.[70] Given the sheer size of the U.S. prison population, this decrease is quite dramatic – resulting in 200,000 fewer individuals incarcerated in state prisons by the middle of 2021.[71] Similar reductions likely occurred in federal prisons.

These reductions were the result of both decreased admissions and increased prison releases compared to previous years. During the pandemic, states also continued to make routine releases from prison, as people became eligible for parole or reached their mandatory release dates. We conclude that non-routine COVID-19 releases had a moderate effect on reducing the prison population. Our analysis shows that COVID-19-related releases—most of which occurred during the first year of the pandemic—allowed approximately 80,658 individuals to be released from prison. Of this number, we estimate that 39,588 were released from federal prisons, and 41,070 were release from state prisons. Since the explicit goal of these release events was to reduce prison populations in order to facilitate social distancing and/or release individuals who were at an increased risk of complications from the virus, these releases were unlikely to happen during a non-pandemic year. We approximate that at the state level, COVID-19 releases accounted for about one-fifth (20.5%) of the overall reduction in state prison populations across the U.S. Thus, COVID related prison releases made up a modest, but not insignificant, percentage of all prison population decreases during the pandemic. The 80,658 releases represent about 5-1/2% of the total state and federal prison population in 2019.

As other research has concluded,[72] the "largest, most rapid single-year decrease in prison population in American history"[73] mainly occurred as a result of a reduction in prison admissions. The reduction in prison admissions was due to decreases in police-citizen interactions resulting in fewer arrests, temporary court closures that led to a disruption in court proceedings,[74] and state-level policies severely curtailing imprisonment by refusing transfers from jails to prisons for newly sentenced individuals and prohibiting or limiting imprisonment for technical violations of probation and parole.[75] These factors reduced prison populations by a significantly greater extent than back-end efforts to release incarcerated individuals.

69. Franco-Paredes, C., Ghandnoosh, N., Latif, H., Krsak, M., Henao-Martinez, A. F., Robins, M., ... & Poeschla, E. M. (2021). Decarceration and community re-entry in the COVID-19 era. *The Lancet Infectious Diseases*, 21(1), e11-e16.
70. Klein, B., Ogbunugafor, C. B., Schafer, B. J., Bhadricha, Z., Kori, P., Sheldon, J., & Hinton, E. (2021). The COVID-19 pandemic amplified long-standing racial disparities in the United States criminal justice system. medRxiv
71. Id.
72. Council of State Governments, *More Community, Less Confinement*, https://csgjusticecenter.org/publications/more-community-less-confinement/national-report/.
73. Klein, et al., supra n. 70.
74. Julie Marie Baldwin, John M. Eassey, and Erika J. Brooke. "Court operations during the COVID-19 pandemic". In: American Journal of Criminal Justice 45.4 (2020), pp. 743–758.
75. Sharma, D., Li, W, Lavoie, D, and Lauer, C. Prison Populations Drop by 100,000 During the Pandemic. The Marshall Project, https://www.themarshallproject.org/2020/07/16/prison-populations-drop-by-100-000-during-pandemic.

Lessons Learned and Recommendations

The intersection of the COVID-19 pandemic with the effects of mass incarceration proved to be a real-time demonstration of the power of back-end prison release discretion, a concept which we expand upon in the Robina Institute's report entitled American Prison Release Systems: Indeterminacy in Sentencing and the Control of Prison Populations.[76] Had there not been legal mechanisms in the back end of the system through which jurisdictions could exercise discretion to effect releases, jurisdictions could not have taken steps to reduce prison populations in an effort to slow the spread of the virus and protect individuals from its effects. However, though 34 states and the federal government managed to exercise these discretionary powers, releases in most places were modest, and this fact, along with other findings in the report, impart several lessons about the feasibility of using back-end releases to reduce the effects of mass incarceration.

1. States and the federal government have the tools to make large-scale releases, but some modifications are needed.

The states and federal government have enormous power to make discretionary back-end release decisions. Even in jurisdictions with determinate sentencing systems—places where we thought there would be stronger legal impediments to releasing people from prison—there were numerous avenues for release. Thus, a lesson learned is that when willing to do so, states and the federal government can accomplish large-scale prison releases – mainly using mechanisms already available to them. However, during the pandemic, this required addressing barriers to making these mechanisms effective for large-scale releases, such as expanding eligibility requirements, taking a top-down rather than case-by-case approach, or assigning resources to expediting considerations for parole and other pre-release reviews. These modifications represent real opportunity to continue large-scale releases for the purpose of reducing prison populations, especially in jurisdictions where prisons are already overcrowded. Thus, jurisdictions could consider making these modifications permanent. For example:

- At least four states that included advanced age in one or more of their targeted groups for COVID-19 releases, do not have a geriatric parole provision in their state code. These and other jurisdictions could enact such second-look provisions which would allow the courts or the parole board to consider the release of elderly people serving long sentences.
- A few jurisdictions eliminated caps on the number of good time or earned time credits that could be earned (often based on offense type) to advance the date of a person's release. Research has shown that incentives are more powerful at promoting behavioral change than sanctions. Yet, eligibility rules for one of the most powerful incentives—earlier release from prison—are often narrowly restricted to people already considered to be less of a risk to public safety. Thus, we should be thinking about expanding these types of incentives to the people for whom we most want to see behavioral change—those considered a greater risk to public safety. The counterpoint

76. Reitz, K., Rhine, E., Lukac, A., and Griffith, M. (2022). *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size*. Final Report, Robina Institute of Criminal Law and Criminal Justice. https://robinainstitute.umn.edu/publications/american-prison-release-systems-indeterminacy-sentencing-and-control-prison-population.

to this is that people who have been convicted of more serious offenses should serve longer terms in prison. But good time and earned time credits allow for both things to occur by allowing for earlier release only if the person adheres to the requirements necessary to earn the credits. Expanding the availability of good time or earned time credits on a permanent basis would give people in prison more agency to determine the length of time served, and incentivize them to continue participating in rehabilitative programing, which, if properly resourced to provide quality programming, will in turn foster long-term behavioral change and reduce recidivism.

- Similarly, many jurisdictions suspended eligibility requirements for home confinement and work release in order to broaden the pool of people who could be released using these mechanisms. All jurisdictions could review these eligibility requirements, which are often unnecessarily narrow and severely reduce the effectiveness of the early release mechanism.

- Most jurisdictions that utilized commutations did so on a large-scale basis by categorically considering groups of individuals meeting specific criteria rather than requiring individual applications. Prior to the pandemic, a similar process was set in motion by President Obama to reduce sentences for nonviolent drug offenders.[77] Similar large-scale efforts could continue to be used to address sentences that appear to be out of step with modern ideals, and doing so could streamline or bypass the lengthy individualized review required in most states today.

2. The pandemic forced jurisdictions to think differently about technical violations of supervision.

As noted in our findings, four release groups relied on sanction reductions, wherein corrections departments used their discretion to impose sanctions for violations of parole to do the opposite; that is, to reduce the sanctions previously imposed and release people back onto parole. And though we did not chronicle it in this report, many jurisdictions also refused to accepted prison admissions due to technical violations of probation or parole. This suggests that many jurisdictions did not view prison as a necessary response to technical violations of supervision. Some jurisdictions are taking the opportunity to rethink the use of incarceration as a sanction for violations altogether.[78] This lesson is one that could be taken universally.

3. Jurisdictions could reduce prison populations by increasing resources for back-end release procedures.

One of the most prevalent criteria for release was time-served. In many cases, individuals were already eligible for release because they had served the minimum required term or had accumulated sufficient good time or earned time credits. But they had not yet been released because they still needed to go through a pre-release review or a parole hearing or complete some form of programming. The common thread here is that in all of these cases, all that was required to achieve release was a more concerted effort to complete these steps. Thus, jurisdictions could reduce prison populations simply by putting more resources into make release processes flow faster.

77. See e.g., Lorelei Laird, Clemency Project 2014 has submitted more than 1,000 petitions to the White House, ABA Journal, May 16, 2016, https://www.abajournal.com/news/article/clemency_project_2014_has_submitted_more_than_1000_petitions_to_the_white_h.
78. See, e.g., Kelly Lyn Mitchell, Lily Hanrath, Erin Harbinson, *Understanding Probation Violations and Disrupting the Revocation Pathway in Ramsey County, Minnesota*, Robina Institute of Criminal Law and Criminal Justice (2021), https://robinainstitute.umn.edu/publications/understanding-probation-violations-and-disrupting-revocation-pathway-ramsey-county.

4. Jurisdictions were risk averse in their approach to identifying people for release.

Though 35 jurisdictions made prison releases due to COVID, the majority of those releases included a requirement that the persons being released have been convicted of non-violent crimes. Still more required that the individuals be very close to having served their required minimum term. Thus, jurisdictions were risk averse in making their releases. They focused on the people they thought would carry the least risk of recidivating. Corrections officials in at least one jurisdiction noted that these were also the releases that were publicly palatable, indicating that jurisdictions may have been concerned not only about actual risk but also public perception about how such releases would impact public safety.

There are two lessons to be learned here. The first is that more focus needs to be placed on the rehabilitation of individuals in prison and less emphasis needs to be placed on the offense for which they were convicted. Often, those who are deemed to be non-violent and low risk to public safety receive all the rewards in prison. They earn more good time credits and serve shorter proportions of their pronounced sentences—all built upon the false dichotomy of "non-violent" versus "violent" offending. But these approaches ignore the fact that regardless of the offense for which a person was convicted, people in prison have varying criminogenic needs (factors that lead to reoffending), and it is only through addressing those needs that they can change behavior and prevent future criminal offending. Yet the programming necessary to address these needs is often under resourced. Thus, rather than relying on this false dichotomy, corrections officials should focus on enhancing rehabilitative programming, and legislatures should fund those programs at the levels needed to address crime.

The second lesson learned is that jurisdictions overrode their understanding of these rehabilitative concepts and made decisions based on their assumptions about public perception. Thus, a second recommendation would be to learn more about public attitudes towards crime and public safety. For example, one research study on sentencing found the public had a less punitive attitude towards considering older criminal history offenses or offenses committed when the person was a juvenile, and that this was in contrast to how most sentencing guidelines were constructed.[79] It may be that the public has a more nuanced view of crime and public safety than corrections officials give them credit. Better understanding of public attitudes may allow for the expanded use of existing legal mechanisms to provide for second looks and permit the release of more people from prison, especially for groups that have traditionally been excluded from such efforts, such as individuals serving time for violent offenses.

5. Efforts at using back-end release powers to reduce prison populations may have been hampered by politics.

In order to use existing mechanisms to bring prison populations down to the levels equivalent to those experienced in the U.S. before the onset of mass incarceration, jurisdictions would have to view mass incarceration as an emergency in the same way they viewed COVID-19 as an emergency. But politics could affect this equation. Criminal justice is a hot button issue often characterized by the false dichotomy of being "soft on crime" or "tough on crime." These concepts permeate political discourse, and can be central to the campaign platforms upon which candidates for elected office run. Those who follow the "tough on crime" line of thinking may see current sentencing and punishment practices as appropriate responses to crime and criminal behavior. Our analysis showed that the political party of the governor in each state bore a relationship to whether the state chose to make COVID-related prison releases, thus politics is likely to affect whether states and the federal government would be willing to continue such releasing practices in order to reduce the effects of mass incarceration. Thus, in order to address mass incarceration, it may be necessary to redefine what it means to be "tough on crime" to include concepts that have been proven to reduce reoffending such as using incentives and rehabilitative programming to promote behavioral change.

6. Outside pressure may be needed to encourage back-end releases.

In several jurisdictions, back-end prison releases were triggered by external forces. In our review, these triggering events were documented as executive orders or directives, or court orders as a result of litigation. Executive orders served two functions. First, they offered the relief needed to expand eligibility or suspend requirements, thereby facilitating use of legal mechanisms that otherwise would have served as barriers. But in some jurisdictions, the orders served to spur action where it might not otherwise have taken place, by, for example urging parole boards to move faster, setting up committees to review cohorts of potential releasees, or ordering the department of corrections to identify potential groups for large-scale releases. Litigation served a similar purpose, by forcing consideration of the health and safety implications of prisons as congregate living settings. Thus, another lesson learned is that jurisdictions may not take it upon themselves to view mass incarceration as an emergency requiring a solution, or they may simply lack the power to address this issue without outside intervention. Outside pressure may be needed to encourage, or make available, the broader use of back-end release discretion to reduce prison population size.

79. Rhys Hester, Julian V. Roberts, Richard S. Frase, and Kelly Lyn Mitchell, *A Measure of Tolerance: Public Attitudes on Sentencing Enhancements for Old and Juvenile Prior Records.* 3(2) Corrections 137 (2018).

Conclusion

Although the points above are discretely divided, the fact is that the lessons learned are intertwined. Though jurisdictions had back-end release powers, they were hampered by procedural barriers in using them on a large scale. Finding ways to overcome those barriers was largely a product of political will. And in some cases, outside pressure in the form of litigation was necessary to prompt government and corrections officials to act. Even when they overcame the barriers to using back-end release mechanisms, jurisdictions took a very conservative approach to back-end releases, focusing on areas where they believed there was less risk to public safety or where they thought they could garner more public support, such as releasing people who committed non-violent offenses or who had very little time left to serve on their sentence. As a result, while some jurisdictions were able to release a sizeable number of people due to the pandemic, the people released tended to be individuals that were close to being released anyway. Thus, the experience from the pandemic informs us that jurisdictions are unlikely to tackle the issue of mass incarceration by using their discretionary back-end release authority unless we address their risk aversion by redefining what it means to be "tough on crime." Some suggested ways to do this include assessing public attitudes for institutionalizing second look processes and eliminating the false dichotomy of "non-violent" and "violent" offending and instead focusing on increasing the availability of rehabilitative programming and incentives for people in prison to engage in that programming.

Appendix A

Prison Releases and Institutional Features by Jurisdiction

Jurisdiction	Prison Pop. at End of 2019	2019 Prison Pop. Rank (based on total size)	Total number of people released	Release Rank (based on total number released)	Ratio of number released to 2019 prison population	System Type	Gov Party 2020
Alabama	28,304	15	-	36	0%	Indeterminate	Republican
Alaska	4,475	44	-	36	0%	Indeterminate	Republican
Arizona	42,441	9	-	36	0%	Determinate	Republican
Arkansas	17,759	28	730	17	4%	Indeterminate	Republican
California	122,687	3	11,014	2	9%	Determinate	Democratic
Colorado	19,785	22	310	24	2%	Indeterminate	Democratic
Connecticut	12,823	31	357	8	3%	Indeterminate	Democratic
Delaware	5,692	40	-	36	0%	Determinate	Democratic
Federal	175,116	1	39,588	1	23%	Determinate	Republican
Florida	96,009	4	3	35	0.003%	Determinate	Republican
Georgia	54,816	5	918	15	2%	Indeterminate	Republican
Hawaii	5,279	42	-	16	0%	Indeterminate	Democratic
Idaho	9,437	34	-	36	0%	Indeterminate	Republican
Illinois	38,259	10	644	18	2%	Determinate	Democratic
Indiana	27,180	16	27	36	0.1%	Determinate	Republican
Iowa	9,282	35	197	19	2%	Indeterminate	Republican
Kansas	10,177	32	6	33	0.1%	Determinate	Democratic
Kentucky	23,082	21	190	11	1%	Indeterminate	Democratic
Louisiana	31,609	14	68	31	0.2%	Indeterminate	Democratic
Maine	2,185	49	95	29	4%	Determinate	Democratic
Maryland	18,595	27	2,000	7	11%	Indeterminate	Republican
Massachusetts	8,205	36	1,156	12	14%	Indeterminate	Republican
Michigan	38,053	11	500	21	1%	Indeterminate	Democratic
Minnesota	9,982	33	448	23	4%	Determinate	Democratic
Mississippi	19,417	23	-	36	0%	Indeterminate	Republican
Missouri	26,044	18	-	36	0%	Indeterminate	Republican
Montana	4,723	43	4	34	0.1%	Indeterminate	Democratic
Nebraska	5,682	41	-	36	0%	Indeterminate	Republican
Nevada	12,840	30	-	36	0%	Indeterminate	Democratic

