



Hawai'i HCR 23 Task Force

Task Force Kick-off
September 12, 2023

Jennifer Kisela, Deputy Program Director, CSG Justice Center
Carl Reynolds, Senior Legal & Policy Advisor, CSG Justice Center

The CSG Justice Center's Team



Carl Reynolds
Senior Policy Advisor



Jennifer Kisela
Deputy Program Director



Saphria Reynolds-Tanner
Policy Analyst

Presentation Outline

- I. CSG Justice Center and the HCR 23 Task Force
- II. Hawai'i Context
- III. Sentencing Systems
- IV. Discussion and Next Steps

The Council of State Governments Justice Center

We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities.

Our Goals

- Break the cycle of incarceration
- Advance health, opportunity, and equity
- Use data to improve safety and justice

How We Work

- We bring people together
- We drive the criminal justice field forward with original research
- We build momentum for policy change
- We provide expert assistance

Equity and Inclusion Statement



The Council of State Governments Justice Center is committed to advancing racial equity internally and through our work with states, local communities, and Tribal Nations.



We support efforts to dismantle racial inequities within the criminal and juvenile justice systems by providing rigorous and high-quality research and analysis to decision-makers and helping stakeholders navigate the critical, and at times uncomfortable, issues the data reveal. Beyond empirical data, we rely on stakeholder engagement and other measures to advance equity, provide guidance and technical assistance, and improve outcomes across all touchpoints in the justice, behavioral health, crisis response, and reentry systems.

The CSG Justice Center's work with the Hawai'i HCR 23 Task Force is made possible through funding with BJA.



BJA
Bureau of Justice Assistance
U.S. Department of Justice

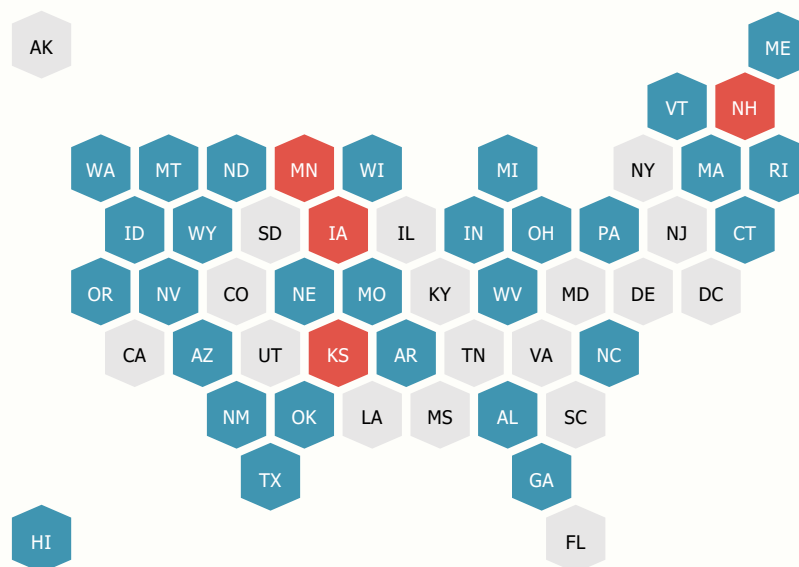


Justice Center
THE COUNCIL OF STATE GOVERNMENTS

Over the past 15 years, the CSG Justice Center has worked with 33 states to control corrections spending and reinvest in strategies to increase public safety.

States that Have Used a Justice Reinvestment Approach with Assistance from The Council of State Governments Justice Center

29 PAST STATES
4 CURRENT STATES



CSG and the Justice Center in Hawai'i

2022: Hawai'i hosts CSG National Conference

Former Governor Ige, Immediate Past National President

2021: Victim Restitution Matters: Four Lessons

2012: Justice Reinvestment: Improving Public Safety

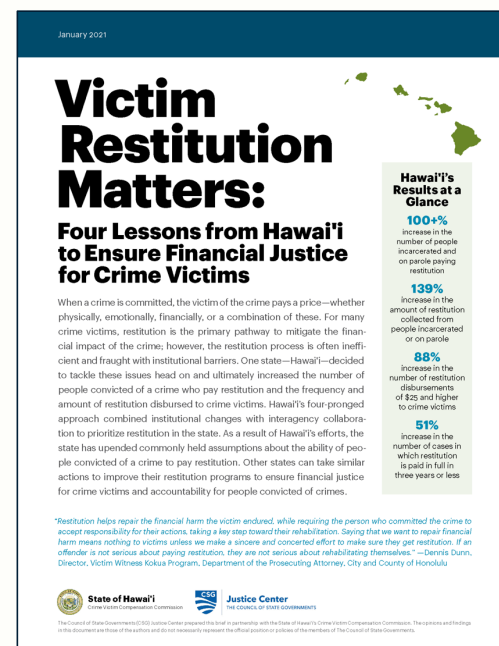


JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

**Justice Reinvestment in Hawaii:
Improving Public Safety by Expanding Treatment Programs
and Strengthening Victim Services**

September 2012

In June 2012, state leaders in Hawaii enacted legislation to reduce corrections spending and invest in strategies to increase efficiency and decrease recidivism. Using a data-driven "justice reinvestment" approach, the state received intensive technical assistance from the Council of State Governments Justice Center (CSG Justice Center), in partnership with the Pew Center on the States and the U.S. Department of Justice's Bureau of Justice Assistance. With continued resources and support, Hawaii leaders are now working to implement the legislation.



January 2021

Victim Restitution Matters:

Four Lessons from Hawai'i to Ensure Financial Justice for Crime Victims

Hawai'i's Results at a Glance

- 100+%** Increase in the number of people incarcerated and on parole paying restitution
- 139%** Increase in the amount of restitution collected from people incarcerated or on parole
- 88%** Increase in the number of restitution disbursements of \$25 and higher to crime victims
- 51%** Increase in the number of cases in which restitution is paid in full in three years or less

When a crime is committed, the victim of the crime pays a price—whether physically, emotionally, financially, or a combination of these. For many crime victims, restitution is the primary pathway to mitigate the financial impact of the crime; however, the restitution process is often inefficient and fraught with institutional barriers. One state—Hawai'i—decided to tackle these issues head on and ultimately increased the number of people convicted of a crime who pay restitution and the frequency and amount of restitution disbursed to crime victims. Hawai'i's four-pronged approach combined institutional changes with interagency collaboration to prioritize restitution in the state. As a result of Hawai'i's efforts, the state has upended commonly held assumptions about the ability of people convicted of a crime to pay restitution. Other states can take similar actions to improve their restitution programs to ensure financial justice for crime victims and accountability for people convicted of crimes.

