Recidivating Patterns of Individuals who Received a COVID Commutation

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The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

As a result of the COVID-19 pandemic and its spread in congregate settings like prisons and jails, former Governor Kate Brown commuted the sentences of 963 adults in custody from July 2020 through October 2021. Individuals received one of two types of commutations: a commutation connected to being medically vulnerable or a commutation that represented an early release from incarceration. Within the early release group, there were two subgroups: individuals who were released who had two months or less remaining on their sentence, and individuals who were released with six months or less remaining in sentence. For the purpose of this report, the two-month and six-month commutations are combined into a single "early release" cohort. Of the 963 individuals who received a commuted sentence, 63 percent were part of the medically vulnerable cohort and 37 percent were part of the early release cohort. Table 1 below displays the type of commutation and number of individuals who received that type of commuted sentence by year of release.

Table 1. Details on Commutation Type by Year

Commutation Type	2020	2021	Total
Medically Vulnerable	185 (70%)	424 (61%)	609 (63%)
Early Release	81 (30%)	273 (39%)	354 (37%)
Total	266	697	963

This report examines the recidivism outcomes for 950 of the 963 individuals who received commuted sentences. These 950 individuals all reached the threshold of at least two post-release years in which recidivism outcomes could be observed.[1] To calculate recidivism rates, the Criminal Justice Commission (CJC) employed its standard approach used in its biannual recidivism reports. First, recidivism outcomes are examined for all the individuals, regardless of the type of commutation they received. Next, the two distinct groups of individuals who received different types of commutations are examined: the medically vulnerable cohort and the 2-Month and 6-Month cohort (i.e., early release cohort). Finally, the early release cohort is further examined due to the important differences between these individuals and those who received medically vulnerable commutations. These differences are described in the subsequent sections.

Recidivism Rates for Entire Commuted Cohort

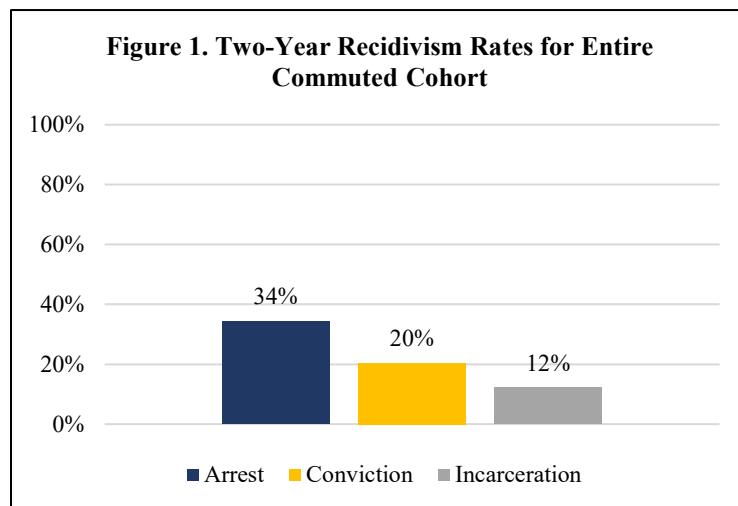Figure 1. Two-Year Recidivism Rates for Entire Commuted Cohort

Figure 1 displays the recidivism outcomes for all individuals who received commuted sentences and reached the threshold of at least two post-release years in which outcomes could be observed at the time of analysis. Of the 963 individual who received commuted sentences in 2020 and 2021, 950 (99 percent) satisfy this requirement and are included in this analysis. 34 percent (327 individuals) were arrested for a new crime within two years of their commutation, 20 percent (194 individuals) were convicted of a new crime within two years of their commutation, and 12 percent (115 individuals) were reincarcerated within two years of their commutation.

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[1] There are 13 individuals who received a commuted sentence that have not had at least two post-release years in which recidivism outcomes could be observed.

Table 2 compares the recidivism rates of the commuted cohort to the recidivism rates of all individuals released in 2020 and 2021 (i.e., a "regular" release cohort). The comparison between these two groups is imperfect but is included to provide context. First, the regular release cohort is approximately 7 times the size of the commuted cohort. Second, the cohort of commuted individuals exhibits a higher risk to recidivate than the regular release cohort as measured by Oregon's Public Safety Checklist (PSC). Indeed, the average PSC score for an individual in the commuted cohort is 45.0, higher than the average risk score of an individual in the regular release cohort, 36.8.