Jurisdiction	Prison Pop. at End of 2019	2019 Prison Pop. Rank (based on total size)	Total number of people released	Release Rank (based on total number released)	Ratio of number released to 2019 prison population	System Type	Gov Party 2020
New Hampshire	2,691	47	-	36	0%	Indeterminate	Republican
New Jersey	18,613	25	6,381	3	34%	Indeterminate	Democratic
New Mexico	6,723	38	550	20	8%	Determinate	Democratic
New York	43,500	8	3,488	5	8%	Indeterminate	Democratic
North Carolina	34,079	13	5,409	4	16%	Determinate	Democratic
North Dakota	1,794	50	240	27	13%	Indeterminate	Republican
Ohio	50,338	6	112	28	0.2%	Determinate	Republican
Oklahoma	25,679	19	464	22	2%	Indeterminate	Republican
Oregon	14,961	29	253	26	2%	Determinate	Democratic
Pennsylvania	45,702	7	165	6	0.4%	Indeterminate	Democratic
Rhode Island	2,740	46	52	32	2%	Indeterminate	Democratic
South Carolina	18,608	26	-	36	0%	Indeterminate	Republican
South Dakota	3,801	45	-	36	0%	Indeterminate	Republican
Tennessee	26,349	17	-	36	0%	Indeterminate	Republican
Texas	158,429	2	-	36	0%	Indeterminate	Republican
Utah	6,665	39	1,000	14	15%	Indeterminate	Republican
Vermont	1,608	51	255	25	16%	Indeterminate	Republican
Virginia	36,091	12	1,376	10	4%	Determinate	Democratic
Washington	19,261	24	1,016	13	5%	Determinate	Democratic
West Virginia	6,800	37	70	30	1%	Indeterminate	Republican
Wisconsin	23,956	20	1,572	9	7%	Determinate	Democratic
Wyoming	2,479	48	-	36	0%	Indeterminate	Republican
Totals	**1,430,805**		**80,658**		**5.6%**	**34 Ind. 17 Det.**	**27 Rep. 24 Dem.**

Appendix B

Release Mechanisms

Throughout this table, DOC refers to the jurisdiction's Department of Corrections.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Arkansas	Executive Order	Prison overcrowding valve	Existing	X	Suspended eligibility requirements	DOC, via power of EO, suspended eligibility requirements for early release pursuant to prison overcrowding valve.
California		Expedited release planning	Existing	X	Expedited release process	DOC sped up the review process for expedited release by creating on-site review teams and working overtime.
Colorado (1)	Executive Order	Good time / earned time credits	Existing	X	Lifted caps; expanded eligibility	EO lifted caps and expanded eligibility criteria on awards of earned time credits, which moved people to their mandatory release dates sooner.
Colorado (2)	Executive Order	Compassionate release	Existing	X	Expanded eligibility	EO expanded eligibility criteria for Special Needs Parole, which is the state's compassionate release provision.
Colorado (3)	Executive Order	Intensive supervision program	Existing	X	Expanded eligibility	EO expanded eligibility criteria for release to the intensive supervision program.
Connecticut (1)		Furlough	Existing	X	Expedited parole process	DOC Comm'r signs policy exception expanding eligibility for furlough for people serving two years or less and who have served 40% of sentence.
Connecticut (2)		Parole	Existing	X	Expedited parole process	DOC, Parole Board and Community Supervision agencies collaboratively identified people to target for discretionary release, prioritizing those who were older, had health conditions, and were deemed to be low risk.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Federal BOP (1)	Court order	Home confinement	Existing	X	Expedited review	Court order to expedite the release of certain medically vulnerable individuals to home confinement.
Federal BOP (2)	Court order	Compassionate release	Existing	X	Expedited review	Court order to expedite the release of certain medically vulnerable individuals to compassionate release.
Federal BOP (3)		Compassionate release	Existing			Statute allows federal courts to reduce prisoners' sentences if they find "extraordinary and compelling reasons" to do so. Courts granted compassionate release via this statute.
Federal BOP (4)	AG memo	Home confinement	Existing	X	Expanded eligibility/ Expedited release process	Attorney General issued memorandum encouraging home confinement release for eligible individuals vulnerable to COVID-19 even when electronic monitoring was not available.
Florida		Compassionate release	Existing			A few people were released through the normal process for conditional medical release, which is Florida's compassionate release provision.
Georgia		Commutation	Existing		Large scale use	Prioritized people who were serving time for non-violent offenses who were close to their sentence end date.
Illinois (1)	Executive Order	Good time/ earned time credits	Existing	X	Suspended notice requirements	EO suspended notice requirements for early release due to good conduct credit award; DOC created task force to prioritize older individuals and those close to their release date for early release.
Illinois (2)	Executive Order	Compassionate release	Existing	X	Suspended 14-day time limit; expanded eligibility	EO suspended 14-day time limit on and expanded eligibility for medical furloughs.
Illinois (3)		Home confinement	Existing			DOC created a task force to prioritize older individuals and those close to their release date for early release.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Indiana		Sentence reduction	Existing			Sentence modifications, based on individual applications, were granted due to reasons related to COVID-19.
Iowa		Parole	Existing	X	Expedited parole process	Implemented a double-panel approach, in which two three-person panels simultaneously reviewed individuals for parole.
Kansas		Home confinement	Existing			Prioritized release to house arrest of individuals with short time left on sentence.
Kentucky	Executive Order	Commutation	Existing	X	Large scale use	Commutation power used multiple times to enact large group releases. Prioritized people based on medical vulnerability, non-violent sentence, and time left to serve.
Louisiana		Compassionate release	Existing			DOC used existing medical furlough law to establish criteria for release and established a review panel to process cases.
Maine		Home confinement	Existing	X	Expedited pre-release review	DOC reviewed early release cases faster.
Maryland (1)	Executive Order	Good time / earned time credits	Existing	X	Expanded eligibility	EO suspended rules about who can receive good time credit.
Maryland (2)	Executive Order	Parole	Existing	X	Expedited parole process	EO orders parole board to accelerate release for qualifying cases, prioritizing older individuals.
Massachusetts		Compassionate release	Existing			Parole board increased their use of medical parole approvals due to COVID-19.
Michigan		Parole	Existing	X	Expedited parole process	MDOC requested that prosecutors sign waivers allowing immediate release, which removed the 28-day waiting period after parole decisions.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Minnesota (1)		Compassionate release	Existing	X	Expanded eligibility	Created new process for conditional medical release, including having the process be applicant driven, coordinating with state and local resources, and considering medical conditions not previously used for conditional medical release.
Minnesota (2)		Sanction reduction	Existing			DOC exercised its authority to reduce sanctions that had been imposed for technical violations of supervised release.
Minnesota (3)		Work release	Existing	X	Expanded eligibility	DOC broadened eligibility criteria for work release.
Montana (1)	Governor Directive	Compassionate release	Existing	X		Governor directive for DOC and parole board to consider medically vulnerable people for early release.
Montana (2)	Governor Directive	Parole	Existing	X		Governor directive for DOC and parole board to consider medically vulnerable people for early release.
New Jersey (1)	Executive Order	Home confinement	Existing	X	Review committee created	EO created a review committee and directed DOC to develop lists of medically vulnerable people who had short time left on sentence for the committee's consideration for release to emergency medical home confinement.
New Jersey (2)	Executive Order	Parole	Existing	X	Expedited parole process	EO directed parole board to expedite release of older, medically vulnerable people who had a short time left on sentence.
New Jersey (3)		Good time/ earned time credits	Newly Created		Wholly new form of credit	New statute created public health emergency credits (i.e., time served credit) to be awarded to certain people in prison during a public health emergency.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
New Mexico	Executive Order	Commutation	Existing	X	Large scale use	Commutation power used to enact large group release, instead of granting approval to individual applicants, prioritizing release of people serving time for lower-level offenses and who were close to their release date.
New York (1)		Unclear				Governor instructed DOC to release pregnant women serving time for non-violent offenses.
New York (2)		Unclear				DOC prioritized early release for older people who were serving time for nonviolent, nonsexual offenses and who were close to their release date.
North Carolina (1)		Good time/ earned time credits	Existing	X	Increased use of discretionary credits	DOC gave sentence credit to people who were at an increased risk of COVID-19 who were serving time for nonviolent, nonsexual offenses, which moved people to their mandatory release dates sooner.
North Carolina (2)		Home confinement	Newly created		New form of home confinement	DOC created new program, Extending the Limits of Home Confinement (ELHC), to identify people who could serve the remainder of their sentence under home confinement.
North Carolina (3)	Lawsuit	Parole	Existing	X		DOC settled a lawsuit agreeing to reduce the prison population. As a result, people were released from prison through sentence credits, the ELHC program, release of people confined for supervised release violations, and parole.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
North Carolina (4)	Lawsuit	Sanction reduction	Existing	X		DOC settled a lawsuit agreeing to reduce the prison population. As a result, people were released from prison through sentence credits, the ELHC program, release of people confined for supervised release violations, and parole.
North Dakota		Parole	Existing	X	Expedited parole process	Parole Board held special session to identify a group of people for early parole release, prioritizing those with medical conditions, with nine months or less on their sentence, and a reliable place of residence.
Ohio (1)	Governor's declaration of emergency overcrowding	Prison overcrowding valve	Existing			At the recommendation of the governor, the legislative oversight committee approved early release for a group of people in prison via the state's prison overcrowding statute.
Ohio (2)		Commutation	Existing			Commutation power used to release seven people from prison.
Oklahoma (1)		Commutation	Existing	X	Large scale use	Commutation power used to enact large group release, instead of granting approval to individual applicants, prioritizing non-violent, or lower-level offenses, in order to reduce prison population.
Oklahoma (2)		Compassionate Release	Existing			DOC recommended a group of individuals for medical parole (i.e., compassionate release) who were at an increased risk from COVID-19 and who were not serving sentences for sex or violent crimes.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Oregon		Commutation	Existing	X	Large scale use	Commutation power used to enact large group release, instead of granting approval to individual applicants, prioritizing those particularly vulnerable to COVID-19, who had served at least half of their sentences, who were not convicted of committing a violent crime against another person, who had housing and access to healthcare in the community.
Pennsylvania	Executive Order	Reprieve	Existing	X	Large scale use	EO required DOC to establish a Reprieve of Sentence of Incarceration Program to recommend individuals for reprieve (temporary release from prison), prioritizing those who were high risk for complications due to coronavirus, serving a sentence for a non-violent offense, and within one year of release.
Rhode Island	Petition to SCt from State Public Defender	Sentence reduction	Existing	X	Suspended timing requirement in the rules	Supreme Court order suspended the time limit for motions to resentence and authorized lower courts to reduce the sentences of identified people with 90 days or less until expiration of sentence.
Utah		Parole	Existing	X	Expedited parole process	Individuals who had a confirmed parole release date in the near future were released early by removing program completion and other requirements.
Vermont (1)		Furlough	Existing			DOC prioritized release for people who had served their minimum sentence or qualified for furloughs.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Vermont (2)		Parole	Existing			DOC prioritized release for people who had served their minimum sentence or qualified for furloughs.
Virginia		Early Release Plan	Newly created		New legislation	Governor requested legislation authorizing DOC to create a program for early release, Inmate Early Release Plan, which allowed DOC to discharge or place inmates in lower level of supervision.
Washington (1)		Commutation	Existing	X	Large scale use	Commutation power used to enact large group release, instead of granting approval to individual applicants, prioritized people who were serving time for non-violent offenses and who were close to their release date.
Washington (2)	Governor's Emergency Proclamation	Home confinement	Existing	X	Suspended statutory requirements	Due to Governor's emergency proclamation, DOC modified its Rapid Reentry program to release individuals who were at an increased risk of complications from the virus to serve out the remainder of their sentence on home confinement with electronic monitoring.
Washington (3)		Work release	Existing	X	Suspended statutory requirements	Due to Governor's emergency proclamation, DOC secretary issued emergency work release furloughs for eligible individuals.
West Virginia (1)		Sanction reduction	Existing			DOC exercised its authority to reduce sanctions for parole violations.
West Virginia (2)		Work release	Existing			DOC exercised its authority to extend work release furloughs.
Wisconsin (1)		Good time / earned time credits	Existing			Certified Earned Release program for people serving sentences related to their substance abuse disorder.

State with Releases	Triggering Event	Mechanisms Used	Type of Mechanism	Modification to Existing Mechanism	Description of Modification	Description of Mechanism
Wisconsin (2)		Parole	Existing	X	Expedited parole process	Parole Board made concerted effort to grant discretionary parole to some individuals. Unclear if certain groups were prioritized.
Wisconsin (3)		Sanction reduction	Existing			DOC used their existing powers to release people serving time for technical violations.

Appendix C

Combinations of Release Criteria by Jurisdiction and Release Group

Jurisdiction*	Type of Crime			Risk to Public Safety				COVID risk to person in prison			Time served						Reentry
	Non-violent / Low-level offenses	Non-sexual offenses	No crimes against a person	Low-risk to public safety	Low-risk of recidivism	Conduct in prison	Technical violations of supervision	Medically vulnerable	Age-based	Age	Accrual of sufficient good time credits	Fulfilled a certain %/ amount of sentence	% or amount served req'dc	Already eligible	Short time left on sentence	Amount of time left on sentence	Housing plan
Arkansas	●	●															
California (1)	●	●													●	60 days	
California (2)	●	●		●											●	180 days	
California (3)	●	●		●					●	30					●	1 year	
California (4)	●	●		●				●	●	<29					●	1 year	
California (5)	●			●				●	●	65							
Colorado (1)				●				●									
Colorado (2)		●				●									●	180 days	●
Colorado (3)	●	●				●					●		12 mos		●	Release date before August 2021 (up to 16 mos)	
Connecticut (1)				●	●												●
Connecticut (2)								●	●	50							
Connecticut (3)								●				●	40%				

Jurisdiction*	Type of Crime			Risk to Public Safety				COVID risk to person in prison			Time served						Reentry
	Non-violent / Low-level offenses	Non-sexual offenses	No crimes against a person	Low-risk to public safety	Low-risk of recidivism	Conduct in prison	Technical violations of supervision	Medically vulnerable	Age-based	Age	Accrual of sufficient good time credits	Fulfilled a certain %/ amount of sentence	% or amount served req'dc	Already eligible	Short time left on sentence	Amount of time left on sentence	Housing plan
Federal BOP (1)								●									
Federal BOP (2)												●	25%	●	●	18 months	
Federal BOP (3)	●			●	●	●		●									●
Florida								●									
Georgia	●														●	180 days	
Illinois (1)											●						
Illinois (2)															●	9 months	
Illinois (3)								●									
Illinois (4)									●	55		●	25%		●	12 months	
Iowa (1)					●												●
Iowa (2)														●			
Kansas															●		
Kentucky (1)	●	●						●							●	< 5 years	●
Kentucky (2)	●	●													●	<6 months	●
Louisiana	●	●						●							●	6 months	●

Jurisdiction*	Type of Crime			Risk to Public Safety				COVID risk to person in prison			Time served						Reentry
	Non-violent / Low-level offenses	Non-sexual offenses	No crimes against a person	Low-risk to public safety	Low-risk of recidivism	Conduct in prison	Technical violations of supervision	Medically vulnerable	Age-based	Age	Accrual of sufficient good time credits	Fulfilled a certain %/ amount of sentence	% or amount served req'dc	Already eligible	Short time left on sentence	Amount of time left on sentence	Housing plan
Maine			●	●								●	50%		●	1 year (18 months "considered")	●
Maryland (1)	●	●									●				●	4 months	
Maryland (2)	●	●							●	60	●						●
Massachusetts								●									
Michigan	●							●	●	60							
Minnesota (1)				●				●									●
Minnesota (2)							●										
Minnesota (3)	●				●							●	50%		●	90 days	
Montana (1)				●				●									
Montana (2)				●					●	65							
Montana (3)				●											●	Not specified	
New Jersey (1)	●														●	90 days	●
New Jersey (2)	●													●			●
New Jersey (3)	●								●	60							●
New Jersey (4)	●							●	●								●
New Jersey (5)	●							●									●
New Jersey (6)	●										●				●	1 year	●

Jurisdiction*	Type of Crime			Risk to Public Safety				COVID risk to person in prison			Time served						Reentry
	Non-violent / Low-level offenses	Non-sexual offenses	No crimes against a person	Low-risk to public safety	Low-risk of recidivism	Conduct in prison	Technical violations of supervision	Medically vulnerable	Age-based	Age	Accrual of sufficient good time credits	Fulfilled a certain %/ amount of sentence	% or amount served req'dc	Already eligible	Short time left on sentence	Amount of time left on sentence	Housing plan
New Mexico		●	●												●	30 days	
New York (1)	●							●							●	6 months	
New York (2)	●	●							●	55					●	90 days	
North Carolina (1)	●	●	●					●									
North Carolina (2)	●		●					●	●	65							
North Carolina (3)	●		●					●	●	50(F)					●	12 months	
North Carolina (4)	●		●						●	65					●	12 months	
North Dakota								●							●	9 months	●
Ohio (1)	●														●	90 days	
Ohio (2)	●							●									
Ohio (3)	●								●	60							
Oklahoma (1)	●																
Oklahoma (2)	●	●						●									
Oregon (1)			●					●				●	50%				●
Oregon (2)															●	2 months	●
Oregon (3)								●									●
Oregon (4)			●			●									●	6 months	●

Jurisdiction*	Type of Crime			Risk to Public Safety				COVID risk to person in prison			Time served						Reentry
	Non-violent / Low-level offenses	Non-sexual offenses	No crimes against a person	Low-risk to public safety	Low-risk of recidivism	Conduct in prison	Technical violations of supervision	Medically vulnerable	Age-based	Age	Accrual of sufficient good time credits	Fulfilled a certain %/ amount of sentence	% or amount served req'dc	Already eligible	Short time left on sentence	Amount of time left on sentence	Housing plan
Oregon (5)			●			●		●									●
Pennsylvania (1)	●	●		●				●							●	9-12 months	
Pennsylvania (2)	●	●		●					●	NA					●	9-12 months	
Rhode Island	●			●											●	90 days	●
Utah														●			
Vermont														●			
Virginia	●				●			●			●				●	1 year	●
Washington	●	●													●	180 days	
West Virginia							●								●	Not specified	
Wisconsin (1)							●										
Wisconsin (2)	●														●	12 months	
Wisconsin (3)														●			
Totals	**39**	**19**	**9**	**15**	**5**	**5**	**3**	**29**	**16**		**6**	**6**		**6**	**36**		**18**

*Jurisdiction does not include Indiana or Washington, D.C. The information we gathered for Indiana did not contain enough detail to describe release groups in this way. Those convicted in Washington, D.C., are housed in federal prisons, so their releases are included in the federal release groups. Jurisdictions that are listed more than once had distinct release groups utilizing different criteria.