"Restitution helps repair the financial harm the victim endured, while requiring the person who committed the crime to accept responsibility for their actions, taking a key step toward their rehabilitation. Saying that we want to repair financial harm means nothing to victims unless we make a sincere and concerted effort to make sure they get restitution. If an offender is not serious about paying restitution, they are not serious about rehabilitating themselves." —Dennis Burns, Director, Victim Witness Kokua Program, Department of the Prosecuting Attorney, City and County of Honolulu

State of Hawai'i | CSG Justice Center | THE COUNCIL OF STATE GOVERNMENTS

The Council of State Governments (CSG) Justice Center prepared this brief in partnership with the State of Hawai'i Crime Victim Compensation Commission. The process and findings in this document are those of the authors and do not necessarily represent the official position or policies of the members of The Council of State Governments.

HCR 23 Task Force Members

Chair Hawaii Correctional Oversight Commission

Mark Patterson, Chair

Chief Justice Hawaii Supreme Court designee

Judge Kevin Souza, First Circuit Court

Attorney General designee

Adrian Dhakhwa, Deputy Attorney General

Director of Health designee

Brenda Bauer-Smith, Court Examiner
Supervisor

Director of Public Safety

Tommy Johnson, Director

Chair of the Office of Hawaiian Affairs

Carmen Hulu Lindsey, OHA Trustee

Chair of the Hawaii Paroling Authority

Edmund "Fred" Hyun, Chair

Public Defender designee

Jon Ikenaga, Appellate Division Supervisor

Hawaii House of Representatives

Representative Mark Hashem, District 19

Hawai'i Senate

Senator Glenn Wakai, District 15

Prosecuting Attorney (4)

Steve Alm, Honolulu County

Keola Sui, Kauai County

Andrew Martin, Maui County

Kelden Waltjen, Hawai'i County

Crime Victim Compensation

Pamela Ferguson-Brey,
Executive Director

Hawaii Assoc. of Criminal Defense Lawyers (4)

Myles Breiner

Brandon Segall

Andrew Kennedy

Craig DeCosta

Members of Public

S.K.

M.R.

The HCR 23 Mandate

- 1. Examine and make recommendations** regarding existing procedures of the Hawai'i Paroling Authority setting the **minimum terms of imprisonment** to increase efficiency of the procedures.
- 2. Study whether parole system models** used by other states might be suited for Hawai'i.
- 3. Examine and compare the minimum sentences** issued by the Hawai'i Paroling Authority and the courts to determine whether there are significant differences.
- 4. Recommend** whether the administration of justice may be better served by removing the **responsibility of setting minimum sentences** from the Hawai'i Paroling Authority.

Presentation Outline

I. CSG Justice Center and the HCR 23 Task Force

II. Hawai'i Context

III. Sentencing Systems

IV. Discussion and Next Steps

Hawai'i news reports depict an adult criminal legal system with major challenges.

"Prison reform advocates outraged over \$10M allocated for new OCCC"

"Chronic Understaffing at Hawai'i Prisons Balloons Overtime Costs"

"Official Reports of Drug Use at Hawaii's Largest Prison Are Challenged by Staff"



"Hawaii Inmates Are Kept Behind Bars to Complete Programs They Can't Get Into"

"Hawaii's Prison Medical Records System Has Reached a Point of 'Absolute Crisis'"

"These Inmates Have Access to Better Facilities. The price? They're 3,000 Miles from Home"

Hawai'i spends a comparably small share of the state budget on corrections.

| NASBO 2022 State Expenditure Report | Corrections General Fund Expenditures as Percentage of Total General Fund Expenditures | Corrections Expenditures as Percentage of Total Expenditures |
|-------------------------------------|--|--|
| Far West States | | |
| Alaska | 7.0 | 2.8 |
| California | 5.7 | 3.5 |
| Hawai'i | 3.0 | 1.6 |
| Nevada | 7.1 | 1.9 |
| Oregon | 3.5 | 1.9 |
| Washington | 3.7 | 2.0 |
| All States | 5.5 | 2.5 |

Three branches of government have a shared goal of public safety but divergent goals in sentencing policy.

| Legislative | Judicial | Executive |
|--|---|--|
| <ul style="list-style-type: none">• Proportionality• Consistency• Public safety | <ul style="list-style-type: none">• Ability to ensure individualized justice• Public safety | <ul style="list-style-type: none">• Incentivize and/or sanction behavior• Risk and readiness for release• Public safety |

In Hawai'i, the judicial role in sentencing is minimized and paroling authority is maximized.

Legislative

- Hawai'i statutes establish:
- Offenses and sentencing options
 - Maximum sentence length by felony class
 - Parole board's authority to set minimum and then to release
 - Mandatory minimums

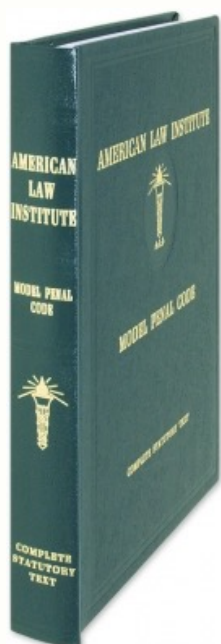
Judicial

- Determines offense committed
- Determines basic sentencing option
- Pronounces maximum based on statute

Executive

- HPA:
- Standards for minimum
 - Hearings for minimum
 - Changing the minimum
 - Parole release
 - Parole revocation
- DOC:
- No good time authority

The American Law Institute “Model Penal Code” is used in 34 states, including Hawai'i, to inform the structure and substance of criminal statutes.



MPC Adopted in...

1960s: Illinois, Minnesota, and New Mexico

1970s: New York, Georgia, Kansas, Connecticut, Colorado, Oregon, Delaware, Hawai'i, New Hampshire, Pennsylvania, Utah, Montana, Ohio, Texas, Florida, Kentucky, North Dakota, Virginia, Arkansas, Maine, Washington, South Dakota, Indiana, Arizona, Iowa, Missouri, Nebraska, New Jersey

1980s: Alabama, Alaska, Wyoming

Draft criminal codes have been produced but not enacted in other states including California, Massachusetts, Michigan, Oklahoma, Rhode Island, Tennessee, Vermont, and West Virginia.

In 1965, Hawai'i ended judicially imposed minimum sentences.

Commentary on H.R.S. § 706.660

“In 1965, the legislature enacted a law *designed to end judicially imposed inconsistent sentences of imprisonment.*”

- This policy known as true indeterminate sentencing is continued.
- The court’s discretion is limited to choosing between imprisonment and other modes of sentencing.
- Once the court has decided to sentence a felon to imprisonment, the actual time of release is determined by parole authorities.”

[footnotes omitted; emphasis added]

A national study of “degrees of indeterminacy” highlights the unique Hawai'i system.

- “We assess the Hawai'i prison-sentencing system as one with an **extremely high degree of indeterminacy** overall.”
- “...**minimum terms** to parole-release eligibility **are not determined by their judicial sentences**, but by the parole board.”
- “There is **no** framework of shared discretion, or **checks and balances**...”
- “The board may **reconsider and change minimum terms** they had previously set.”