Table 2. Comparison of Recidivism of Commuted and Regular Release Cohorts

Recidivism Type	Two-Year Recidivism Rates by Cohort	
	Commuted Cohort	**Regular Release Cohort**
Arrest	327 (34%)	2,348 (34%)
Conviction	194 (20%)	1,590 (23%)
Incarceration	115 (12%)	868 (13%)
Total Cohort	950	6,876

When the entire cohort of all 950 individuals who received a commutation is compared with the recidivism rates for a regular release cohort, only small differences are noted. The two-year arrest recidivism rate is the same across these two groups, and the conviction and incarceration recidivism rates are slightly higher for the regular release cohort compared to the rate exhibited by individuals receiving commutations.

The CJC also examined the types of new offenses committed by individuals with recidivating events, both for the standard release cohort and those who received commutations. Of the commuted individuals who recidivated, most did not recidivate for a person crime. Out of the 327 individuals who were arrested within two years of their commutation, 98 individuals, or 30 percent, were arrested for a person crime. The most common person crime was recklessly endangering another person, followed by assault in the fourth degree, weapon use, menacing, and resisting arrest. In comparison, out of the 2,348 individuals who were arrested from the regular release cohort, 1,177 individuals (50 percent) were arrested for a person crime within two years of their release. The most common person crimes among the regular release cohort were assault in the fourth degree, menacing, harassment, and resisting arrest.

Table 3 displays the most serious crimes resulting in conviction and incarceration within two years of release for the commutation group, as well as the most serious crimes resulting in conviction and incarceration within two years of release for the regular release group. For the commuted group, one of the most common crime categories for conviction and incarceration is "Other" which includes crimes such as eluding police, criminal mischief in the second degree, possession of a weapon as a felon, trespassing in the second degree, and driving while intoxicated. Person crimes make up approximately 14 percent of convictions and incarceration sentences. The most common person crime categories for conviction include reckless endangerment, assault in the fourth degree, and menacing. The most common person crime categories for incarceration include assault in the second degree and burglary in the first degree. Similarly, the most common crime categories for conviction and incarceration are also "Other". The rate of conviction and incarceration for person crimes is notably higher in the regular release cohort than in the commuted cohort; the regular release cohort were convicted and incarcerated at approximately twice the rate of the commuted cohort. The most common person crime among the regular release cohort for both conviction and incarceration was assault in the fourth degree.

Table 3. Conviction and Incarceration Crimes

Crime Category	Commuted Cohort		Regular Release Cohort	
	Conviction	**Incarceration**	**Conviction**	**Incarceration**
Drug*	19 (10%)	9 (8%)	92 (6%)	46 (5%)
Other	72 (37%)	49 (43%)	660 (42%)	395 (46%)
Person	28 (14%)	16 (14%)	428 (27%)	248 (29%)
Property	75 (39%)	41 (36%)	410 (26%)	179 (21%)
Total	194	115	1,590	868

*This includes drug delivery and manufacturing as well as drug possession. Drug possession was the most serious conviction and incarceration crime category in only 10 cases across both cohorts.
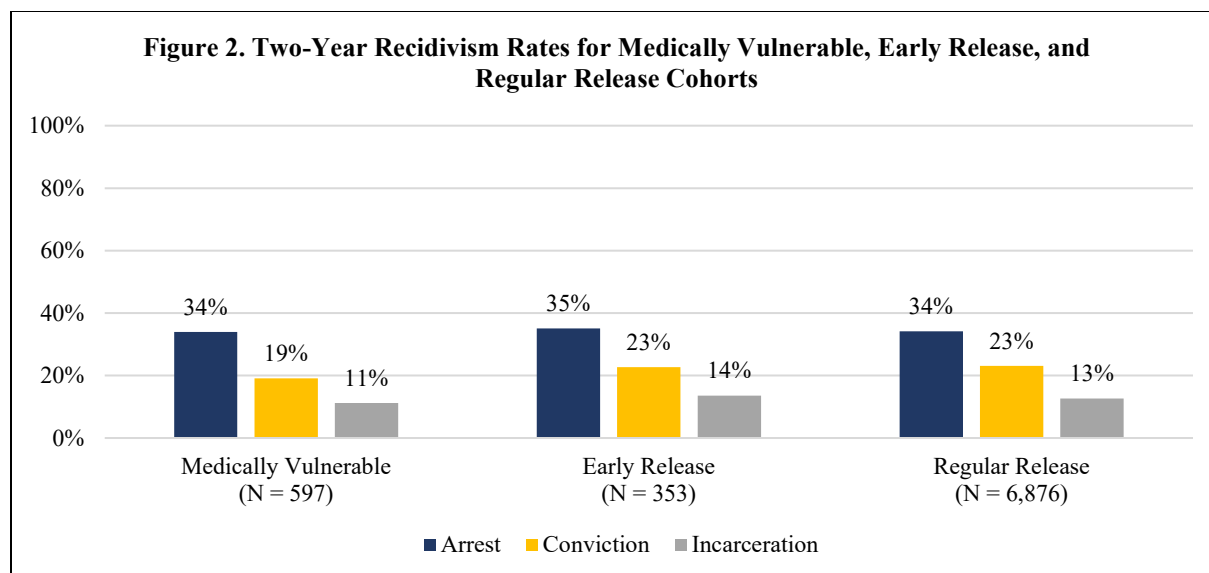
Recidivism Rates for Subsets of Commuted Cohort