Appendix D.

Compassionate Release and Geriatric Parole Provisions by Jurisdiction

This appendix sets forth the results of our statutory survey of compassionate release and geriatric parole provisions. There are three tables. The first details jurisdictions that have compassionate (medical) release provisions. The second table details states that have provisions requiring the combination of age plus a medical condition. The third table details jurisdictions that have provisions allowing for release based on age, often combined with time served. Prior to the first and third tables, we briefly describe the major themes in eligibility and exclusion factors for each type of release. In some jurisdictions compassionate release and geriatric parole are included in the same statutory provision, but for purposes of our analysis, we broke them out separately to better analyze the distinct requirements for each release mechanism.

COMPASSIONATE RELEASE PROVISIONS

- **Eligibility:** Of the 51 jurisdictions that have compassionate release, all maintain eligibility requirements that categorize different types of medical conditions that would qualify an individual for consideration.
  - » Terminal Illness. A majority of jurisdictions allow consideration for compassionate release if an individual has a terminal illness. However, the life expectancy required for an illness to qualify as terminal varies greatly. Kansas has the strictest statute, requiring that death is likely within 30 days,[80] while Arkansas and South Carolina have the longest time frame, requiring that death is likely to result within 2 years.[81] The most common time frame is 12 months.
  - » Permanent or Severe Incapacitation. A second category of eligibility is for people who have a permanent or severe incapacitation. These conditions may not be terminal, but are serious enough to render the person unable to care for themselves or severely limit their functioning, or require a degree of medical care that is not possible in the prison facility. This category includes people who would benefit from hospice or palliative care.
  - » Cognitive or Mental Disorders. A third area, but less common, are provisions allowing compassionate release for cognitive or mental disability.
- **Exclusion Groups:** Most jurisdictions also have clear exclusion groups for compassionate release. Most frequently, people who are sentenced to death, life without parole, or life sentences are ineligible to apply for compassionate release. These are generally people who have been convicted of very serious offenses such as murder or particularly violent sex crimes. A few jurisdictions also exclude people who have been convicted of less serious offenses. Of the 51 compassionate release statutes, about 80% also explicitly take into account an individual's risk to public safety either at the initial eligibility phase or during the review and hearing phase (once the initial eligibility factors have been met).

80. Kan. Stat. § 22-3729 (2022).
81. Ark. Code Ann. § 12-29-404 (2022); S.C. Code Ann. § 24-21-715 (2022).

Table 5. Compassionate Release Provisions by Jurisdiction

* Indicates statute was enacted in 2021 or 2022 and was not in place at the start of the pandemic.

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Alabama Ala. Code § 15-22-41 to -43 Ala. Code § 14-14-1 to -7	"Incurable condition" Likely to result in death within 12 months	Render individual unable to perform daily life functions without assistance	--	Capital murder or sex offenses	Yes Eligibility Stage	Y
Alaska Alaska Stat. § 33.16.085	--	Medical disability that requires care and supervision better addressed outside the prison	Cognitive disability that requires care and supervision better addressed outside the prison	Sexual assault or sexual abuse	Yes Eligibility Stage	Y
Arizona Ariz. Rev. Stat. Ann. § 31-403(D) Ariz. Rev. Stat. Ann. § 41-1604.11 (B)	If expected to die imminently (3-6 months)	--	Temporary removal for provision of medical treatment not available in prison	None	Not Explicitly	N / Not explicitly stated
Arkansas Ark. Code Ann. § 12-29-404 Ark. Code Ann § 16-93-708	"Incurable condition" Likely to result in death within two years	Permanent and Irreversible incapacitation requiring immediate and long-term care	Individual would benefit from hospice care	Sentenced to death or life without possibility of parole, sexual offense	Yes Review/Hearing Stage	Y
California Cal. Penal Code § 3550 Cal. Code Regs. tit. 15, § 3359.1 to .6 Cal. Penal Code § 1170(e) Cal. Code Regs. tit 15, §§ 3076, 3076.3 to .5	"Incurable condition" Likely to result in death within 12 months	Results in permanent inability to perform daily life activities and need for 24-hour care	--	Sentenced to death or life without possibility of parole or first-degree murder of a peace officer	Yes Eligibility Stage	Y
Colorado Colo. Rev. Stat § 17-22.5-403.5 Colo. Rev. Stat § 17-1-102 Colo. Rev. Stat § 17-2-201	Anticipative life expectancy of twelve months or less	Irreversible physical illness, condition, or disease that requires costly medical care of treatment	Behavioral or mental health disorders that require care and costly treatment	Sentenced to life without parole, felony crime of violence (Doesn't apply to terminal illness)	Yes Review/Hearing Stage	Y
Connecticut Conn. Gen. Stat. §§ 54-131a to -131g; -131k	Six months or less to live	Debilitation, incapacitation, or infirmity as a result of a non-terminal condition, disease, or syndrome	Requiring continuous palliative or end-of-life care	Capital felonies or murder with special circumstances	Yes Eligibility Stage	Y

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Delaware Del. Code Ann. tit. 11, § 4217(a) to (c) Del Code Ann. tit. 11, § 4346(e)	--	Serious medical illness or infirmity	--	None	Yes Eligibility Stage	Y
Federal BOP 18 U.S.C. § 3582(c)(1)(A)	Disease or condition with end-of-life trajectory Death within eighteen months	Incurable, progressive illness or debilitating injury	--	None	Yes Review/Hearing Stage	N / Not explicitly stated
Florida Fla. Stat. § 947.149 Fla. Admin. Code Ann. r. 33-601.603(7)(b)	No recovery and death is imminent	Permanent and irreversible incapacitation	--	Sentenced to death	Yes Eligibility Stage	Y
Georgia Ga. Code Ann. § 42-9-43(b)	"Entirely incapacitated" Likely to result in death within 12 months	--	People with disabilities	None	Yes Eligibility Stage	Y
Hawaii Haw. Code. R. §§ 23-700-26	Progressive and incurable condition for which death is imminent	Impedes capacities so much that care outside of prison would be more appropriate	Cognitive impairment such that prison is not rehabilitative	None	Not Explicitly	N / Not explicitly stated
Idaho Idaho Code § 20-1006	Irreversibly terminally ill	Permanently and irreversibly physically incapacitated	--	Sentenced to death	Yes Eligibility Stage	Y
Illinois 730 Ill. Comp. Stat. 5/3-3-14*	Irreversible and incurable Likely to cause death within 18 months	Severe, permanent medical condition that prevents individuals from functioning independently	Condition that will result in mental incapacity within six months	None	Yes Review/Hearing Stage	N / Not explicitly stated
Indiana 220 Ind. Admin. Code 1.1-4-1.5	Terminal medical condition	--	Condition that would be more effectively treated in another facility	None	Yes Eligibility Stage	N / Not explicitly stated
Iowa (no provisions)						

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Kansas Kan. Stat. Ann § 22-3728 to -3729	Likely to cause death within 30 days	Significant incapacitation to the extent that person does not have the capacity to cause physical harm	--	Sentenced to death or life without parole, sentenced for an "off-grid" offense	Yes Review/Hearing Stage	Y
Kentucky Ky. Rev. Stat. Ann § 439.3405	Likely to result in death within 1 year	Severe lung, heart, or neuromuscular disease; limited mobility; or dependency on life support	--	None	Yes Eligibility Stage	N / Not explicitly stated
Louisiana La. Stat. Ann. § 15:574.20	Likely to result in death with 1 year *	Unable to perform activities of daily living; confinement to a bed or chair	--	First- or second-degree murder or sentenced to death	Yes Review/Hearing Stage	Y
Maine Me. Stat. tit. 34-A, § 3036-A(10)*	Terminal condition for which care outside prison is appropriate	Severely incapacitating condition for which care outside prison is appropriate	--	Anyone with greater than minimum-security classification	Yes Review/Hearing Stage	Y
Maryland Md. Code Ann., Corr. Servs. § 7-309	--	Chronically debilitated or incapacitated	Mental health conditions included as well	Sentence to any convictions without possibility of parole.	Yes Eligibility Stage	Y
Massachusetts Mass. Gen. Laws ch. 127, § 119A	Likely to cause death with 18 months	Physical or cognitive incapacitation that appears irreversible	--	None	Yes Eligibility Stage	Y
Michigan Mich. Comp. Laws § 791.235(10), (11) Mich. Comp. Laws § 791.244	Terminal condition that is serious and complex, cannot function without personal assistance	Non-terminal condition that is serious and complex, cannot function without personal assistance	Mental disorder which results in impaired ability to do daily activities	Sentenced to life without parole or first-degree criminal sexual offense	Yes Eligibility Stage	Y
Minnesota Minn. Stat. §244.05	Likely to result in death within 12 months	Grave illness or condition requiring extended medical management	--	None	Yes Eligibility Stage	Y
Mississippi Miss. Code Ann. § 47-7-4	Significant and permanent physical medical condition that is terminal in nature	Significant and permanent physical medical condition that is totally incapacitating and/or terminal in nature	--	Sex crimes	Not Explicitly	Y

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Missouri Mo. Rev. Stat. § 217.250	Likely to result in death with 6 months	--	Confinement is greatly endangering or shortening the person's life	Sentenced to life without parole, those who have yet to serve minimum term	Not Explicitly	Y
Montana Mont. Code Ann. § 46-23-210	Likely to cause death within 6 months	Medical condition that requires extensive medical attention	--	Sentenced to death or life imprisonment without the possibility of release	Yes Eligibility Stage	Y
Nebraska Neb. Rev. Stat. § 83-1,110.02	Terminally ill because of an existing medical condition	Permanently incapacitated because of an existing medical condition	--	Sentenced to death or life imprisonment without the possibility of release	Yes Review/Hearing Stage	Y
Nevada Nev. Rev. Stat. § 209.3925	Expected to die within 18 months	Physically incapacitated or in ill health	--	Sentenced to death or life imprisonment without the possibility of release	Yes Eligibility Stage	Y
New Hampshire N.H. Rev. Stat. Ann. § 651-A:10-a	Terminal illness requiring excessive care and treatment costs	Debilitating, incapacitating, or incurable medical condition or syndrome requiring excessive care and treatment costs	--	Sentenced to death or life imprisonment without the possibility of release	Yes Review/Hearing Stage	Y
New Jersey N.J. Rev. Stat. § 30:4-123.51e*	Expected to die within 6 months	Permanent physical incapacity that results in inability to perform daily life activities and creates a need for 24-hour care	--	None	Yes Review/Hearing Stage	Y
New Mexico N.M. Stat. Ann. § 31-21-25.1	"Incurable condition" Likely to result in death within six months	Permanent and irreversible physical incapacitation	--	First-degree murder	Yes Review/Hearing Stage	Y

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
New York N.Y. Exec. Law § 259-r to -s	Results in person being severely debilitated or incapacitated	Nonterminal condition, disease, or syndrome that has resulted in physically debilitation and/ or incapacitation	Cognitive debilitation and incapacitation	First-degree murder (including attempt and conspiracy)	Yes Eligibility Stage	Y
North Carolina N.C. Gen. Stat. § 15A-1369 to 1369.5 N.C. Gen. Stat. § 148-4	Incurable condition Likely to cause death within six months	Permanent and irreversible physical incapacitation	--	Capital felonies; Class A, B1, or B2 felonies, registration offenses	Yes Eligibility Stage	Y
North Dakota N.D. Cent. Code § 12-59-08	Death is "likely and imminent"	Immediate risk to individual's health that requires complex or intensive medical care	--	None	Not Explicitly	Y
Ohio Ohio Rev. Code Ann. § 2929.20(A)(5), (N) to (S) Ohio Rev. Code Ann. § 2967.05 Ohio Admin. Code 5120:1-1-40	Incurable condition Likely to cause death within 12 months	Severe and permanent medical or disability that impairs independent functioning	Cognitive disability In imminent danger of death (because of either terminal or non-terminal medical issue) with death likely within six months	Sentenced to death or life sentence, sexual offense, murder, Chapter 2941 offenses	Not Explicitly	Y
Oklahoma 57 Okla. Stat. § 332.18	--	--	- Dying or near death (likely within six months) - Medically frail or medically vulnerable	Life sentence without parole	Yes Eligibility Stage	Y
Oregon Or. Rev. Stat. § 144.122 Or. Rev. Stat. § 144.126	--	Severe medical condition	--	Sentenced to life without possibility of release or parole, violent offense, sexual offense	Yes Review/Hearing Stage	N / Not Explicitly Stated

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Pennsylvania 42 Pa. Cons. Stat. Ann. § 9777	Terminally ill, not ambulatory, and likely to die in the "near future"	Seriously ill and not expected to live for more than one year	--	None	Yes Review/Hearing Stage	Y
Rhode Island R.I. Gen. Laws § 13-8.1-1 to 1-4	Diagnosis likely to lead to profound decline Likely to result in death within 18 months	Incapacitation such that the individual cannot function independently and/or requires extensive medical treatment	Cognitive disability (including "cognitive insult" or other mental conditions)	Life sentence without parole	Not Explicitly	Y
South Carolina S.C. Code Ann. § 24-21-715 S.C. Code Ann. § 24-21-610 S.C. Code Ann. § 24-3-210	"Incurable condition" Likely to result in death within two years	Permanent and irreversible physical incapacitation that requires immediate and long-term residential care	--	Sentenced to death or life without the possibility of parole	Yes Eligibility Stage	Y
South Dakota S.D Codified Laws § 24-15A-55 to -68	Having a terminal illness	Seriously ill and not likely to recover	Individuals whose medical needs are better addressed from a private residence or facility (has additional eligibility criteria)	Sentenced to death or medically indigent	Yes Review/Hearing Stage	Y
Tennessee Tenn. Code Ann. § 41-21-227 (i)(1) to (i)(5)	Expected to die within one year	No longer able to provide self-care because of physical deterioration	No longer able to provide self-care because of psychological deterioration	Sentenced to death	Yes Eligibility Stage	Y
Texas Tex. Gov't Code Ann. § 508.146 37 Tex. Admin. Code § 143.34	Incurable condition Likely to result in death within 6 months	Likely to continue indefinitely and limit daily functioning	Intellectual disabilities, mental illness, need for long term care	Sentenced to death or life without parole, active ICE detainees	Yes Eligibility Stage	N / Not Explicitly Stated