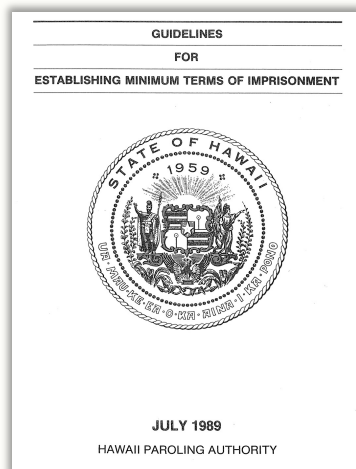
Hawai'i statutes establish prison sentence *maximums* by felony class.

| Felony Grade | Mandatory Stat. Max. |
|-------------------------------|-----------------------------|
| 1 st Degree Murder | Life without parole |
| 2 nd Degree Murder | Life with parole |
| Class A | 20 years |
| Class B | 10 years |
| Class C | 5 years |

HPA uses guidelines, published in 1989 and later modified, for setting the minimum term.

Three levels of severity:

- ❖ Level I (mitigated)
- ❖ Level II
- ❖ Level III (aggravated)



Seven Main Areas of Focus:

- ❖ Nature of the offense
- ❖ Degree of injury or loss
- ❖ Criminal history
- ❖ Character and attitude with respect to criminal activity or lifestyle
- ❖ Efforts made to live prosocial life prior to prison
- ❖ Probation revocation
- ❖ Youth adult offender (HRS Sec. 706-667)
- ❖ Involvement in instant offense

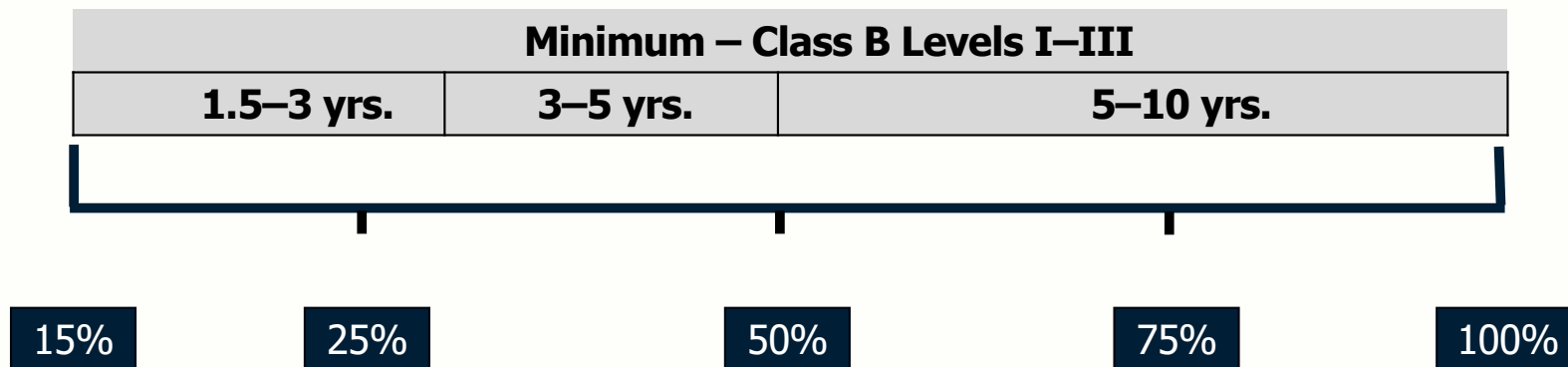
The HPA minimum ranges are broad.

| Felony Grade | Mandatory Stat. Max. | Level I | Level II | Level III |
|-------------------------------|----------------------|---------|----------|-----------|
| 1 st Degree Murder | Life without parole | n/a | n/a | n/a |
| 2 nd Degree Murder | Life with parole | 5–10 | 10–20 | 20–50 |
| Class A | 20 years | 2–5 | 5–10 | 10–20 |
| Class B | 10 years | 1.5–3 | 3–5 | 5–10 |
| Class C | 5 years | 1–2 | 2–3 | 3–5 |

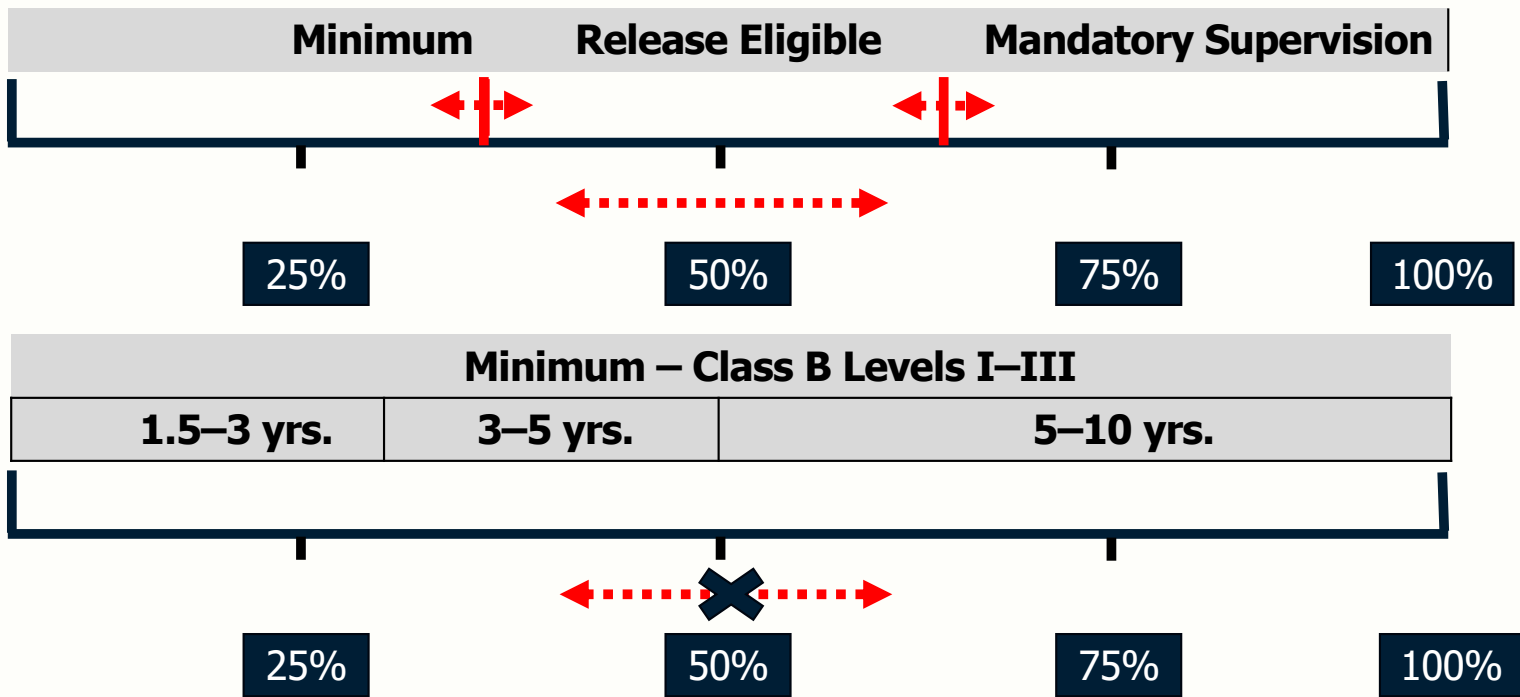
Absolute Minimum Sentence in Relation to Maximum Sentence

| I | II | III |
|-----|-----|-----|
| 10% | 25% | 50% |
| 15% | 30% | 50% |
| 20% | 40% | 60% |

Hawai'i Sentencing and Release System Design



Depicting a 10-Year Sentence in Other Typical Systems and in Hawai'i



Varying rules for time increments

Varying effect of good time or earned time on parole eligible or mandatory release date