The previous section described the recidivism rates for the entire commuted cohort and a "regular" release cohort. As introduced above, the commuted cohort consists of individuals who received two distinct types of commuted sentences. The first type of commuted sentence included individuals who were considered medically vulnerable to COVID-19, as identified by Department of Corrections (DOC) staff. The second type of commuted sentence included individuals who were within two to six months of release as calculated by DOC. To be eligible for either commuted sentence, an individual could not be serving a sentence for a person crime.[2] Of the 950 individuals who received a commuted sentence and have at least two years of post-release information, 353 (37 percent) of them were released with 2 to 6 months remaining in their sentence (i.e., early release) and 597 (63 percent) of them were medically vulnerable.

The recidivism rates for these two groups of individuals are depicted in Figure 2 below. This figure compares the recidivism of the commuted cohort – divided into early release and medically vulnerable groups – to the recidivism of those released in 2020 and 2021 (i.e., the regular release cohort). The comparison between these groups is imperfect. The regular release cohort includes 6,876 individuals, which is nearly 20 times the size of the early release cohort and approximately 12 times the size of the medically vulnerable cohort. The early release cohort exhibits a higher risk to recidivate than the medically vulnerable cohort and the regular release cohort; the average Public Safety Checklist (PSC) score for an individual in the early release cohort is 48.4, the average risk score for the medically vulnerable cohort is 43.1, and the average risk score for the regular release cohort is 36.8. Moreover, the regular release cohort includes individuals who served a sentence for any type of crime, including person crimes, while the commuted cohorts do not include individuals serving time for person crimes. Despite the imperfections of this comparison, it provides data-driven direction for further analyses.

As displayed in Figure 2 below, the 353 individuals in the early release cohort exhibited relatively higher recidivism rates than the medically vulnerable cohort as well as the regular release cohort. Of those in the early release cohort, 35 percent (124 individuals) were arrested for a new crime within two years of their commutation, 23 percent (80 individuals) were convicted of a new crime, and 14 percent (48 individuals) were reincarcerated.

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[2] Factors considered in commutation decisions included COVID-19 vulnerability/risk, type of sentence being served, time remaining in the sentence, conduct record for the previous 12 months, housing plans, out-of-custody health care needs, and safety, security, and compliance risk to the community.

Figure 2. Two-Year Recidivism Rates for Medically Vulnerable, Early Release, and Regular Release Cohorts

Of the early-release individuals who recidivated, most did not recidivate for a person crime. Out of the 124 individuals who were arrested within two years of their commutation, 40 individuals (32 percent) were arrested for a person crime. The most common person crime was assault in the fourth degree, followed by recklessly endangering another person, weapon use, and assault in the second degree. In comparison, out of the 2,348 individuals who were arrested from the regular release cohort, 1,177 individuals (50 percent) were arrested for a person crime within two years of their release. The most common person crimes among the regular release cohort were assault in the fourth degree, menacing, harassment, and resisting arrest. Table 4 displays the most serious crimes resulting in conviction and incarceration within two years of early release, as well as the most serious crimes resulting in conviction and incarceration within two years of release for the regular release group.

Table 4. Conviction and Incarceration Crimes

Crime Category	Early Release Cohort		Regular Release Cohort	
	Conviction	**Incarceration**	**Conviction**	**Incarceration**
Drug*	11 (14%)	3 (6%)	92 (6%)	46 (5%)
Other	27 (34%)	25 (52%)	660 (42%)	395 (46%)
Person	10 (13%)	4 (8%)	428 (27%)	248 (29%)
Property	32 (40%)	16 (33%)	410 (26%)	179 (21%)
Total	80	48	1,590	868

*This includes drug delivery and manufacturing as well as drug possession. Drug possession was the most serious conviction and incarceration crime category in only 8 cases across both cohorts.

Matched Sample Recidivism Outcomes

The descriptive information in prior sections displays that the early release cohort exhibited higher recidivism rates as well as higher risk to recidivate scores than both the medically vulnerable cohort and the regular release cohort (see Figure 2 above). Given these differences, this section examines a matched sample for a comparable group of the regular release cohort to the early release cohort to ensure that the differences in these cohorts identified above are minimized and do not impact the measured outcomes. Specifically, a propensity score method is used to make two groups comparable to one another.