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Utah Utah Admin. Code R671-314-1(1)	--	Medical infirmity, disease, or disability	Mental health disease or disability; medical condition requiring palliative or nursing home care	None	Yes Eligibility Stage	N / Not Explicitly Stated
Vermont Vt. Stat. Ann. tit. 28, § 502a(d) Vt. Stat. Ann. tit. 28, § 808	"Incurable disease" Likely to result in death within 18 months	Incurable, progressive illness or debilitating injury	--	None	Yes Eligibility Stage	Y
Virginia Va. Code Ann. § 53.1-40.01	"Chronic or progressive medical condition" Likely to result in death within 12 months	--	--	First- or second-degree murder, crime involving a youth, sexual offense, treason, robbery and carjacking offenses	Not Explicitly	Y
Washington Wash. Rev. Code § 9.94A.728(1)(c),(d)	--	Individual is unable to engage in daily activities without assistance and the care or treatment is very costly	--	Sentenced to life without parole	Yes Eligibility Stage	Y
Washington, D.C. D.C. Code § 24-403.04 D.C. Code § 24-461 to -468 28 C.F.R. §§ 2.77, 2.78	Incurable illness or medical condition	Physical or medical condition that is not terminal	--	First-degree murder or certain crimes committed while armed	Yes Review/Hearing Stage	Y
West Virginia W. Va. Const. art. 7, § 11 W. Va. Code § 5-1-16	No recovery expected Likely to result in death within 120 days	"Extremely serious medical condition"	--	None	Yes Eligibility Stage	N / Not Explicitly Stated

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Terminal Illness?	Permanent or Severe Physical Incapacitation?	Other Conditions?			
Wisconsin Wis. Stat. § 304.06	--	Extraordinary health condition that may require medical treatment not available without prison	--	Class A or B felonies	Yes Review/Hearing Stage	Y
Wyoming Wyo. Stat. Ann. § 7-13-424	Terminal illness likely to cause death within 12 months	Physical incapacitation that makes independent functioning impossible and/or requiring treatment outside prison	--	Sentenced to death or life imprisonment without parole	Yes Review/Hearing Stage	Y

GERIATRIC PAROLE PROVISIONS

- **Eligibility:** Geriatric parole allows individuals to apply for release based on age alone or a combination of age and time served or age, time served, and medical conditions. The majority of jurisdictions—14—have provisions that require age to be considered in combination with a specific period of time served, 9 jurisdictions have provisions that require the presence of a certain medical condition in combination with an age/time served requirement, and just 3 jurisdictions allow for consideration of release based solely on age. Four jurisdictions have both types of geriatric provisions.
  - **Age:** Age requirements vary across jurisdictions. For example, California, alone, allows consideration for individuals as young as 50 years old[82] while four states require individuals to be at least 70[83] before they are eligible. The average age requirement is 63, while the most common age requirement is 60. A handful of states also forgo bright line requirements altogether, requiring "advanced age" or "elderly" status in order to qualify, but not providing any specificity as to what that means.[84] As noted above, age is rarely an eligibility factor on its own,[85] and a person must usually also meet time-served or medical requirements to be considered for release.
  - **Time Served:** Another point of distinction for geriatric parole is the amount of time that an individual must have served prior to being eligible for release. Of the 15 jurisdictions that articulate time served requirements, the lowest is 5 years[86] and the highest is 30 years.[87] Seven of the fifteen jurisdictions require that individuals of a certain age must have served at least 10 years of their sentence, which is the most common length for these provisions.
- **Exclusions:** The exclusionary groups for geriatric parole differed depending on whether age was paired with medical issues or time served. When combined with medical issues, the same exclusions as in compassionate release applied, excluding from eligibility those who had been convicted of capital offenses, or who were sentenced to death or life without parole. When combined with time served, the exclusionary groups were much broader. Often people convicted of crimes of violence or sexual offenses were also excluded from consideration. Mississippi had an especially broad provision, excluding habitual offenders, people convicted of crimes of violence, sex crimes, and even drug trafficking.[88]

82. Cal. Penal Code § 3055 (2022).
83. S.C. Stat. § 24-21-715(A)(2) (2022); S.D. Codified Laws § 24-15A-55 (2022); Tenn. Code. Ann §§ 40-35-501(x)(1)(A) (2022); 18 U.S.C. § 3582(c)(1) (2018).
84. See, e.g., Tex. Gov't Code Ann. § 508.146 (2021) (elderly); Utah Admin. Code R. 671-314-1 (2022) (advancing age).
85. Age can be considered on its own in Georgia, Texas, and Utah. Ga. Const. art. IV, par. II(e); Tex. Gov't Code Ann. § 508.146 (2021) (elderly); Utah Admin. Code R. 671-314-1 (2022) (advancing age).
86. Va. Stat. § 53.1-40.01 (2022) (providing that people 65 and older must have served five years of their sentence in order to be considered for release).
87. S.D. Stat. § 24-15A-55 (2022) (providing that a person who is 70 years old and has served at least 30 years of their sentence may be considered for release).
88. Miss. Code Ann. § 47-7-3(1)(h)(iii) (2022).

Table 6. Combined Compassionate/Geriatric Release Provisions by Jurisdiction

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Age	Time Served	Medical Requirements?			
Alabama Ala. Code § 15-22-41 to -43 Ala. Code § 14-14-1 to -7	60	--	Life threatening illness or chronic debilitating disease that leaves the individual unable to function independently	Capital murder or sex offenses	Posing a low risk to community is part of eligibility determination	Y
Colorado Colo. Rev. Stat § 17-22.5-403.5 Colo. Rev. Stat § 17-1-102 Colo. Rev. Stat § 17-2-201	55	--	Suffers from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder that causes "serious impairment" that limits daily functioning	Sentenced to life without parole, felony crime of violence (Doesn't apply to terminal illness)	Yes Review/Hearing Stage	Y
Connecticut Conn. Gen. Stat. §§ 54-131a to -131g; -131k	"Advanced age"	--	Debilitation, incapacitation, or infirmity as a result of the individual's advanced age	Capital felonies or murder with special circumstances	Yes Eligibility Stage	Y
Missouri Mo. Rev. Stat. § 217.250	"Advanced"	--	There is a need for long-term nursing home care or confinement would endanger or shorten life	Sentenced to life without parole, those who have yet to serve minimum term	Not Explicitly	Y
New Mexico N.M. Stat. Ann. § 31-21-25.1	65	--	Suffering from a chronic infirmity, illness, or disease related to aging	First-degree murder	Yes Review/Hearing Stage	Y
North Carolina N.C. Gen. Stat. § 15A-1369 to 1369.5 N.C. Gen. Stat. § 148-4	65	--	Suffering from a chronic infirmity, illness, or disease related to aging that has progressed such that the person is incapacitated	Capital felonies; Class A, B1, or B2 felonies, registration offenses	Yes Eligibility Stage	Y
Oregon Or. Rev. Stat. § 144.122 Or. Rev. Stat. § 144.126	"Elderly"	--	Permanently incapacitated such that they don't have independent mobility	Sentenced to life imprisonment without parole	Yes Review/Hearing Stage	N / Not Explicitly Stated
Rhode Island R.I. Gen. Laws § 13-8.1-1 to 1-4	65	--	Suffers from functional impairment, infirmity, or illness	Serving life without parole	Yes Review/Hearing Stage	Y

Jurisdiction	Eligibility Groups			Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Age	Time Served	Medical Requirements?			
South Carolina S.C. Code Ann. § 24-21-715 S.C. Code Ann. § 24-21-610 S.C. Code Ann. § 24-3-210	70	--	Suffering from chronic infirmity, illness, or disease related to aging	Sentenced to death or life without possibility of parole	Yes Eligibility Stage	Y
South Dakota S.D Codified Laws § 24-15A-55 to -68	65	At least 10 years	Care needs that at least double the average annual medical cost	Sentenced to death, medically indigent, Class 1 or 2 felony	Yes Review/Hearing Stage	Y
Washington, D.C. D.C. Code § 24-403.04 D.C. Code § 24-461 to -468 28 C.F.R. §§ 2.77, 2.78	60	15 years of 75% of sentence (lower of the two)	Condition related to the aging process that causes acute vulnerability to COVID-19	None	Yes Review/Hearing Stage	Y
	65	--	Chronic infirmity, illness, or disease related to aging	First-degree murder or certain crimes committed while armed		
Wyoming Wyo. Stat. Ann. § 7-13-424	--	--	Incapacitation because of age that diminishes one's ability to provide for themselves	Sentenced to death or life imprisonment without parole	Yes Review/Hearing Stage	Y

Table 7. Geriatric Parole Provisions by Jurisdiction

Jurisdiction	Eligibility Groups		Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Age	Time Served			
California Cal. Penal Code § 3055	50	At least 20 years of continuous incarceration on the current sentence	Sentenced to death or life without possibility of parole or first-degree murder of a peace officer	Yes Review/Hearing Stage	N / Not explicitly stated
Colorado Colo. Rev. Stat § 17-22.5-403.5 Colo. Rev. Stat § 17-1-102 Colo. Rev. Stat § 17-2-201	64	At least 20 years	Violent offense or sexual offense	Yes Review/Hearing Stage	Y
Federal BOP 18 U.S.C § 3582(c)(1)(A)	70	At least 30 years	None	Yes Eligibility Stage	N / Not Explicitly Stated
Louisiana La. Stat. Ann. § 15:574.4	60	At least 10 years	Violent offenses or sexual offenses Those who don't meet programming requirements	Yes Eligibility Stage	N / Not Stated Explicitly
Maryland Md. Code Ann., Crim. Law § 14-101 (f)	60	At least 15 years	Individuals registered as sex offenders	Not Explicitly	N / Not Stated Explicitly
Mississippi Miss. Code Ann. § 47-7-3	60	At least 10 years	"Habitual offenders," crimes that prohibit parole release, sex crimes, trafficking of controlled substances	Not Explicitly	N / Not Stated Explicitly
Nevada Nev. Rev. Stat. § 213.12155	65	At least a majority of the maximum term	Violent crimes, crimes against children, sexual offenses, vehicular homicides, "habitual criminals," sentenced to death or life without the possibility of parole	Yes Eligibility Stage	N / Not Stated Explicitly
Oklahoma 57 Okla. Stat § 332.21	60	At least 10 years or one-third of total term (shorter)	Violent crimes and sexual offenses	Yes Eligibility Stage	N / Not Explicitly Stated

Jurisdiction	Eligibility Groups		Exclusion Group(s)	Any consideration for risk to public safety? If yes, when?	Revocable?
	Age	Time Served			
South Dakota S.D Codified Laws § 24-15A-55 to -68	70	At least 30 years	Sentenced to death or medically indigent	Yes Review/Hearing Stage	Y
Texas Tex. Gov't Code Ann. § 508.146	65	--	Sentenced to death or life without parole, active ICE detainees	Yes Eligibility Stage	N / Not Explicitly Stated
Utah Utah Adm. Code R671-314-1	"Advanced age"	--	None	Yes Eligibility Stage	N / Not Explicitly Stated
Virginia Va. Code Ann. § 53.1-40.02	60 65	At least 10 years At least 5 years	Class 1 Felonies	Not explicitly	Y
Washington Wash. Rev. Code § 9.94A.728 (1) (d)	"Advanced age"	--	None	Not explicitly	N
Washington, D.C. D.C. Code § 24-403.04	60	At least 20 years	None	Yes Review/Hearing Stage	N / Not Explicitly Stated
Wisconsin Wis. Stat. § 302.113 (9g)	60 65	At least 10 years At least 5 years	Class A or B Felonies	Yes Review/Hearing Stage	Y

Appendix E.

Narrative Descriptions of COVID Prison Releases by Jurisdiction

In this section, we include a brief narrative of the prison releases made in each jurisdiction in response to the COVID pandemic. Fourteen states are excluded because they did not make releases: Alabama, Alaska, Arizona, Idaho, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, South Carolina, South Dakota, Tennessee, Texas, and Wyoming.

Arkansas

Citing the Arkansas Emergency Services Act of 1973 (Ark. Code Ann. §§ 12-75-101, et seq.), Arkansas governor Asa Hutchinson issued an executive order (EO 20-06) giving state agencies the authority to publicly identify and suspend for thirty days:

> **provisions of any regulatory statute, agency order or rule that in any way prevents, hinders, or delays the agency's ability to render maximum assistance to the citizens of this state while they are adhering to guidelines to prohibit the spread of disease or seeking assistance from the state to obtain benefits or services related to health, education, employment, or any service rendered by the state in response to or to mitigate the spread of COVID-19.**[89]

Governor Hutchinson later extended the deadline of Executive Order 20-06 via another executive order (EO 20-16). The Arkansas Department of Corrections (ADC) used these executive orders to suspend two eligibility requirements for people in prison being considered for early release due to a prison overcrowding state of emergency (these requirements can be found in A.C.A. § 12-28-604). Specifically, ADC suspended the requirements (found in Section (b)(1)) that eligible people in prison have been incarcerated for six months and be Class I or Class II. After those requirements were suspended, 300 people were released from prison on May 12, 2020. Then, between May 12 and July 3, 2020, 430 more people were released. All those released from prison had been incarcerated for nonviolent and non-sexual offenses.[90]

California

On March 31, 2020, the California Department of Corrections and Rehabilitation (CDCR) announced its plan to expedite the transition to parole for certain people in prison. All who were released from prison in this expedited process had 60 days or less left to serve on their sentences and were not serving time for a violent crime as defined by law, a sex offense, or domestic violence. In order to expedite the process

89. Ark. Code Ann. § 12-75-101 (West 2022); Ark. Code Ann. §12-28-604 (West 2020); Ark. Exec. Order No. 20-06 (Mar. 17, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-06._.pdf

90. Ark. Code Ann. § 12-75-101 (West 2022); Ark. Code Ann. §12-28-604 (West 2020); Ark. Exec. Order No. 20-06 (Mar. 17, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-06._.pdf; Ark. Exec. Order No. 20-16 (Apr. 15, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-16._.pdf; John Moritz, *Arkansas prison system below capacity for first time since '07*, Ark. Democrat Gazette (July 3, 2020), https://www.arkansasonline.com/news/2020/jul/03/states-prison-system-below-capacity/?news-arkansas; *Public Health Rule Suspension Notice*, Arkansas Department of Corrections, (Apr. 22, 2020), https://doc.arkansas.gov/wp-content/uploads/2020/09/Public_Health_Rule_Suspension_-_EO20-16_20-06_Notice.pdf; Ninette Sosa, *ADC: 1,243 inmates considered for early release due to COVID*, KNWA Fox24 (Apr. 29, 2020), https://www.nwahomepage.com/lifestyle/health/coronavirus/adc-1243-inmates-considered-for-early-release-due-to-covid/; Ninette Sosa, *Approx. 800 inmates approved for early release; COVID-19 precaution*, KNWA Fox24 (May 14, 2020), https://www.nwahomepage.com/lifestyle/health/coronavirus/approx-800-inmates-approved-for-early-release-covid-19-precaution/.

of release, CDCR created on-site strike teams and allowed staff to work overtime in order to accomplish all the tasks necessary to implement the releases. Between CDCR's announcement on March 31 and the end of the day on April 12, 2020, 3,418 people were released from prison.[91]

On July 10, 2020, CDCR announced a new set of cohort releases. These releases were divided into four cohorts: the 180-day cohort; the 365-day, under 30 cohort; the 365-day, over 30 cohort; and the high-risk medical cohort. The 180-day cohort consisted of people who had 180 days or less left to serve on their sentences, were not serving time for violent crimes, were not required to register as sex offenders, and did not have assessment scores that indicated high risks for violence. This cohort was screened and released on a rolling basis. Both of the 365-day cohorts consisted of people that were in correctional institutions with large populations of high-risk patients, had 365 days or less to serve on their sentences, were not serving time for violent crimes, were not required to register as sex offenders, and did not have assessment scores that indicated high risks for violence. Members of the 365-day, over 30 cohort were immediately eligible for release. Members of the 365-day, under 30 cohort were reviewed on a case-by-case basis for release. To be eligible for the high-risk medical cohort, individuals had to be deemed high risk for COVID-19 complications by the California Correctional Health Care Services and have an assessment indicating a low risk for violence; they also could not be serving a sentence of life without parole, be condemned to death, or be a high-risk sex offender. Between July 1, 2020, and November 25, 2020, CDCR released 7,596 people from prison through the cohort system, the majority of which belonged to the 180-day cohort.[92]

Colorado

On March 25, 2020, Colorado Governor Jared Polis issued an executive order (D 2020 016) suspending regulatory statutes concerning criminal justice. These statutes included caps and criteria on awards of earned time credits, criteria for release to Special Needs Parole, and the requirement of successfully completing a regimented discipline program before the Department of Corrections has the authority to establish and directly operate an intensive supervision program. Then on April 23, 2020, Governor Polis issued a second executive order (D 2020 043) amending and extending D 2020 016; this order suspended the standards and criteria for intensive supervision programs and the notice requirement for placement of a non-paroled offender in an intensive supervision program. As of the end of April 2020, almost 150 people had been released from prison through this executive order. There was an additional reduction in Colorado's incarcerated population of approximately 3,350 as of that April, likely caused by a

91. *CDCR Announces Plan to Further Protect Staff and Inmates from the Spread of COVID-19 in State Prisons*, Cal. Dep't of Corr. and Rehabilitation (Mar. 31, 2020), https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/; Decl. Gipson Supp. Defs.' Opp'n Pl.'s Emergency Mot. Re Prevention & Management COVID-19, No. 01-cv-01351-JST (N.D. Cal. Apr. 13, 2020), https://storage.courtlistener.com/recap/gov.uscourts.cand.76/gov.uscourts.cand.76.3275.0.pdf; *Frequently Asked Questions for Plan on Expedited Release and Increased Physical Space within State Prisons*, Cal. Dep't of Corr. and Rehabilitation, https://www.cdcr.ca.gov/covid19/frequently-asked-questions-for-plan-on-expedited-release-and-increased-physical-space-within-state-prisons/ (last visited Mar. 27, 2022).