Presentation Outline

- I. CSG Justice Center and the HCR 23 Task Force
- II. Hawai'i Context
- III. Sentencing Systems
- IV. Discussion and Next Steps

The HCR 23 mandate requires looking at other state systems.

1. **Examine and make recommendations** regarding existing procedures of the Hawai'i Paroling Authority setting the **minimum terms of imprisonment** to increase efficiency of the procedures.
2. **Study whether parole system models** used by other states might be suited for Hawai'i.
3. **Examine and compare the minimum sentences** issued by the Hawai'i Paroling Authority and the courts to determine whether there are significant differences.
4. **Recommend** whether the administration of justice may be better served by removing the **responsibility of setting minimum sentences** from the Hawai'i Paroling Authority.

Two major structural choices yield a state typology of four system types.

Determinate

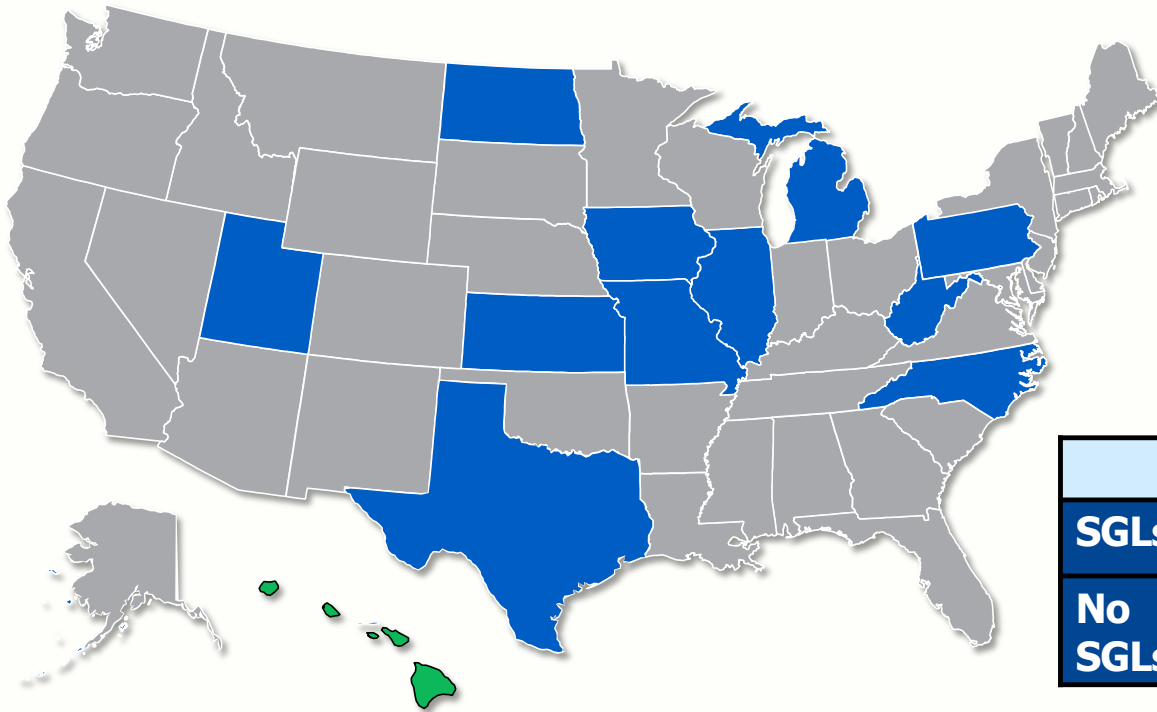
Fixed term that may be reduced by good time or earned time; no parole body; post-release supervision may be included in sentence.

Indeterminate

Judge specifies sentence—min/max or just one—and **parole authority** determines LOS after minimum is reached.

| | Determinate | Indeterminate |
|---------|--|--|
| SGLs | DC, DE, FL, KS , MN, NC , OR, US, VA, WA | AL, AR, MD, MA, MI , PA , TN, UT |
| No SGLs | AZ, CA, IL , IN, ME, NM, OH, WI | AK, CO, CT, GA, HI , IA , ID, KY, LA, MO , MS, MT, ND , NE, NH, NJ, NV, NY, OK, RI, SC, SD, TX , VT, WV , WY |

Eleven states were selected to explain the variation in sentencing systems.



Examples selected to show the following:

- Differences from Hawai'i's system
- Similarities to Hawai'i's system
- Challenges and nuances of different systems

| | Determinate | Indeterminate |
|----------------|--------------------|------------------------|
| SGLs | KS, NC | MI, PA, UT |
| No SGLs | IL | HI, IA, MO, ND, TX, WV |

Sentencing Guidelines in a Nutshell

- ❖ Offense seriousness and criminal history rankings
- ❖ Sentence ranges narrower than statutory minimum and maximum are adopted by a sentencing commission
- ❖ Judges expected to sentence within the guideline range or justify departure
- ❖ Departures subject to appellate review