After matching the groups on measurable characteristics, the final sample included 3,907 individuals. Out of these individuals, 353 had their sentence commuted within 2 or 6 months of completing their sentence, and 3,554 individuals were released from prison after completing their sentence. Most individuals in the sample served a sentence for a property crime (49 percent), were male (86 percent), identified as White (75 percent), and had an average age of approximately 37 years. Their average PSC score was 45.10, which indicates a relatively higher risk to recidivate than the full regular release population, which had an average PSC score of 36.8.

Table 5. Summary Statistics for Matched Sample

Variable	Percent/Average
Sex	
Male	86%
Female	14%
Race/Ethnicity	
White	75%
Latinx	14%
Black	8%
Other	4%
Original Crime	
Property	49%
Other	32%
Drug	15%
Driving	4%
First Oregon Conviction	
Yes	11%
No	89%
PSC Score	45.1
Age (Years)	37.4

The CJC conducted an Inverse Probability-Weighted Regression Analysis to determine what effect the commuted sentences may have had on recidivism rates and how recidivism rates of the early release cohort compare to the recidivism rates of the regular release cohort after controlling for known factors. There are important factors that are not accounted for due to data access and availability limitations such as housing availability, suitable re-entry plans, in-custody behavior, and whether out-of-custody health needs are assessed and adequately addressed. This regression analysis controls for known differences between the early release population and the regular release population including age, gender, race/ethnicity, and PSC score. A regression analysis of the weighted data was completed to account for several confounding factors that may influence recidivating outcomes.[3]

The results from this regression analysis are displayed in Table 6 below. The third and fourth column are the main findings. The third column is the average effect of an early release commutation on those who *actually received* an early release commutation. This helps answer the question, "Holding known factors constant, are there recidivism outcome differences for those who received an early release COVID commutation?" Table 6 also provides the observed two-year recidivism rates for the early release population and the observed two-year recidivism rates for the matched regular release population.

Early release commuted sentences were associated with statistically significant lower two-year recidivism rates for arrest and conviction, but they were not associated with differences in the two-year recidivism rates for incarceration. As shown in Table 6, of those who received a commuted sentence, the

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[3] The analysis was completed in Stata 16. For a more detailed description of the methods employed see Technical Appendix and the Stata Treatment-Effects Reference Manual, https://www.stata.com/manuals16/te.pdf.

commutation was associated with a 7 percent reduction in two-year arrest rates and a 6 percent reduction in two-year conviction rates. This finding differed for the two-year incarceration rates: receiving an early release commutation was not associated with a statistically significant difference in the two-year incarceration rates for the population who received an early release commutation. Put differently, incarceration rates for the early release cohort seem to be unaffected by receiving an early release commutation.

Table 6. Matched Sample Regression Results

Outcome	Number of Early Release Individuals	Average Effect of Early Release on Early Release Individuals	Recidivism Rate for the Early Release Population	Recidivism Rate for the Matched Regular Release Population[4]
Arrest within 2 Years	353	-6.97%*	35.1%	41.5%
Conviction within 2 Years	353	-5.81%*	22.7%	27.9%
Incarceration within 2 Years	353	-1.20%	13.6%	14.7%
*95% confidence level				

Conclusion

This report provides recidivism rates for all 950 individuals who received commuted sentences who reach the threshold of at least two post-release years in which recidivism outcomes could be observed. The descriptive analysis demonstrated that, compared to the regular release cohort, the commuted cohort has recidivated at lower rates. The recidivism rates were further examined by separating the commuted cohort into two distinct groups: the medically vulnerable cohort and the early release cohort. A different pattern of recidivism emerged after partitioning the groups: the medically vulnerable cohort continued to exhibit lower recidivism rates than the regular release cohort, while the early release cohort appeared to recidivate at higher rates than the regular release cohort. The early release cohort was then more closely examined using regression analysis that balances the known characteristics of the early release cohort with that of the regular release cohort. This provides a more viable comparison between the two groups and accounts for several important differences between them. The methods utilized for this analysis help create an unbiased, more viable comparison between release cohorts. The results suggest that the early release cohort is not recidivating at a higher rate than their regular release counterparts, in fact, with regards to arrest and conviction recidivism, the results suggest that the early release cohorts performed slightly better.

References

Durose, M. R. (2021). *Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2012–2017)* (Special Report NCJ 255947).

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[4] These estimates will differ from previous tables and graphs because this is the actual rate for the matched sample regular release that includes 3,907 individuals that are viable comparisons to the early release individuals.