92. Cal. Dep't of Corr. and Rehabilitation, https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#R (last visited Mar. 27, 2022); *CDCR Announces Additional Actions to Reduce Population and Maximize Space Systemwide to Address COVID-19*, Cal. Dep't of Corr. and Rehabilitation (July 10, 2020), https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/; CDCR Div. of Corr. Pol'y Rsch. and Internal Oversight Off. of Rsch, *Release Occurrences from CDCR's In Custody Population Released Early Due to COVID 19 Between July 01, 2020 and November 25, 2020 Version 24*, CalMatters (Nov. 26, 2020), https://calmatters.org/wp-content/uploads/2020/12/Expedited-release-demographics-to-Nov.-25.pdf; Robert Lewis, *California's Post-Prison Chaos: Thousands Released Early, Including Many With Coronavirus*, CapRadio (Aug. 12, 2020), https://www.capradio.org/articles/2020/08/12/californias-post-prison-chaos-thousands-released-early-including-many-with-coronavirus/; Byrhonda Lyons, *High-Risk Inmates Aren't Prioritized in State's Early Releases*, CapRadio (Dec. 13, 2020), https://www.capradio.org/articles/2020/12/13/high-risk-inmates-arent-prioritized-in-states-early-releases/.

moratorium on transfers from county jails, regular attrition and paroles being granted. As of September 2020, 160 more people (for a total of 310) were released thanks to these executive orders.[93]

Connecticut

On March 24, 2020, the State of Connecticut Department of Correction (DOC) issued a press release announcing its response to the COVID-19 pandemic. Part of that response involved having the Community Release Unit, Parole and Community Services Division, and The Board of Pardons and Paroles work collaboratively to use discretionary release for people in prison who were considered low risk, had stable home plans, were 60 years old or older, and had health conditions which made them more susceptible to catching the virus. In practice, the DOC prioritized releasing people over 50 years old with medical conditions making them susceptible to COVID-19. In April, the DOC Commissioner signed an exception for medical furlough allowing people to be released that had completed at least 40% of a maximum two-year prison sentence. On May 6, 2020, DOC issued a press release announcing that since March 1, 2020, the prison population had dropped by 1,609 people. Then on June 2, 2020, DOC issued a similar press release announcing that the prison population had dropped by 2,000 people since March 1, 2020. However, this estimate, which was wholly attributed to COVID releases, failed to take into account the ordinary release rate of the parole board. To develop a more accurate estimate, we compared releases in 2019 to releases in 2020. In March, April, and May, there were 1,270 discretionary releases. During that same period in 2020, there were 1,670 discretionary releases. Therefore, we estimate that there were an additional 357 releases in 2020 in response to the COVID-19 pandemic.[94]

Federal BOP

At the federal level, COVID releases were triggered through multiple mechanisms, including at the direction of the Attorney General, court orders, and compassionate release provisions. On March 26, 2020, United States Attorney General William Barr (AG Barr) issued a memorandum directing the BOP to prioritize the use of home confinement as a tool for combatting the COVID-19 pandemic and the dangers it posed to vulnerable individuals. The memorandum specified that the BOP should prioritize people in prison who were vulnerable to COVID-19 as defined by the Centers for Disease Control and Prevention, those in lower security facilities, those with good behavior while in prison, those scoring low on the PATTERN risk assessment, those with verifiable re-entry plans, and those with less serious offenses. On April 3, 2020, AG Barr issued a second memorandum which instructed the BOP to prioritize the

93. Colo. Exec. Order No. D 2020 016 (Mar. 25, 2020), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20016%20Suspending%20Certain%20Regulatory%20Statutes%20Concerning%20Criminal%20Justice_0.pdf; Colo. Exec. Order No. D 2020 043 (Apr. 23, 2020), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20043%20Extending%20016.pdf; Ali Budner, *Hundreds Of Colorado Inmates Have Been Released Early Because Of Coronavirus. This Is One Man's Story*, Colo. Pub. Radio (Sept. 14, 2020) https://www.cpr.org/2020/09/14/colorado-coronavirus-update-prison-inmate-early-releases/; LJ Dawson, ACLU pressures Polis to release more inmates at risk for COVID-19, Colo. Springs Indy (Sept. 9, 2020), https://www.csindy.com/news/aclu-pressures-polis-to-release-more-inmates-at-risk-for-covid-19/article_dcbe5b2a-f228-11ea-acb6-573f7c4885c9.html; Allison Sherry, *Colorado Corrections Agrees To Release Some Inmates Early To Reduce Prison Populations*, Colo. Pub. Radio (Apr. 23, 2020) https://www.cpr.org/2020/04/23/colorado-corrections-agrees-to-release-some-inmates-early-to-reduce-prison-populations/?eType=EmailBlastContent&eId=07a90610-fdf3-4e1b-994a-712a02c5065c.

94. *DOC COVID-19 Release Facts*, Conn. State Dep't of Corr. (May 5, 2020), https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/RELEASE-FACT-SHEET-covid-19-050520.pdf?la=en; Rich Kirby, *CT Prison Population Down 16 Percent: Report*, Patch (June 3, 2020), https://patch.com/connecticut/across-ct/ct-prison-population-down-16-percent-report; Press Release, Conn. State Dep't of Corr., CT Prison Population Down 2,000 since March 1st (June 2, 2020), https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Press-Release-re-Populations-Drops-by-2000--060220.pdf; Press Release, Conn. State Dep't of Corr., The Department of Correction continues essential operations while managing reentry planning and routine offender releases without disruption (March 24, 2020), https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Press-Release-DOC-reentry-032420.pdf; Press Release, Conn. State Dep't of Corr., Prison Population Drops by 1,609 people since March 1st (May 6, 2020), https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Press-Release-DOC-Release-Data-050620.pdf.

facilities most impacted by COVID-19 in reviewing people for release from prison to home confinement. The memorandum also expanded the eligibility for home confinement: rather than only considering the those who met the ordinary criteria for home confinement, AG Barr directed the BOP to consider all people in prison considered at risk for COVID-19 and to transfer them even if electronic monitoring was not available, as long as such a move was consistent with maintaining public safety. Between AG Barr's first memorandum (March 26, 2020) and January 2, 2022, the BOP released 36,367 people to home confinement, including those individuals mentioned in the following paragraph who were ordered to be released by the courts.[95]

On April 13, 2020, the ACLU of Ohio and the Ohio Justice and Policy Center brought a class action habeas petition seeking modification of the sentences of medically vulnerable people in prison in Elkton Federal Correctional Institution (a low security federal prison). On May 19, 2020, a federal judge of the United States District Court for the Northern District of Ohio ordered the Bureau of Prisons to expedite the release of 837 of those medically vulnerable people through home confinement and compassionate release.[96] In September 2020, the Bureau of Prisons (BOP) settled a case with a class of people in federal prison; a provision of the Settlement Agreement required that the BOP "endeavor to release individuals approved for home confinement to home confinement within 14 days of the approval decision" unless public safety or the individual's home situation counseled against such release. On December 11, 2020, Judge Michael Shea of the District Court for the District of Connecticut found that federal administrators in Danbury Federal Correctional Institution were not acting quickly to release eligible individuals. Seventeen people who had previously been cleared for release to home confinement had been waiting substantially longer than 14 days to be released, according to Judge Shea. Thus, Judge Shea ordered that those 17 people be released to home confinement by 5 p.m. on December 12, 2020.[97]

Under the First Step Act, signed into law in 2018, federal courts may reduce a person's prison sentence if they find "extraordinary and compelling reasons" to do so. Some courts have found that the pandemic provided such reason and released vulnerable people to protect them from the virus. As of June 11, 2021, 3,221 people in federal prison had been granted compassionate release by judges since the beginning of the pandemic.[98]

95. William Barr, *Memorandum for Director of Bureau Prisons: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19*, Off. of the Att'y Gen. (Apr. 3, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf; William Barr, *Memorandum for Director of Bureau Prisons: Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic*, Off. of the Att'y Gen. (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf; *Frequently Asked Questions regarding potential inmate home confinement in response to the COVID-19 pandemic*, Fed. Bureau of Prisons, https://www.bop.gov/coronavirus/faq.jsp (last visited Mar. 31, 2020).
96. *A Federal Judge Issues Order To Enforce Compliance, Requiring Elkton Prison Officials To Expedite Transfer & Release Of Medically Vulnerable Subclass Through Home Confinement And Compassionate Release*, ACLU Ohio (May 19, 2020), https://www.acluohio.org/en/press-releases/federal-judge-issues-order-enforce-compliance-requiring-elkton-prison-officials; Order on Mot. to Enforce. No. 4:20-cv-00794-JG (N.D. Ohio May 19, 2020), https://www.acluohio.org/sites/default/files/Order-on-motion-to-enforce.pdf.
97. *Whitted v. Easter*, No. 3:20-cv-00569 (MPS), 2020 U.S. Dist. LEXIS 232843 (D. Conn. Dec. 11, 2020), https://plus.lexis.com/api/permalink/40a753f8-11da-440f-9be5-aa4b302b72c9/?context=1530671; Edmund Mahony, *Judge says Danbury prison is slow to enforce COVID-19 agreement and orders immediate release of 17 inmates*, Hartford Courant (Dec. 11, 2020), https://www.courant.com/coronavirus/hc-news-coronavirus-judge-releases-inmates-20201211-20201211-utrrx4536zekrltjuv3bhfkgsi-story.html.
98. Keri Blakinger & Joseph Neff, *31,000 Prisoners Sought Compassionate Release During COVID-19. The Bureau of Prisons Approved 36*, The Marshall Project (June 11, 2021), https://www.themarshallproject.org/2021/06/11/31-000-prisoners-sought-compassionate-release-during-covid-19-the-bureau-of-prisons-approved-36; Greg Newburn, *COVID-19's toll on Florida prisons highlights the need for compassionate release*, Fla. Pol. (Sept. 2, 2020), https://floridapolitics.com/archives/364267-greg-newburn-covid-19s-toll-on-florida-prisons-highlights-the-need-for-compassionate-release/.

Florida

As of May 8, 2020, the Florida prison system's only COVID-19-related releases were three people who had been released from prison on conditional medical release. Florida's conditional medical release program gives those who are permanently incapacitated or terminally ill a chance to be released. Governor Ron DeSantis repeatedly made clear that he did not view releasing people from prison as a viable option for addressing the pandemic and Florida abolished parole in 1983. In August of 2020, advocates were still asking for some sort of meaningful response to the spread of COVID-19 in Florida prisons.[99]

Georgia

On March 31, 2020, the Georgia State Board of Pardons and Paroles issued a news release announcing that it had begun reviewing cases for clemency release in response to the COVID-19 pandemic. The Board stated that it was considering people who were serving time for nonviolent offenses and were within 180 days of completing their prison sentences. According to one report, during April and May of 2020 the Board released 2,550 people from prison, including granting early releases for 918 people who were within 180 days of the end of their sentences. This is more than a 150% increase in releases from the roughly 850 people the Board releases in an average month. After May 2020 the Board returned to its average release rate.[100]

Illinois

On March 23, 2020, Illinois Governor J. B. Pritzker issued an executive order (EO 2020-11). Among other COVID-19 measures, EO 2020-11 temporarily suspended the requirement that the Department of Corrections (DOC) provide no less than 14 days' notice to the State Attorney if a person in prison receives an earlier release date because of sentence credits earned for good conduct. Thanks to EO 2020-11, by March 27, 2020, at least six people were granted good conduct time and released from the Decatur Correctional Center's special wing that houses mothers and their newborn babies.[101]

According to the Illinois Northern District Court, 644 people were released from the Illinois DOC's custody between March 2, 2020, and April 10, 2020, through various efforts. This likely includes the six previously mentioned mothers with newborns but also includes those released through various other methods. For example, Governor Pritzker reviewed and granted at least two commutation petitions during that time. The DOC also created a population management task force to prioritize the review of individuals for possible release. Every day between March 2 and April 10, 2020, the DOC identified and reviewed people in prison within nine months of their release date to determine whether they were eligible for early release. The DOC also continued to place people on electronic monitoring or

99. *Florida COVID-19 FAQ*, Families Against Mandatory Minimums (2020), https://famm.org/wp-content/uploads/Florida-COVID-FAQ.pdf; Samantha Gross, *Florida prisons boss can't release inmates amid COVID-19. But can he furlough them?*, Mia. Herald (May 8, 2020) https://www.miamiherald.com/news/special-reports/florida-prisons/article242573521.html#storylink=cpy; Grace Toohey, *Advocates call for steps to release some Florida prisoners as COVID-19 spreads*, Orlando Sentinel (Aug. 14, 2020) https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-lawmakers-concern-prison-cases-deaths-20200814-ctn7bdmkwfcljpnpu3pghpg22a-story.html.
100. Stanley Dunlap, *COVID Races Through Some Georgia Prisons, Sickening Staff and Inmates*, Ga. Pub. Broad. (Sept. 29, 2020), https://www.gpb.org/news/2020/09/29/covid-races-through-some-georgia-prisons-sickening-staff-and-inmates; Press Release, State Bd. of Pardons and Paroles, Board Considering Releases to Address COVID-19 in Georgia Prisons (March 31, 2020), https://pap.georgia.gov/press-releases/2020-03-31/board-considering-releases-address-covid-19-georgia-prisons; Joshua Sharpe, *Georgia to release some inmates due to COVID-19 fears*, The Atlanta Journal-Constitution (Mar. 31, 2020), https://www.ajc.com/news/local/breaking-georgia-release-some-inmates-due-covid-fears/np6zhBrlP1oe2jOkUmWVoL/.
101. Ill. Exec. Order No. 2020-11 (Mar. 23, 2020), https://www2.illinois.gov/sites/coronavirus/Resources/Pages/ExecutiveOrder2020-11.aspx; Annie Sweeney, *Facing growing coronavirus threat, Illinois prison officials release moms jailed with their babies: 'Oh my goodness, there was no words'*, Chi. Trib. (Mar. 27, 2020), https://www.chicagotribune.com/coronavirus/ct-coronavirus-woman-babies-released-prison-20200327-t6rfew4m6jbuxmw4lrw5v47dfi-story.html.

home detention, concentrating on those 55 years or older who had served at least a fourth of their sentence and were within 12 months of release. About 450 people were released from prison through various forms of sentence credit, restoration of credit, and electronic detention. Finally, Governor Pritzker issued an executive order (EO 2020-21) on April 6, 2020, which suspended the 14-day limit for medical furloughs and allowed furloughs for medical purposes at the discretion of the Director of the DOC. Sixty-five furloughs were granted between March 2 and April 10, 2020.[102]