Kansas Non-drug Offense Sentencing Grid

White = presumptive prison
 Green = presumptive probation
 Blue "border box" = judicial discretion

| SENTENCING RANGE – NONDRUG OFFENSES | | | | | | | | | |
|-------------------------------------|--------------------|-------------------|---------------------------------|-------------------|-----------------------|----------------------|--------------------|-------------------|-------------------------|
| Category → | A | B | C | D | E | F | G | H | I |
| Severity Level ↓ | 3+ Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3+ Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanor | 1 Misdemeanor No Record |
| I | 658 620 592 | 618 588 554 | 586 572 558 | 567 568 540 | 546 524 521 | 526 514 508 | 508 496 484 | 486 478 466 | 465 465 447 |
| II | 498 467 442 | 460 438 418 | 416 406 394 | 400 390 381 | 384 374 365 | 368 360 358 | 354 348 338 | 338 331 328 | 328 317 309 |
| III | 347 338 321 | 328 316 308 | 307 302 296 | 300 294 288 | 288 282 278 | 278 274 268 | 272 268 264 | 264 258 254 | 254 248 241 |
| IV | 272 263 254 | 262 254 244 | 256 251 246 | 248 242 236 | 236 230 224 | 228 224 218 | 222 218 214 | 214 208 204 | 204 198 191 |
| V | 186 180 172 | 178 170 164 | 172 167 162 | 164 158 152 | 152 146 140 | 144 138 132 | 136 130 124 | 128 122 116 | 116 110 104 |
| VI | 146 141 136 | 138 133 128 | 132 127 122 | 124 118 112 | 116 110 104 | 108 102 96 | 100 94 88 | 92 86 80 | 84 78 72 |
| VII | 104 102 100 | 102 100 98 | 100 98 96 | 98 96 94 | 96 94 92 | 94 92 90 | 92 90 88 | 90 88 86 | 88 86 84 |
| VIII | 84 82 80 | 82 80 78 | 80 78 76 | 78 76 74 | 76 74 72 | 74 72 70 | 72 70 68 | 70 68 66 | 68 66 64 |
| IX | 64 62 60 | 62 60 58 | 60 58 56 | 58 56 54 | 56 54 52 | 54 52 50 | 52 50 48 | 50 48 46 | 48 46 44 |
| X | 44 42 40 | 42 40 38 | 40 38 36 | 38 36 34 | 36 34 32 | 34 32 30 | 32 30 28 | 30 28 26 | 28 26 24 |

Determinate SGL systems like Kansas and North Carolina use much shorter maximums to arrive at the same minimum as an indeterminate system like Texas.

Kansas: SGLs dictate maximum sentence and available time credits.

No less than
60 months
w/ good time

Max sent = 71 months

No parole board making release decision, but people must "earn" their way down to the minimum with good behavior.

North Carolina: SGLs dictate minimum and maximum sentence.

Min sentence = **60 months**

Max sent = 84 months

Texas: Judge sets maximum, and statute determines minimum.

Min sentence = **60 months**

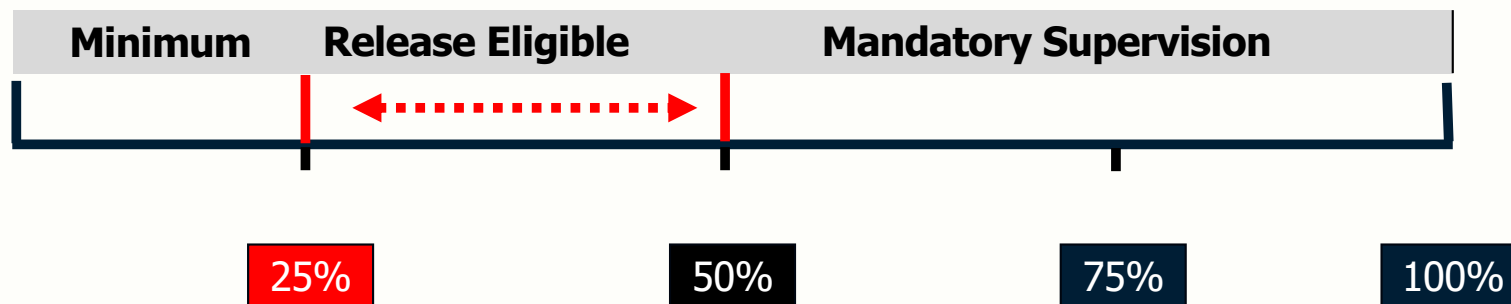
Max sentence = 20 years to fix min at 5

Parole board determines release.

Texas is indeterminate with no SGLs and illustrates how statutory minimums are calculated off the judicial maximum.

1/4 of max for less serious and 1/2 of max for more serious offenses

- ❖ 1:1 good time applies to parole eligibility for less serious offenses
- ❖ Mandatory release to supervision adopted in 1977 to avoid “max outs”
 - ❖ Changed to “discretionary mandatory release,” another parole decision but with more due process



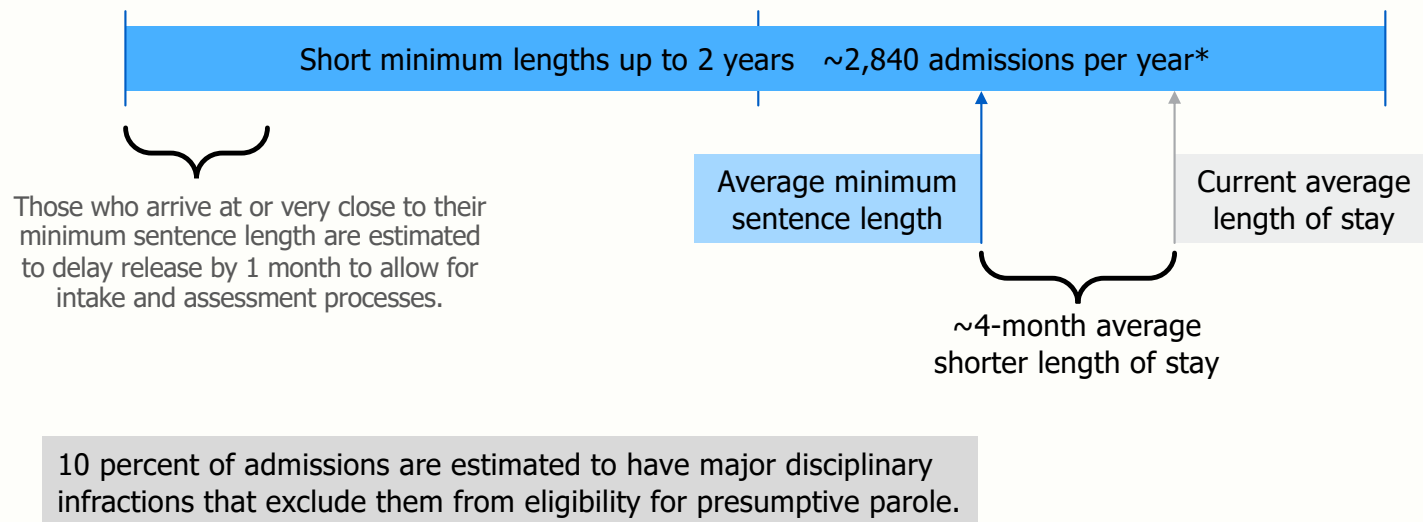
Pennsylvania uses advisory SGLs for judges to set the minimum, but with wide parole discretion.