Indiana

According to reports, between March and June of 2020, Indiana's prison population dropped by 1,015 (from 26,891 to 25,876). This does not necessarily reflect an intentional effort to decrease the prison population, though: fewer people were entering Indiana prisons because of the way the pandemic disrupted the court system, while people in prison were still being released as their sentences ended. In fact, Governor Eric Holcomb took no action to reduce the prison population, stating, "I do not believe in releasing those low-level offenders." Instead, the governor left it to local courts to decide whether anybody should be let out early, encouraging county officials to take steps to reduce their county jail populations (and there are reports that this did happen, to some extent). However, 27 people did receive COVID-19-related sentence modifications from March through May 2020, and it is likely that at least some of those modifications resulted in those individuals being released early.[103]

Iowa

As of April 22, 2020, the Iowa Board of Parole had approved 572 people for early release from the state's prisons in order to reduce overcrowding during the COVID-19 pandemic. While the Board did not list any certain targets for release, the director of the Iowa Department of Corrections stated that the Board has the authority to release those who would likely succeed in a community setting (e.g., have a plan for safe housing, low risk of reoffense, etc.). At some point shortly thereafter, the Board also implemented a double-panel approach, in which two three-person panels simultaneously reviewed individuals for parole. They also reconsidered those who had previously been recommended for, but denied, parole. If additional people were released from prison due to COVID-19, the exact number does not appear to have been tracked. However, 4,724 people were paroled in fiscal year 2020, compared to 4,527 in fiscal year 2019, so we estimate that at least 197 more people were paroled due to COVID.[104]

Kansas

In early April 2020, Kansas Governor Laura Kelly announced that officials were reviewing a list of people in prison with short amounts of time left on their sentences and "viable plans" for reentry. More than 500 cases were reviewed through this process, but the Department of Corrections only released 6 people from prison to serve the rest of their sentences on house arrest. After that, on May 1, 2020, Governor Kelly announced that the releases would stop. She cited an outbreak in one correctional facility (none of the

102. Ill. Exec. Order No. 2020-21 (Apr. 6, 2020), https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-21.aspx; *Money v. Pritzker*, 453 F. Supp. 3d 1103 (N.D. Ill. 2020).
103. Jake Harper, *Indiana Left It To County Courts To Release Prisoners During The COVID Crisis. Most Of Them Haven't*, WFPL News (July 18, 2020) https://wfpl.org/indiana-left-it-to-county-courts-to-release-prisoners-during-the-covid-crisis-most-of-them-havent/; *Prison health needs greater priority in Indiana*, The Republic (July 17, 2020), http://www.therepublic.com/2020/07/17/prison_health_needs_greater_priority_in_indiana/.
104. O. Kay Henderson, *Hundreds of Iowa prisoners getting early parole due to COVID-19 concerns*, KMAland (Apr. 22, 2020), https://www.kmaland.com/news/hundreds-of-iowa-prisoners-getting-early-parole-due-to-covid-19-concerns/article_e508b620-83fd-11ea-b6d6-738156a1cd88.html?eType=EmailBlastContent&eId=07a90610-fdf3-4e1b-994a-712a02c5065c; Erin Jordan, *Iowa parole board releases fewer offenders in fiscal 2020, despite COVID-19*, The Gazette (Feb. 8, 2021), https://www.thegazette.com/crime-courts/iowa-parole-board-releases-fewer-offenders-in-fiscal-2020-despite-covid-19/.

six released individuals had been incarcerated in that specific facility) as the reason--officials did not want to risk spreading the virus by releasing people infected with COVID-19 into the community. There are no reports of additional releases thereafter.[105]

Kentucky

On April 2, 2020, Kentucky Governor Andy Beshear announced an executive order (EO 2020-267), which commuted the sentences of 186 people in jails and prison, all of whom were identified as being medically vulnerable to COVID-19 and serving time for non-violent, non-sexual offenses. The order does not specify how many were released from prisons versus jails; however, since 10% of those released in later executive orders were released from prison, we estimate that a similar percentage, or 19 people, may have been released from prison as a result of this executive order. The next executive order was issued on April 10, 2020, when Governor Beshear commuted the sentences of 697 people, of which 33 people were serving time in prison facilities. Next, Governor Beshear issued an executive order (EO 2020-293) on April 24, 2020, which commuted the sentences of 352 people, 15 of whom were in prison. The order targeted people in jails and prisons who were vulnerable to COVID-19 because of age or medical conditions who were serving sentences for non-violent, non-sexual offenses and had 5 or fewer years remaining on their sentences. Finally, on August 25, 2020, Governor Beshear issued another executive order (EO 2020-699), which commuted an additional 646 sentences, of which 123 were people serving time in prison. The order targeted people who were serving sentences for non-violent, non-sexual offenses and were either medically vulnerable or were nearing the end of their sentences. Each executive order required people who were released to have a verified housing plan.[106]

Louisiana

In April of 2020, the Louisiana Department of Corrections (DOC) set up a review panel to consider medical furlough for people in prison because of the COVID-19 pandemic. The panel consisted of six members: representatives from the DOC, Louisiana Division of Probation and Parole, state Board of Pardons and Parole, Louisiana Sheriff's Association, and Louisiana District Attorneys Association, as well as a victim's advocate appointed by the governor. An individual needed five out of these six members' votes in order to be released. In order to even be considered for release, the person needed to have an underlying health condition, be serving time for a non-violent and non-sexual offense, have a release date within six months, and have proof of a post-release housing plan. Only 68 people were released from prison by the panel before it was suspended in June.[107]

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105. John Hanna & Heather Hollingsworth, *Coronavirus Outbreak Prompts Kansas to Stop Prison Releases*, U.S. News (May 1, 2020), https://www.usnews.com/news/best-states/kansas/articles/2020-05-01/coronavirus-outbreak-prompts-kansas-to-stop-prison-releases; Alice Speri, *Prison Officials in Kansas Ignored the Pandemic. Then People Started Dying*, The Intercept (July 2, 2020), https://theintercept.com/2020/07/02/coronavirus-kansas-prison-lansing-correctional/.
106. Ky. Exec. Order. No. 2020-267 (Apr. 2, 2020), https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf; Ky. Exec. Order. No. 2020-293 (Apr. 24, 2020), https://governor.ky.gov/attachments/20200424_Executive-Order_2020-293_Conditional-Commutation.pdf; Ky. Exec. Order. No. 2020-278 (May 15, 2020), https://russellvilleky.org/index.php/covid-19-information/governor-executive-orders/588-governor-executive-order-2020-278; Ky. Exec. Order. No. 2020-699 (Aug. 25, 2020), https://governor.ky.gov/attachments/20200825_Executive-Order_2020-699_Commutations.pdf; *Kentucky's Response to COVID-19*, Kentucky.gov (Oct. 20, 2020), https://governor.ky.gov/Documents/20201020_COVID-19_page-archive.pdf; Brian Planalp, *Nearly 1,000 Kentucky prison sentences to be commuted, Beshear says*, FOX19 (Apr. 2, 2020), https://www.fox19.com/2020/04/02/watch-live-gov-beshear-provides-update-covid-kentucky/; Chris Williams, *Lawmakers question DOC officials on Governor Beshear's COVID-19 commutations*, WHAS11 (Dec. 3, 2020), https://www.whas11.com/article/news/kentucky/kentucky-governor-prisoners-released-covid-19-lawmakers-face-off-corrections-officials/417-84c107ff-50e3-452d-b050-31a7d3b5db05.
107. Julie O'Donoghue, *Louisiana Prisons Need To Do More COVID-19 Releases, Advocates Say*, La. Illuminator (Sept. 3, 2020), https://lailluminator.com/2020/09/03/louisiana-prisons-need-to-do-more-covid-19-releases-advocates-say/; Lea Skene, *Review panel to consider medical release for some Louisiana state prison inmates due to coronavirus*, The Advoc. (Apr. 14, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_62e9f822-7e79-11ea-bfb3-933881495eb6.html.

Maine

Because of the COVID-19 pandemic, the Maine Department of Corrections (DOC) began reviewing candidates for release from prison to home confinement more quickly than usual by increasing the number of employees who were reviewing cases. More people began finishing their sentences that way, but the criteria for home confinement were not expanded in response to the pandemic. In order to be eligible for home confinement in Maine, individuals had to be classified as minimum security, be within 18 months of their release date, and have finished at least half of their sentence. During the pandemic, the DOC actually began using an even stricter set of criteria than usual in order to prioritize cases. A person needed to have a plan for their housing and well-being; must not have committed a crime against a person; and must have been within a year of their release date (though those with a release date within 18 months were still considered). Other factors that affected the decision-making process were the person's medical history and past compliance with probation conditions. As of April 21, 2020, the DOC had reported releasing more than 60 people from prison to home confinement; as of May 3, 2020, that number had risen to 73. Finally, as of May 27, 2020, 95 people had been released from prison through the program; 5 had returned to prison for violating rules and 20 people were awaiting release through the program.[108]

Maryland

In response to the COVID-19 pandemic, Maryland Governor Lawrence J. Hogan, Jr. issued two virtually identical executive orders (7 months apart) to facilitate the release of people from prison. Each order gave the Maryland Division of Correction the power to accelerate the releases of people within four months of their release date via diminution credits; prompted immediate consideration of release to home detention for some; and accelerated consideration of parole for those 60 years old and older (not convicted of a violent crime and with good behavior and a home plan). No one convicted of sexual offenses were eligible for release through any of these three paths. The first order, issued on April 18th, 2020, was prompted by demands from a coalition of advocates led by the ACLU. The order was expected to result in the release about 700 people who were within four months of their release date and 100 who might be eligible for expedited parole. The second order, issued on November 17th, 2020, was expected to make 1200 more people eligible for early release. There are no reports of how many of those people were actually released as a result of these orders.[109]

108. Callie Ferguson, *He pleaded to leave Maine prison early amid pandemic. The answer was no*, Bangor Daily News (June 8, 2020), https://bangordailynews.com/2020/06/08/mainefocus/an-inmate-pleads-to-leave-early-but-maine-prisons-arent-letting-out-as-many-as-some-would-like/; Megan Gray, *Maine prisons pressured to release more inmates, and information, during pandemic*, Portland Press Herald (May 3, 2020), https://www.pressherald.com/2020/05/03/maine-prisons-pressured-to-release-more-inmates-and-more-information-during-pandemic/?rel=related; Susan Sharon, *Maine Released Dozens Of Prisoners To Prevent COVID-19 Spread. But Advocates Say More Should Be Done*, Me. Public (April 21, 2020), https://www.mainepublic.org/courts-and-crime/2020-04-21/maine-released-dozens-of-prisoners-to-prevent-covid-19-spread-but-advocates-say-more-should-be-done.

109. Md. Exec. Order No. 20-04-18-01 (Apr. 18, 2020), https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf; Md. Exec. Order No. 20-11-17-03 (Nov. 17, 2020), https://governor.maryland.gov/wp-content/uploads/2020/11/Prisoner-Release-RENEWAL-11.17.20.pdf; Luke Broadwater, *With coronavirus spreading, Maryland Gov. Hogan signs order for expedited release of hundreds of prisoners*, The Balt. Sun (Apr. 19, 2020), https://www.baltimoresun.com/coronavirus/bs-md-pol-hogan-prisoners-20200419-7mzvooaoxfbyngowb2xdeucrme-story.html?utm_source=The+Marshall+Project+Newsletter&utm_campaign=f1efaf562f-EMAIL_CAMPAIGN_2020_04_20_11_35&utm_medium=email&utm_term=0_5e02cdad9d-f1efaf562f-166145513; Danielle Gaines, *Hogan Issues Order to Guide Speedier Inmate Releases During COVID-19 Outbreak*, Md. Matters (Apr. 19, 2020), https://www.marylandmatters.org/2020/04/19/hogan-issues-order-to-guide-speedier-inmate-releases-during-covid-19-outbreak/; Ovetta Wiggins, *Md. governor signs executive order to allow early release of prisoners to slow the spread of coronavirus*, The Wash. Post (Nov. 18, 2020), https://www.washingtonpost.com/local/md-politics/maryland-prisoner-release-coronavirus-/2020/11/18/136cc1f8-29dc-11eb-9b14-ad872157ebc9_story.html.

Massachusetts

Towards the beginning of the COVID-19 pandemic, three Massachusetts organizations (the Committee for Public Counsel Services, the Massachusetts Association of Criminal Defense Lawyers, and the ACLU of Massachusetts) initiated a lawsuit, seeking the release of various people in prison across the state. On April 3, 2020, the Supreme Judicial Court issued its opinion, which created a presumption of eligibility for release for certain individuals (people held on bail for certain offenses and people being held for a probation violation hearing) and required all correctional facilities and prisons to report, among other things, the number of people released daily. The ACLU of Massachusetts tracked these reports and recorded, from March 27, 2020, through August 15, 2021, that Massachusetts released 36 people, approved 47 for medical parole, and released another 1,055 on parole. Several releases were those held for technical violations of parole pursuant to the earlier court order. Otherwise, it is unclear whether these releases were directly related to COVID-19. The United States Attorney's Office also has a page on which it tracks COVID-19 related releases of people in prison in the District of Massachusetts. According to that page, 54 people (who had already been sentenced) either were resentenced to time served or had their motion to release granted as of August 30, 2021 (62 more motions were pending).[110]

Michigan

Between March 20 and June 5, 2020, Michigan's prison population decreased by 1,958. About half of that decrease, it is estimated, was caused by a decline in intake from county jails and courts; the other half is attributed to fewer people on parole returning to prison for technical violations and accelerated parole reviews. Although the Michigan Department of Corrections (MDOC) affirmed it had no authority to release people before their earliest release date, MDOC did state that the parole board was working to expedite paroles for eligible people in prison. For example, MDOC was requesting that prosecutors sign waivers allowing immediate release, which removed the 28-day waiting period after parole decisions. Nonviolent people who were 60 years or older and had health issues were prioritized for parole consideration. According to the MDOC legislative liaison, Kyle Kaminski, from March 2020 through May 2020 an additional 500 paroles were approved, as compared to the same period during 2019.[111]

Minnesota

The Minnesota Department of Corrections (DOC) implemented three programs aimed at reducing the prison population because of the COVID-19 pandemic. The first program, which ran from April 16 through August 24, 2020, was the COVID-19 Conditional Medical Release Program. In order to be granted release under this program, a person's application was first reviewed to determine medical eligibility using health risk assessments developed based on guidance from the Center for Disease Control and Prevention and the Minnesota Department of Health. Then a public safety assessment was conducted; and finally, the DOC Commissioner made the final decision in all applications that made it through the first two steps.

110. Deborah Becker, *More Than 600 Massachusetts Prisoners Released Amid Pandemic*, WBUR (Apr. 22, 2020), https://www.wbur.org/news/2020/04/22/mass-prisoners-released-coronavirus; *Comm. for Pub. Counsel Services v. C.J. of Tr. Ct.*, 142 N.E.3d 525 (Mass. 2020); *COVID-19 Related Prisoner Releases*, The U.S. Att'y Off. Dist. of Mass., https://www.justice.gov/usao-ma/covid-19-related-prisoner-releases (last visited Mar. 29, 2022); *CPCS v. Chief Justice of the Trial Court, Comm.* for Pub. Couns. Services (Apr. 3, 2020), https://www.publiccounsel.net/cpcs-v-chief-justice-of-the-trial-court/; *Tracking COVID-19 in Massachusetts Prison and Jail*, ACLU Mass., https://data.aclum.org/sjc-12926-tracker/ (last visited Mar. 29, 2022).

111. Paul Egan, *Michigan prison population sees record drop during coronavirus pandemic*, Detroit Free Press (June 9, 2020) https://www.freep.com/story/news/local/michigan/2020/06/09/michigan-prison-population-drops-coronavirus/5326185002/; Heather Walker, *Coronavirus prompts prisons to parole inmates more quickly*, WOOD (Apr. 14, 2020), https://www.woodtv.com/health/coronavirus/coronavirus-prompts-prisons-to-parole-some-early/; *2021 Coronavirus (COVID-19) Response Q&A, Answer 24*, Mich. Dep't of Corr., https://www.michigan.gov/corrections/0,4551,7-119-9741_12798-521973--,00.html (last visited Mar. 29, 2022).

Though 161 people were approved for conditional medical release, 156 were released because five were disciplined subsequent to approval. Some other reasons listed for denying applications were community safety, no residence, medical condition deemed not serious enough, and having a life sentence, which made the person automatically ineligible for the program.

MN DOC also developed a Sanction Reduction Program during the pandemic. This involved a review of individuals who had been returned to prison due to technical violations to determine who could be released early. There were 28 people released through this program. Finally, DOC expanded its work release program during the pandemic. This was done by broadening the eligibility criteria: individuals further away from their supervised release date, with higher recidivism risk scores, and with previously excluded offenses were made eligible for work release because of the pandemic. No start or end date was listed for this program, but as of September 7, 2021, 264 individuals were released through the expanded work release program.[112]

Montana

On April 1, 2020, Montana Governor Steve Bullock issued a directive regarding COVID-19. In relevant part, the directive tasked the Montana Department of Corrections with providing assistance to the Board of Pardons and Paroles to consider early release for certain individuals, "but only so long as they do not pose a public safety risk and can have their medical and supervision needs adequately met in the community." The Board considered those aged 65 or older, those with medical conditions putting them at a high risk during the pandemic and those who were otherwise medically frail, those who were pregnant, and those who were nearing their release date. According to reports, as of November 2020, only three people had been granted parole based on those conditions; one additional person was granted medical parole with COVID-19 listed as a factor in the Board's consideration.[113]

New Jersey

On April 10, 2020, New Jersey Governor Philip Murphy signed Executive Order No. 124, requiring the parole board and department of corrections (DOC) to implement an expedited process to consider certain people in prison for parole and furlough. Targets for this process included those older than 60, those with high-risk medical conditions, those denied parole within the previous year, and those with short amounts of time left on their sentences. Anyone convicted of murder, sexual assault, or other serious crimes was not eligible for the expedited process. As of late October 2020, more than 1,200 people had been released from prison under Executive Order 124, according to Governor Murphy. At least 300 of those 1,200 people were approved by the DOC commissioner for furlough (as of August 5, 2020), though there were no exact numbers detailing how many were granted parole and how many were granted furlough.[114]

112. *COVID-19 Updates*, Minn. Dep't of Corr. (last visited Mar. 29, 2020), https://mn.gov/doc/about/covid-19-updates/; Mgmt. Analysis and Dev., *Research summary: Prison population management* (Dec. 21, 2020), https://mn.gov/obfc/assets/Appendix%20A%20Ombuds%20for%20Corrections%20COVID%20Report_tcm1157-470275.pdf.

113. Steve Bullock, *Directive implementing Executive Orders 2-2020 and 3-2020 related to state correctional and state-contracted correctional facilities*, Off. of the Governor: State of Mont. (Apr. 1, 2020), https://bloximages.newyork1.vip.townnews.com/montanarightnow.com/content/tncms/assets/v3/editorial/4/f3/4f3aedda-7452-11ea-8967-bf80c092f212/5e84f12a200ce.pdf.pdf; Mara Silvers, *Breaking out in prison: COVID-19 gaining traction in Montana correctional facilities*, Mont. Free Press (Nov. 8, 2020), https://www.bozemandailychronicle.com/coronavirus/breaking-out-in-prison-covid-19-gaining-traction-in-montana-correctional-facilities/article_2dffc0de-1c92-5fcc-ab3a-d934783c76aa.html.

114. N.J. Exec. Order No. 124 (Apr. 10, 2020), http://d31hzlhk6di2h5.cloudfront.net/20200410/c0/64/ce/2c/0ef068b5d2c6459546c33a46/EO-124.pdf; Joe Atmonavage, *First wave of 50 inmates approved for release from N.J. prisons under Murphy's order*, NJ.com (Apr. 27, 2020), https://www.nj.com/coronavirus/2020/04/first-wave-of-50-inmates-approved-for-release-from-nj-prisons-under-murphys-order.html; Daniel Israel, *Curbing the spread of COVID-19 in state prisons*, Hudson Rep. (Oct. 20, 2020), https://hudsonreporter.com/2020/10/20/curbing-the-spread-of-covid-19-in-state-prisons/; *Murphy Administration blew it on prison release. But it can still save lives*, NJ.com (Aug. 5, 2020), https://www.nj.com/opinion/2020/08/murphy-administration-blew-it-on-prison-release-but-it-can-still-save-lives-editorial.html.

Then, in September of 2020, the New Jersey state legislature passed the Public Health Emergency Credit Bill (S-2519). The bill awards up to eight months of public health emergency credits to people in prison who are within a year of their maximum parole eligibility dates (excluding those convicted of murder or aggravated sexual assault, and repetitive, compulsive sex offenders). The law's effects continue on a rolling basis while the state is under a public health emergency declaration. As of March 31, 2021, around 3,675 individuals had been released from New Jersey prisons because of S-2519. Approximately 2,258 of those releases occurred on November 4, 2020 (the day the law took effect) and after that about 300 people were released each month. In the summer of 2021, Governor Murphy ended the state's public health emergency and thus closed the window for earning credits through S-2519. The last person to be released early was on October 4, 2021. Between November 4, 2020, and October 4, 2021, 5,181 individuals were released.[115]

New Mexico

New Mexico Governor Michelle Lujan Grisham signed an executive order on April 6, 2020, designed to release people in prison to prevent the spread of COVID-19. The executive order essentially commutes individuals' sentences, placing them on parole instead. In order to qualify for commutation, a person in prison had to meet strict criteria: be scheduled to be released in the next 30 days; have a parole plan; not be serving time for driving while under the influence, domestic abuse, or assault on a peace officer; not be a sex offender (even if they are not currently serving time for a sex offense); and not be serving an enhanced sentence for use of a firearm. The first group of releases, the day after the order was signed, consisted of 10-12 people. As of September 30, 2021, that number had risen to over 550.[116]

New York

On April 30, 2020, New York Governor Andrew Cuomo announced that the New York Department of Corrections and Community Supervision (DOCCS) would be releasing some pregnant women from prison due to concerns about the COVID-19 pandemic. The pregnant women were all serving time for non-violent offenses and had under six months remaining on their sentences. Eight women were released on parole starting on May 6, 2020.[117]

115. Suzette Parmley, *Has 'COVID Time' Legislation Worked, and What Does It Mean for NJ's Criminal Justice Reform Future?*, Law.com: N.J. L. J. (May 11, 2021), https://www.law.com/njlawjournal/2021/05/11/has-covid-time-legislation-worked-and-what-does-it-mean-for-njs-criminal-justice-reform-future/; Lauren del Valle & Leah Asmelash, *New Jersey releases more than 2,200 eligible inmates under nation's first public health crisis sentencing law*, CNN (Nov. 4, 2020), https://www.cnn.com/2020/11/04/us/new-jersey-prisoners-covid-trnd/index.html; Karen Yi, *NJ Cut Its Prison Population By 40% During 11 Months Of the Pandemic*, Gothamist (Nov. 22, 2021), https://gothamist.com/news/njs-cut-its-prison-population-by-40-during-11-months-of-the-pandemic.

116. Associated Press, County Jails *Contend With High-Risk Environment for COVID-19*, U.S. News & World Rep. (Sept. 30, 2021), https://www.usnews.com/news/best-states/new-mexico/articles/2021-09-30/county-jails-contend-with-high-risk-environment-for-covid-19; Elise Kaplan, *Gov. orders early release of some inmates*, Albuquerque J. (Apr. 6, 2020), https://www.abqjournal.com/1440938/gov-orders-early-release-of-some-inmates-from-prison.html; Rachel Knapp, *More than 500 inmates and counting released due to pandemic concerns*, KRQE News 13 (July 7, 2021), https://www.krqe.com/health/coronavirus-new-mexico/more-than-500-inmates-and-counting-released-due-to-pandemic-concerns/; Jeff Proctor, *Massive COVID-19 outbreak at a southern NM prison hits just one type of inmates — sex offenders. That's by design.*, N.M. In Depth (June 27, 2020), https://nmindepth.com/2020/06/27/massive-covid-19-outbreak-at-a-southern-nm-prison-hits-just-one-type-of-inmates-sex-offenders-thats-by-design/.

117. Justin Bey, *8 pregnant women to be released from New York prison over virus fears*, CBS News (May 6, 2020), https://www.cbsnews.com/news/coronavirus-new-york-prisons-pregnant-women-freed-covid-19/; Angelina Chapin, *I Was 7 Months Pregnant in Prison. Then COVID-19 Hit*, The Cut (May 27, 2020), https://www.thecut.com/2020/05/i-was-pregnant-in-a-new-york-prison-then-covid-19-hit.html; Nick Reisman, *New York Moves To Release Pregnant Inmates*, Spectrum News 1 (May 1, 2020), https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2020/04/30/new-york-pregnant-inmate-release.

Also in April of 2020, DOCCS announced that it would begin releasing other people in prison in an effort to combat the pandemic. DOCCS generated lists of potentially eligible people who were serving time for nonviolent, nonsexual offenses and were within 90 days of their release date. Most of them were over 55 years old. The lists were reviewed, and DOCCS conducted investigations of each eligible person to ensure they had an adequate housing plan and, if needed, access to treatment programs. More than 3,480 people had been released through this process as of December 10, 2020.[118]

North Carolina

At the beginning of the COVID-19 pandemic, the North Carolina Department of Public Safety (DPS) began increasing its use of discretionary sentence credits in order to release people sooner, in an effort to prevent the spread of COVID-19. This increased use of sentence credits applied to those serving time for nonviolent, nonsexual offenses who were at an increased risk from COVID-19 (such as people with underlying conditions and pregnant people). Between March 1, 2020, and May 3, 2020, 485 people were released via this method. On July 14, 2020, it was reported that a total of 600 people had been released, likely through sentence credits.[119]

On April 13, 2020, DPS announced that it was beginning an initiative to decrease the prison population which would come to be known as Extending the Limits of Confinement (ELC). ELC is not considered an early release but rather allows people in prison to serve the remainder of their sentence at home under strict conditions. In order to be eligible for ELC, a person must not have been convicted of a violent crime against a person and must fall into one of the following categories: 1) pregnant offenders, 2) offenders age 65 and older with underlying health conditions, 3) female offenders age 50 and older with health conditions and a release date in 2020, 4) offenders age 65 and older with a release date in 2020, 5) offenders on home leave or work release with a release date in 2020. These requirements were periodically modified throughout the pandemic, allowing for release dates further into the future, among other changes. As of May 3, 2020, 182 people had returned to the community through ELC; on May 7, 2020, that number had increased to 192; and, finally, as of the middle of June 2020 359 people had been "released" through ELC.[120]

On April 8, 2020, five North Carolina organizations (the ACLU of North Carolina, Disability Rights North Carolina, Emancipate NC, Forward Justice, and the National Juvenile Justice Network) filed a lawsuit seeking to ensure that North Carolina public officials took further action to stop the spread of COVID-19, particularly in prisons. The case, NC NAACP v. Cooper (Rights of Incarcerated People), was settled on February 25, 2021, bringing about the release of 4,450 people in state custody between February 15, 2021,

118. Jonathan Bandler, *Coronavirus: Prison inmates sue New York for early release over COVID-19 fears*, Lohud (Apr. 17, 2020), https://www.lohud.com/story/news/2020/04/17/inmates-westchester-prisons-sue-new-york-early-release-over-covid-19-fears/5151361002/; Chelsia Marcius, *'A lack of compassion': Lawyers say New York prisons are dragging their feet releasing eligible inmates amid COVID concerns*, New York Daily News (Dec. 10, 2020), https://www.nydailynews.com/coronavirus/ny-covid-new-york-prisons-early-release-20201210-swdkwiioezadbdmjzlw4rnt5ua-story.html.

119. Samantha Kummerer, *'Feels a little hopeless:' North Carolina families frustrated with prison system as COVID-19 pandemic continues*, ABC 11: WTVD-TV (July 14, 2020), https://abc11.com/north-carolina-prison-nc-covid-cases-19-covid-19/6317355/; Gary Robertson, Associated Press, *Virus Directives Mean Hundreds More NC Prisoners Go Home*, U.S. News & World Rep. (May 7, 2021), https://www.usnews.com/news/best-states/virginia/articles/2020-05-06/outer-banks-counties-announce-date-for-reopening-to-visitors; Mackenzie Stasko, *Hundreds of inmates released early from NC prisons over COVID-19 risk*, CBS 17 (May 4, 2020), https://www.cbs17.com/news/north-carolina-news/hundreds-of-inmates-released-early-from-nc-prisons-over-covid-19-risk/.

120. *Adult Correction Actions on COVID-19*, N.C. Dep't of Pub. Safety, https://www.ncdps.gov/our-organization/adult-correction/adult-correction-actions-covid-19#may--20 (last visited Apr. 3, 2022); Pamela Walker, *Pandemic Prompts Department of Public Safety to Transition Some Offenders to Supervision in the Community*, N.C. Dep't of Pub. Safety (Apr. 13, 2020), https://www.ncdps.gov/news/press-releases/2020/04/13/pandemic-prompts-department-public-safety-transition-some-offenders.

and August 21, 2021. The Division of Adult Correction and Juvenile Justice released people through three main mechanisms: ELC, discretionary sentence credits, and post release supervision and parole actions.[121]

North Dakota

In March 2020, the North Dakota Parole Board held a special meeting to grant early parole to 120 people as part of its COVID-19 mitigation efforts. The Parole Board considered a person's medical conditions, the amount of time left on their sentence (the Board was looking for those with nine months or less left), and whether they had a reliable place of residence. In April 2020 the Parole Board heard 141 cases and granted parole for 120 of those people. As of May 8, 2020, the Parole Board director said that the Board had met facility goals concerning COVID-19 and would not be holding another special meeting for extra requests.[122]

Ohio

On April 7, 2020, Ohio Governor Mike DeWine released a COVID-19 update which, in relevant part, announced that the state's overcrowding emergency statute would be used so that certain people in prison scheduled to be released within 90 days could be considered for early release. A number of factors disqualified people from consideration: being convicted of serious charges (such as sex offenses, homicide-related offenses, kidnapping, etc.); having been denied judicial release in the past; having a prior incarceration in Ohio; having convictions from another state; having active warrants or detainers; and having had a serious prison rule violation in the last five years. Governor DeWine recommended 141 qualifying individuals to the Ohio Correctional Institution Inspection Committee (a joint-legislative committee that provides external oversight of Ohio's prisons), which approved 105 for early release. On April 15, 2020, Governor DeWine officially approved the release of those 105 individuals. Then, on April 17, 2020, Governor DeWine also commuted the sentences of 7 people because of their age and / or pre-existing conditions that could be exacerbated by COVID-19.[123]

Oklahoma

On April 10, 2020, Oklahoma Governor Kevin Stitt approved commutations for 452 people in an effort to reduce the state's prison population because of the COVID-19 pandemic. Though his criteria for the commutations were not specified, most people were incarcerated for either drug possession crimes or property crimes. Just under a quarter of the people who received commutations (111) were released on April

121. *Adjusted Reentry Dates for Offenders*, N.C. Dep't of Pub. Safety (2021), https://www.ncdps.gov/adjusted-reentry-dates-offenders; *NC NAACP V. Cooper (Rights of Incarcerated People)*, ACLU of N.C. (2021), https://www.acluofnorthcarolina.org/en/cases/nc-naacp-v-cooper-rights-incarcerated-people; *Prison Population Reduction Efforts*, N.C. Dep't of Pub. Safety (2021), https://www.ncdps.gov/our-organization/adult-correction/prisons/prison-population-reduction-efforts#post-release-supervision-and-parole-commission-actions.
122. Julie Martin, *More than 100 DOCR inmates granted early parole due to COVID-19*, KFYR (May 8, 2020), https://www.kfyrtv.com/content/news/More-than-100-DOCR-inmates-granted-early-parole-due-to-COVID-19-570318211.html.
123. Corr. Inst. Inspection Comm., https://www.ciic.state.oh.us/about (last visited Jan. 21, 2022); *COVID-19 Update: Liquor Sales, Office of Small Business Relief, Ohio Prisons, SNAP Payments*, Mike DeWine - Governor of Ohio (Apr. 7, 2020), https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/liquor-sales-office-of-small-business-relief-ohio-prisons-snap-payments; Nick Swartsell, *DeWine Authorizes Release of 105 Inmates as Coronavirus Cases in Ohio Prisons Swell into the Hundreds*, CityBeat (Apr. 16, 2020), https://www.citybeat.com/news/dewine-authorizes-release-of-105-inmates-as-coronavirus-cases-in-ohio-prisons-swell-into-the-hundreds-12169663; *2 high-profile prisoners have sentences commuted by DeWine amid coronavirus crisis*, WTOL 11 (Apr. 17, 2020), https://www.wtol.com/article/news/health/coronavirus/ohio-prisoners-sentences-commuted/512-3786f7da-1d88-4d6f-b57c-6e18ce89e6c6.