- ❖ Judge also sets the max, which must be > 2X the min, to preserve parole discretion
- ❖ Lower severity offenses typically have a max 3X to 4X the min and the max can be many multiples of the min, such as “3 months to 24 months” or “6 months to 36 months”
- ❖ Maximum > 2 years = state prison, maximum < 2 years = county prison

| Level | OGS | Prior Record Score | | | | | RFEL | REVOC | AGG/MIT | |
|---------|-----|-------------------------|-------------------------|---------------------------|---------------------------|-------------------------|-------------------------|---------|---------|--------|
| | | 0 | 1 | 2 | 3 | 4 | | | | 5 |
| LEVEL 5 | 14 | 72-SL | 84-SL | 96-SL | 120-SL | 168-SL | 192-SL | 204-SL | SL | ~/12 |
| | 13 | 60-78 | 66-84 | 72-90 | 78-96 | 84-102 | 96-114 | 108-126 | 240 | +/- 12 |
| | 12 | 48-66 | 54-72 | 60-78 | 66-84 | 72-90 | 84-102 | 96-114 | 120 | +/- 12 |
| | 11 | 36-54 | 42-60 | 48-66 | 54-72 | 60-78 | 72-90 | 84-102 | 120 | +/- 12 |
| | 10 | 22-36 | 30-42 | 36-48 | 42-54 | 48-60 | 60-72 | 72-84 | 120 | +/- 12 |
| | 9 | 12-24 | 18-30 | 24-36 | 30-42 | 36-48 | 48-60 | 60-72 | 120 | +/- 12 |
| LEVEL 4 | 8 | 9-16 | 12-18 | 15-21 | 18-24 | 21-27 | 27-33 | 40-52 | NA | +/- 9 |
| LEVEL 3 | 7 | 6-14 | 9-16 | 12-18 | 15-21 | 18-24 | 24-30 | 35-45 | NA | +/- 6 |
| | 6 | 3-12 | 6-14 | 9-16 | 12-18 | 15-21 | 21-27 | 27-40 | NA | +/- 6 |
| LEVEL 2 | 5 | RS-9 P2 (225-250) | 1-12 | 3-14 | 6-16 | 9-16 | 12-18 | 24-36 | NA | +/- 3 |
| | 4 | RS-3 P1 (100-125) | RS-9 P2 (225-250) | RS-<12 P2 (300-325) | 3-14 | 6-16 | 9-16 | 21-30 | NA | +/- 3 |
| | 3 | RS-1 P1 (50-75) | RS-6 P1 (150-175) | RS-9 P2 (225-250) | RS-<12 P2 (300-325) | 3-14 | 6-16 | 12-18 | NA | +/- 3 |
| LEVEL 1 | 2 | RS (25-50) | RS-2 P1 (75-100) | RS-3 P1 (100-125) | RS-4 P1 (125-150) | RS-6 P1 (150-175) | 1-9 | 6-<12 | NA | +/- 3 |
| | 1 | RS (25-50) | RS-1 P1 (50-75) | RS-2 P1 (75-100) | RS-3 P1 (100-125) | RS-4 P1 (125-150) | RS-6 P1 (150-175) | 3-6 | NA | +/- 3 |

Pennsylvania JRI remedied delays in programming caused by short sentences to prison.

Policy Option: Make short prison sentences more predictable and less expensive.

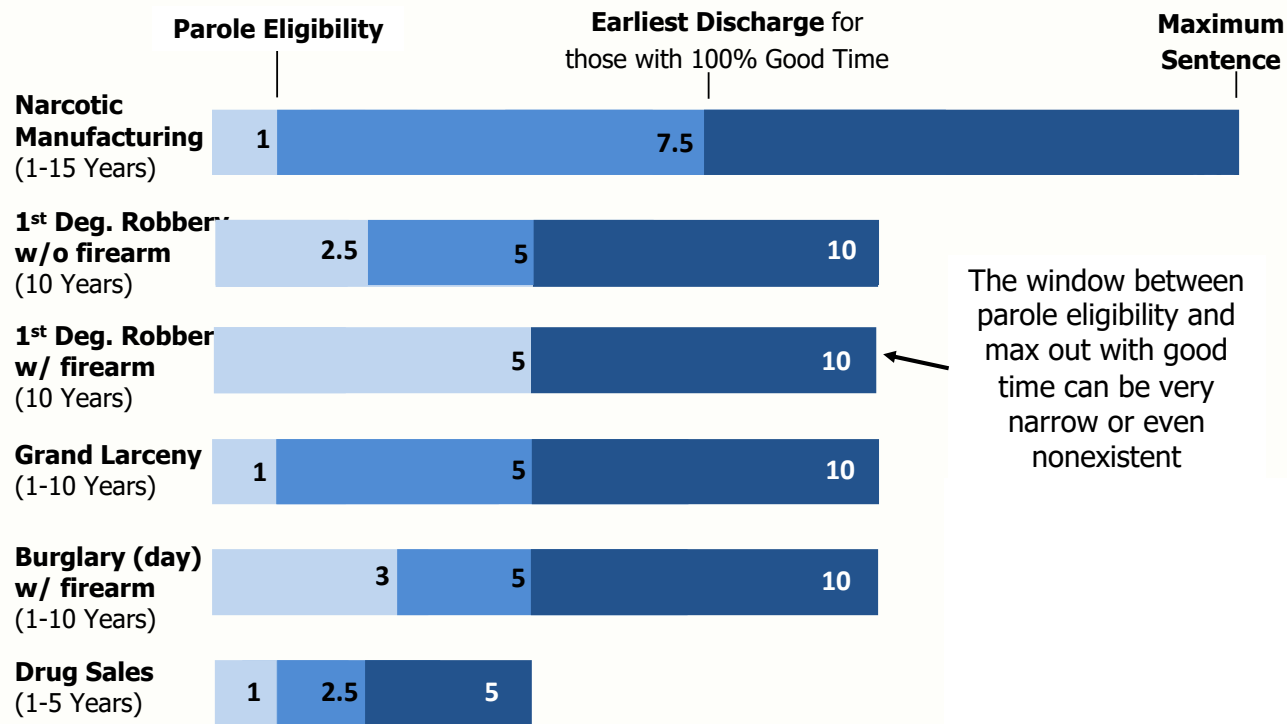


Like Pennsylvania, Michigan uses SGLs to guide judicial minimums and retains wide parole discretion.

Michigan's constitution references the use of an indeterminate sentencing system

- Judges set minimum (via SGLs) and maximum.
 - Under case law and then statute, the min can not exceed 2/3 of the max, preserving parole board discretion.
- “Truth in sentencing” means no good time toward the minimum.
- Parole approval rate is the best predictor of the prison population over time.

West Virginia is indeterminate, without SGLs, and illustrates the complexity of variable minimums and good time, which can lead to a max-out problem.