16, 2020. The remaining people were not released from prison immediately, due to other charges that were not commuted, but were set to be released early (at varying times) thanks to the commutations.[124]

The Oklahoma Department of Corrections (DOC) identified 126 people in prison whose medical conditions put them at a higher risk from COVID-19. After eliminating those serving time for violent crimes, sex crimes, and other (unspecified) categories, the director of the DOC sent a letter to the Oklahoma Pardon and Parole Board on May 1, 2020, recommending 14 people for medical parole, as he is authorized to do by Oklahoma statute. By the time the Pardon and Parole Board considered this list, one of those 14 had already received parole and another waived his right to be considered for parole due to the proximity of his release date. On May 13, 2020, the Pardon and Parole Board approved the remaining 12 people for medical parole.[125]

Oregon

On June 25, 2020, Oregon Governor Kate Brown announced that she would be commuting the sentences of 57 people in prison. She had received a list from the Oregon Department of Corrections (DOC) of 61 people for consideration. The 57 people Governor Brown authorized for commutations were particularly vulnerable to COVID-19, had served at least half of their sentences, were not convicted of committing a violent crime against another person, had housing, and had access to healthcare. Most of those released were white men convicted of drug and property offenses.[126]

On September 28, 2020, Governor Brown announced that she had commuted 66 more sentences through a similar process; on September 21 the DOC sent her a list of 69 people to consider. All the people Governor Brown selected had a plan for housing and health care; 10 were medically vulnerable to COVID-19 and the other 56 were within two months of their release dates. On December 15, 2020, Governor Brown announced that she was set to commute the sentences of approximately 130 people to be released December 17, 2020. All those receiving commutations were not serving person crimes, had housing plans for after their release, and had a record of good conduct for 12 months; some had less than six months left on their sentences and others were at a higher risk for COVID-19.[127]

124. Kayla Branch, *Error from Stitt's office leads to inaccurate count of prisoners to be released*, The Oklahoman (Apr. 16, 2020), https://www.oklahoman.com/article/5660266/error-from-stitts-office-leads-to-inaccurate-count-of-prisoners-to-be-released; Shardaa Gray, *Oklahoma inmates released from prison across the state because of COVID-19*, FOX25 (Apr. 16, 2020), https://okcfox.com/news/local/oklahoma-inmates-released-from-prison-across-the-state-because-of-covid-19; Hicham Raache, *Gov. Stitt approves hundreds of prison commutations to mitigate coronavirus spread*, KFOR (Apr. 10, 2020), https://kfor.com/news/coronavirus/gov-stitt-approves-hundreds-of-prison-commutations-to-mitigate-coronavirus-spread/?eType=EmailBlastContent&eId=07a90610-fdf3-4e1b-994a-712a02c5065c.

125. 2001 OK. HB 2924, https://plus.lexis.com/document/?pdmfid=1530671&crid=963d660e-8557-4a0d-9685-d2a96306b197&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4J1B-8GH0-0033-41Y8-00000-00&pdcontentcomponentid=125155&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&prid=798894bf-b319-4587-8f64-108c9d0e480d&ecomp=-t4hk&earg=sr4; Chris Polansky, *Board Recommends Special Medical Parole For 12 State Inmates*, Public Radio Tulsa (May 13, 2020), https://www.publicradiotulsa.org/local-regional/2020-05-13/board-recommends-special-medical-parole-for-12-state-inmates#stream/0.

126. Shane Kavanaugh, *Oregon Gov. Kate Brown approves early release of 57 inmates vulnerable to coronavirus*, The Oregonian (June 25, 2020), https://www.oregonlive.com/coronavirus/2020/06/gov-kate-brown-approves-early-release-of-57-inmates-vulnerable-to-coronavirus.html; Conrad Wilson, *Oregon Governor Commutes Sentences Of 57 Inmates Vulnerable To COVID-19*, OPB (June 25, 2020), https://www.opb.org/news/article/oregon-governor-commutes-57-prison-sentences-covid-19/.

127. Jayati Ramakrishnan, *Governor commutes sentences for 66 more inmates, including 10 considered vulnerable to COVID*, The Oregonian (Sept. 29, 2020, https://www.oregonlive.com/pacific-northwest-news/2020/09/governor-commutes-66-more-inmates-sentences-including-10-considered-vulnerable-to-covid.html; Conrad Wilson, *Oregon prisons to release more inmates as COVID-19 outbreaks continue*, East Oregonian (Dec. 15, 2020), https://www.eastoregonian.com/coronavirus/oregon-prisons-to-release-more-inmates-as-covid-19-outbreaks-continue/article_7f423606-3f12-11eb-b1ee-572e37fe342a.html.

Pennsylvania

On April 10, 2020, Pennsylvania Governor Tom Wolf issued an executive order in response to the COVID-19 pandemic requiring the Pennsylvania Department of Corrections (DOC) to establish a Reprieve of Sentence of Incarceration Program through which the DOC would recommend qualified individuals to Governor Wolf for consideration for issuance of a conditional reprieve. To qualify, a person had to be vulnerable to COVID-19 (either because of their age, medical conditions, or pregnancy); either eligible for release within the next twelve months or within nine months of their minimum eligibility release date; and not convicted of certain enumerated crimes (largely violent and sex-related crimes). Between the issuance of the order and February 10, 2021, Governor Wolf granted 165 reprieves. On June 22, 2020, Governor Wolf announced that, in addition to the reprieve program, a number of measures had been taken to reduce the prison population. These measures included furloughing paroled individuals from centers to home plans, maximizing parole releases, reviewing parole detainers, expediting the release process for anyone with a pending approved home plan, and reviewing and releasing people who are beyond their minimum sentences. However, we could find no documentation of the number of people affected by these measures. Some news articles reported that the prison population decreased by 3,312 people; however, this was likely due primarily to a decrease in admissions rather than an increase in releases.[128]

Rhode Island

Following a request by Rhode Island prosecutors, prison authorities, and public defenders, on April 3, 2020, the Rhode Island Supreme Court issued an order establishing a process whereby superior courts and district courts would enter orders providing for the "immediate release" of 52 people from prison. The orders reduced their sentences, making the individuals eligible for release. All 52 people had less than 91 days left on their sentences and were serving time for nonviolent offenses.[129]

Utah

At the beginning of March 2020, the Utah Board of Pardons and Parole (BOPP) began collaborating with the Utah Department of Corrections (UDC) to release some individuals early because of the COVID-19 pandemic. All the people released through this effort had already had a hearing and been granted a release; on average they were released a little more than two months before their originally scheduled release date. In July 2020 the BOPP reported that, from the beginning of March 2020 through the end of June 2020, 730 individuals were released with COVID-19 related considerations. As of November 7, 2020, press reported that more than 1,000 people were released from prison early because of the pandemic.[130]

128. *Pennsylvania's Prison Population Reduced by Nearly 3,500 Since March 1*, Erie News Now (June 22, 2020), https://www.erienewsnow.com/story/42276002/pennsylvanias-prison-population-reduced-by-nearly-3500-since-march-1; J.D. Prose, *PA legislators to Wolf: Give more reprieves to inmates vulnerable to COVID-19. His response.*, The Times (Feb. 10, 2021), https://www.timesonline.com/story/news/2021/02/10/pennsylvania-inmates-release-covid-19/4455476001/; Tom Wolf, *Order of the Governor of the Commonwealth of Pennsylvania Regarding Individuals Incarcerated in State Correctional Institutions*, Commonwealth of Penn. Off. of the Governor (Apr. 10, 2020), https://famm.org/wp-content/uploads/2020.4.10-TWW-SCI-reprieve-release-order-COVID-19.pdf.

129. In re Req. for Prison Census Control In Resp. to COVID-19 (Apr. 3, 2020), https://www.courts.ri.gov/PDF/In%20re%20Request%20for%20Prison%20Census%20Control%20(Order).pdf; Mark Reynolds, *R.I. Supreme Court OKs release of 52 inmates*, Providence J. (Apr. 4, 2020), https://perma.cc/3JUV-NFLY.

130. Annie Knox, *Some Utah inmates get early homecoming, others fear the worst as virus spreads in prison*, Deseret News (Nov. 7, 2020), https://www.deseret.com/utah/2020/11/7/21546012/coronavirus-parole-inmates-get-early-homecoming-others-fear-the-worst-as-virus-spreads-in-prison; *Utah's Prison Population Trend in Context of COVID-19*, State of Utah Bd. of Pardons and Paroles (July 30, 2020), https://bop.utah.gov/index.php/home-top-public-menu/2-uncategorised/167-bopp-coronavirus-information-2.

Vermont

Due to concerns regarding the COVID-19 pandemic, Jim Baker, the commissioner for the Vermont Department of Corrections (DOC), made an effort to decrease the Vermont prison population during the early stage of the pandemic. Baker started by "looking at which inmates can be let out on furlough and who can be released on probation." This resulted in almost 100 people being released from prison between March 19, 2020, and March 26, 2020, which brought the DOC's total number of releases since late February to over 200. It was then reported on April 30, 2020, that 255 people had been released by the DOC since March 13, 2020.[131]

Virginia

On April 22, 2020, the Virginia General Assembly approved a proposed budget amendment from Governor Ralph Northam which gave the director of the Virginia Department of Corrections (DOC) authority to release people from prison early during the COVID-19 pandemic. The early release plan developed by the DOC had several requirements. People had to have a viable housing plan, be at a low to medium risk of recidivism, have less than one year left to serve, have their good time earning at a certain level, and have no active detainer. If they were convicted of a class 1 felony or a sexually violent offense, they were not considered. All final decisions about early releases were made by the Director of Corrections, who also considered the individuals' medical conditions. People were released periodically throughout the DOC's period of authority: 62 were released during the week after the amendment was approved, and 606 had been released as of October 15, 2020. When the DOC's authority to release individuals early terminated at midnight on July 1, 2021, a total of 1,376 people had been released early.[132]

Washington

On April 15, 2020, Washington Governor Jay Inslee issued both a commutation order and an emergency proclamation; both were in response to the COVID-19 pandemic and aimed at reducing the prison population. The commutation order and emergency proclamation combined to result in the release of 1,016 people from prisons. In order to be eligible for release, a person must not have had a violent or sexual offense and had to have a release date within 180 days of the Governor's orders. The releases were via commutation of sentences (422 people), work release furlough (66 people), or a "rapid reentry" process (528 people) by which the individuals served the remainder of their sentences at home with electronic monitoring.[133]

131. Sheldon Burnell, *Courts reviewing calls for more prisoners to be released from Vermont prisons due to COVID-19*, Community News Service at UVM (Apr. 30, 2020), https://www.communitynews.net/home/courts-reviewing-calls-for-more-prisoners-to-be-released-from-vermont-prisons-due-to-covid-19; Anna Merriman, *'It's very difficult to control': Many Vermont inmates released so that those who remain can be spread out*, Valley News (Mar. 26, 2020), https://www.vnews.com/Vermont-NH-prisons-working-to-reduce-population-to-prevent-virus-spread-33512589.

132. *COVID-19 Response: Inmate Early Release Plan*, Va. Dep't of Corr. (2020), https://vadoc.virginia.gov/media/1506/vadoc-covid19-early-release-plan.pdf; Frank Green, *62 inmates released early - so far - in COVID-19 relief for prisons*, Richmond Times-Dispatch (Apr. 29, 2020), https://perma.cc/N2X6-LWCC; Katherine Hafner, *Virginia has been releasing hundreds of prisoners during the pandemic. Critics argue it's not enough*, Virginian-Pilot (Oct. 15, 2020), https://www.pilotonline.com/government/virginia/vp-nw-inmate-early-release-numbers-20201015-ksstatr6n5fy3ipj2x7uqamwtm-story.html; *Press Release, Va. Dep't of Corr., Pandemic-Related Early Release of State Inmates Coming to an End as Authority Expires* (June 16, 2021), https://vadoc.virginia.gov/news-press-releases/2021/pandemic-related-early-release-of-state-inmates-coming-to-an-end-as-authority-expires/; Va. Dep't of Corr., COVID-19/Coronavirus Updates, https://vadoc.virginia.gov/news-press-releases/2021/covid-19-updates/ (last visited Mar. 27, 2022).

133. *Emergency Commutation in Response to COVID-19*, Jay Inslee (Apr. 15, 2020), https://www.governor.wa.gov/sites/default/files/COVID-19%20-%20Commutation%20Order%204.15.20%20%28tmp%29.pdf; Wash. Proclamation No. 20-50, (Apr. 15, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-50%20-%20COVID-19%20Reducing%20Prison%20Population.pdf; *COVID-19 Frequently Asked Questions (FAQ)*, Wash. State Dep't of Corr., https://www.doc.wa.gov/corrections/covid-19/faq.htm#reentry (last visited Mar. 27, 2022); *COVID-19 Incarcerated Population Reduction Efforts | Commutations*, Wash. State Dep't of Corr. (2020), https://www.doc.wa.gov/corrections/covid-19/docs/reduction-efforts-commutation.pdf; *COVID-19 Incarcerated Population Reduction Efforts | Rapid Reentry*, Wash. State Dep't of Corr. (2020), https://www.doc.wa.gov/corrections/covid-19/docs/reduction-efforts-rapid-reentry.pdf; *COVID-19 Incarcerated Population Reduction Efforts | Work Release Furloughs*, Wash. State Dep't of Corr. (2020), https://www.doc.wa.gov/corrections/covid-19/docs/reduction-efforts-work-release-furlough.pdf.

West Virginia

At the beginning of the COVID-19 pandemic, the West Virginia Division of Corrections and Rehabilitation began to consider how it could decrease prison population density in the state in order to mitigate the spread of the COVID-19 virus. After weighing release options within its authority under state law, the Division had released about 70 people who were serving short terms for parole-related sanctions as of April 1, 2020.[134]

Wisconsin

At the beginning of the COVID-19 pandemic, Wisconsin released some people from prison through a variety of mechanisms in order to help address the COVID-19 crisis. Between March 1, 2020, and May 8, 2020, 53 people were granted release by the Wisconsin Parole Commission. Between March 2, 2020, and May 4, 2020, 1,447 individuals who had been detained because they violated terms of their parole, probation, or extended supervision were released by the Wisconsin Department of Corrections (DOC). There were 65 individuals who had been in a Wisconsin prison for treatment as part of the Alternative to Revocation program were released on April 2, 2020. Finally, 7 people were released through Certified Earned Release, a program for people who were within 12 months of their release and who were sentenced between 2009 and 2011. As of May 8, 2020, a total of 1,572 people had been released from Wisconsin prisons.[135]

134. Leslie Ruben, *W.Va. taking steps to reduce inmate population amid COVID-19 pandemic*, WCHS/WVAH (Apr. 1, 2020), https://wchstv.com/news/coronavirus/wva-taking-steps-to-reduce-inmate-population-amid-covid-19-pandemic.

135. Gina Barton & Natalie Brophy, *Coronavirus can spread quickly through a prison -- so what can Wisconsin do to keep inmates, guards and the public safe?*, Milwaukee Journal Sentinel (Apr. 2, 2020), https://www.jsonline.com/story/news/2020/04/02/coronavirus-wisconsin-inmates-risk-virus-spreads-prisons/5097246002/; *COVID-19 (Coronavirus): FAQs*, State of Wis. Dep't of Corr., https://doc.wi.gov/Pages/COVID19(Coronavirus)/FAQS/COVID19FAQs.aspx (last visited Mar. 30, 2022); Emily Hamer, *Wisconsin DOC has released nearly 1,600 inmates so far to combat COVID-19 spread*, Wis. State J. (May 8, 2020), https://madison.com/wsj/news/local/crime-and-courts/wisconsin-doc-has-released-nearly-1-600-inmates-so-far-to-combat-covid-19-spread/article_03537daa-e1ec-5fe8-ac68-f5cf38ce8be5.html (https://perma.cc/58WK-99UW.