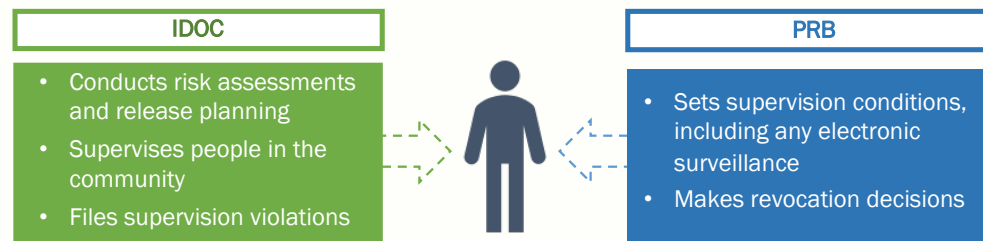


The window between parole eligibility and max out with good time can be very narrow or even nonexistent

Illinois eliminated parole release but retained a Prisoner Review Board to set conditions and adjudicate revocations.

Kansas also uses a PRB in lieu of a parole board but has rigorous SGLs, versus Illinois without SGLs.

What are the Roles of IDOC and the PRB in Mandatory Supervised Release?



What do people need to be successful post-release?

- 1 Reentry planning & programming
- 2 Access to community-based supports
- 3 Effective supervision & revocation policies

Analogous to Hawai'i, the Missouri Parole Board establishes guidelines on minimum time to serve based on offense type and risk of recidivism.

EXAMPLES

Drug and nonviolent offenses range:

- Low risk: 15–20%
- Very high risk: 40–66%

Maximum guideline term for sentence less than 10 years:

- High or very high risk: 66%

Maximum guideline term for sentences from 10 to 30 years:

- Conditional release date

Appendix C

**Drug and Non-Violent Offenses:
C Felonies prior to 1-1-2017; D and E Felonies**

| Sentence (yrs.) | Low Minimum 15% | Low Maximum 20% | Moderate Minimum 20% | Moderate Maximum 30% | High Minimum 30% | High Maximum Cond. Rel. | Very High Minimum 40% | Very High Maximum Cond. Rel. |
|-----------------|-----------------|-----------------|----------------------|----------------------|------------------|-------------------------|-----------------------|------------------------------|
| 1 | 2 | 2 | 2 | 4 | 4 | 8 | 5 | 8 |
| 2 | 4 | 5 | 5 | 7 | 7 | 16 | 10 | 16 |
| 3 | 5 | 7 | 7 | 11 | 11 | 24 | 14 | 24 |
| 4 | 7 | 10 | 10 | 14 | 14 | 32 | 19 | 32 |
| 5 | 9 | 12 | 12 | 18 | 18 | 40 | 24 | 40 |
| 6 | 11 | 14 | 14 | 22 | 22 | 48 | 29 | 48 |
| 7 | 13 | 17 | 17 | 25 | 25 | 55 | 34 | 55 |
| 8 | 14 | 19 | 19 | 29 | 29 | 63 | 38 | 63 |
| 9 | 16 | 22 | 22 | 32 | 32 | 71 | 43 | 71 |
| 10 | 18 | 24 | 24 | 36 | 36 | 84 | 48 | 84 |
| 11 | 20 | 26 | 26 | 40 | 40 | 96 | 53 | 96 |
| 12 | 22 | 29 | 29 | 43 | 43 | 108 | 58 | 108 |

Parole board minimums and the “conditional release” statute govern the range of eligibility for release for many offenses in Missouri.

| Felony Class | Offense Type | Time Served Range Release Based on Risk to Reoffend | |
|--|--|--|--------------------|
| A / B / C A: 10–30 years B: 5–15 years C: 3–10 years | Dangerous Felony Offender | 85–100% | |
| | Previously sentenced to prison and now being sentenced again for a serious offense listed in 558.019 | 3+ prior prison commitments | 80–100% |
| | | 2 | 50–66% / CR |
| | | 1 | 40–66% / CR |
| | Violent Offense | 33–66% / CR | |
| | Nonviolent/DWI Offense | 25–66% / CR | |
| | Drug Offense | 20–66% / CR | |
| D / E D: 1–7 years E: 1–4 years | Violent Offense | 33–66% / CR | |
| | Nonviolent/Drug Offense | 15–66% / CR | |

Other analogous states to Hawai'i are Iowa, Utah, and North Dakota.

Iowa

- Extremely high indeterminacy—people are eligible for discretionary parole release on the day they are admitted to prison.
- Unlike Hawai'i, DOC can reduce maximum lengths of stay to 45 percent of sentence through the award of earned time credits.

Utah

- Utah parole board holds broad statutory power to release people *before* their minimum terms have expired.
- Sentencing courts have no control over the maximum sentences. People arrive with sentences that include the statutory maximum prison terms for their offenses of conviction.

North Dakota

- Some people are immediately eligible for parole, and the board will consider their case within 30–90 days after incarceration.
- Some offenses require a person to serve a minimum term by statute, are subject to truth-in-sentencing laws, or are statutorily ineligible for parole.

Key Points by State

Kansas and North Carolina: Tight SGLs govern dispositions and ranges, and length of time “to do” is 80–85 percent of max.

Texas: Judge sets max. Mins set by statute at $\frac{1}{4}$ max for nonviolent, counting good time, and $\frac{1}{2}$ max for violent, w/o good time.

Pennsylvania: SGLs guide the min. Judges set min and max, and max must be $>2X$ the min. Short sentences to prison require special parole policy.

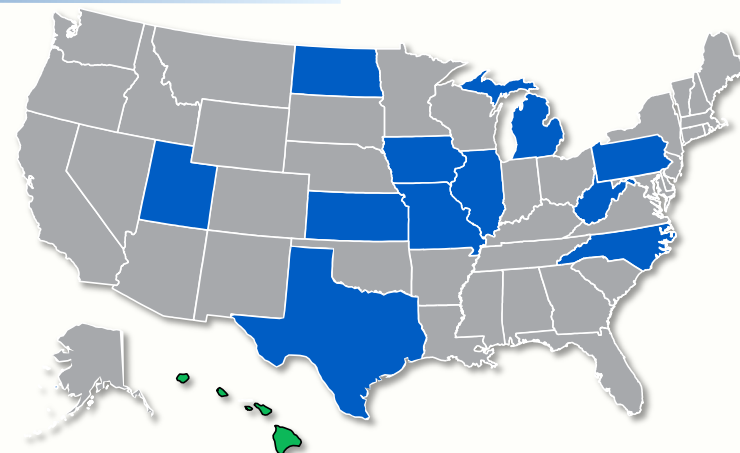
Michigan: SGLs guide the min. Judges set min and max, and min can not exceed $\frac{2}{3}$ max. Prison pop determined by parole rate.

West Virginia: Confusion of variable minimums by statute, plus good time leading to the max-out problem.

Illinois: Eliminated parole but preserved a Prisoner Review Board, with coordination challenges.

Missouri: Minimums for many offenses set by Parole Board rules based on offense type and risk.

Iowa, Utah, and North Dakota: People are generally parole eligible when they reach prison.



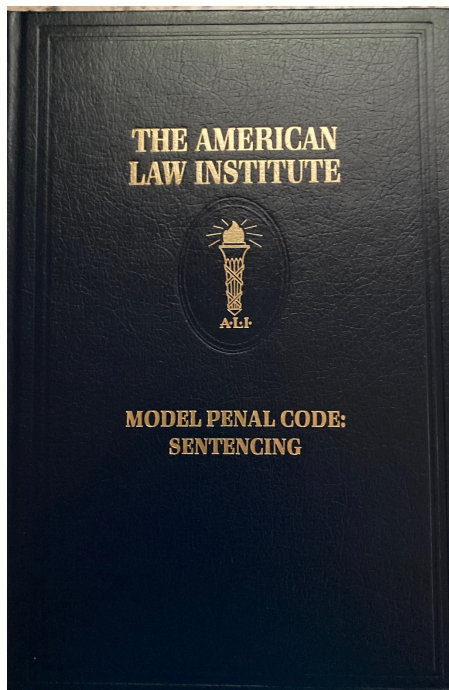
Presentation Outline

- I. CSG Justice Center and the HCR 23 Task Force
- II. Hawai'i Context
- III. Sentencing Systems
- IV. Discussion and Next Steps

Revisiting the HCR 23 Mandate

- 1. Examine and make recommendations** regarding existing procedures of the Hawai'i Paroling Authority setting the **minimum terms of imprisonment** to increase efficiency of the procedures.
- 2. Study whether parole system models** used by other states might be suited for Hawai'i.
 - ✓ Studied how other systems set minimum and maximum sentences in comparison to Hawai'i.
- 3. Examine and compare the minimum sentences** issued by the Hawai'i Paroling Authority and the courts to determine whether there are significant differences.
- 4. Recommend** whether the administration of justice may be better served by removing the **responsibility of setting minimum sentences** from the Hawai'i Paroling Authority.

The American Law Institute's "Model Penal Code: Sentencing" recommendations are not yet fully realized in any state.



- Sentencing commission with real sentencing guidelines and appellate review of departures
- Probation with modern limitations
- Modest good time for those incarcerated
- *No paroling authority, but . . .*
- *Judicial "second look" structure for longer sentences*

The Model Penal Code describes the purposes of sentencing in two ways, *individually* and *systemically*.

Sentencing Individuals

- (i) Proportionality based on severity of offense, harms to victims, and blameworthiness of the defendant
- (ii) Rehabilitation, general deterrence, incapacitation of dangerous people, restitution, preservation of families, and reintegration into the law-abiding community
- (iii) Sentences no more severe than necessary
- (iv) Avoid sanctions that increase the likelihood of recidivism

The Model Penal Code describes the purposes of sentencing in two ways, individually and *systemically*.

Administration of the Sentencing System

- (i) Preserve judicial discretion to individualize sentences within a framework of law.
- (ii) Produce sentences that are uniform in their reasoned pursuit of the individual sentencing goals [prior page].
- (iii) Eliminate inequities in sentencing across population groups.
- (iv) Ensure adequate resources to carry out sentences.
- (v) Ensure humane administration.
- (vi) Promote research on sentencing policy.
- (vii) Increase transparency of sentencing and corrections.

H.R.S. §706-606 Factors to Be Considered in Imposing a Sentence

The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
 - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
 - (b) To afford adequate deterrence to criminal conduct;
 - (c) To protect the public from further crimes of the defendant; and
 - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Policy inquiries for discussion: what problem(s) are we trying to fix?

1. Transparency

- Do the defendant, victim, and practitioners know what to expect?

2. Consistency in decisions

- Are the judicial and HPA's decisions guided by best practices and clearly communicated?

3. Proportionality of punishment with severity of offense

- Do the minimum and maximum sentence lengths appropriately respond to the severity of the offense?

4. Reduce disparities in sentencing

- Are sentences applied consistently across demographic or geographic characteristics?

5. Reduce Recidivism

- Do sentencing decision-makers have access to data and information about recidivism to guide policy and practice changes?

Ideas for Data Analysis

- Minimums by HPA
 - By offense class over time
 - Compared to the guidelines
 - Compared to judicial minimums
 - Minimum hearings proportion of HPA caseload
- Prison population over time
 - By HPA minimum setting
 - By HPA release approval rates and length-of-stay trends
- What else should we be analyzing?



What can we do to provide additional information and context about the Hawai'i system?

- People or organizations to meet with?
- Activities to engage in?
- Observations to conduct?
- Research or reports to review?



Thank You!

Join our distribution list to receive updates and announcements:

<https://csgjusticecenter.org/resources/newsletters/>

For more information, please contact:

Jennifer Kisela at jkisela@csg.org

Carl Reynolds at creynolds@csg.org

This project was supported by Grant No. 2019-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

© 2023 The Council of State Governments Justice Center

Citations for slide 14

- *All Hawaii News*. "State Seeks Corrections Officers as OT Costs Spike, GPS Sends Another Tourist into the Sea, Honolulu Mulls Resident Property Tax Breaks, More News from All the Hawaiian Islands." May 31, 2023. <https://www.allhawaiinews.com/2023/05/state-seeks-corrections-officers-as-ot.html>.
- Davis, C. "Prison Reform Advocates Outraged over \$10M Allocated for New OCCC." May 10, 2023. <https://www.hawaiinewsnow.com/2023/05/10/prison-reform-advocates-outraged-over-10m-allocated-new-occc/>.
- Dayton, K. "Hawaii's Prison Medical Records System Has Reached a Point of 'Absolute Crisis'." *Honolulu Civil Beat*. December 16, 2022. <https://www.civilbeat.org/2022/12/hawaiis-prison-medical-records-system-has-reached-a-point-of-absolute-crisis/>.
- Dayton, K. "Official Reports of Drug Use at Hawaii's Largest Prison Are Challenged by Staff." *Honolulu Civil Beat*. March 7, 2023. <https://www.civilbeat.org/2023/03/official-reports-of-drug-use-at-hawaiis-largest-prison-are-challenged-by-staff/#:~:text=Official%20Reports%20Of%20Drug%20Use%20At%20Hawaii's%20Largest%20Prison%20Are%20Challenged%20By%20Staff,-9&text=Staff%20allege%20that%20the%20number,is%20higher%20than%20official%20figures.&text=Reading%20time%3A%204%20minutes>.
- Indursky, J. "Hawaii Inmates Are Kept Behind Bars to Complete Programs They Can't Get Into." *Honolulu Civil Beat*. August 8, 2023. <https://www.civilbeat.org/2023/08/hawaii-inmates-are-kept-behind-bars-to-complete-programs-they-cant-get-into/#:~:text=Many%20parole%20requests%20were%20denied,various%20facilities%2C%20the%20report%20found>.
- Kawano, L. "These Inmates Have Access to Better Facilities. The Price? They're 3,000 Miles from Home." *Hawaii News Now*. December 15, 2022. <https://www.hawaiinewsnow.com/2022/12/15/these-hawaii-prisoners-have-access-better-facilities-price-theyre-3000-miles-home/>.