



House Concurrent Resolution 23 Task Force Report

Final report from the HCR23 Task Force examining existing procedures of the Hawai'i Paroling Authority for setting minimum terms of imprisonment.

Authored by the Hawai'i Correctional System Oversight Commission,
Council of State Governments, and the Criminal Justice Research Institute.
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Introduction

During the 2023 Legislative Session, House Concurrent Resolution No. 23 was passed requesting the Hawai'i Correctional System Oversight Commission to convene a task force to examine and make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting the minimum terms of imprisonment. The goal of the resolution was to explore parole models from other states and determine whether minimum sentencing responsibilities should be removed from the Paroling Authority. The task force included representatives from various sectors, including the judiciary, executive branch, legislature, and victims' advocates.

[House Concurrent Resolution 23](#) (HCR23, HCR23 HD1 SD1) was introduced by Representative Gregg Takayama and passed with amendments by the Senate Committee on Public Safety and Intergovernmental and Military Affairs (PSM), the Senate Committee on Judiciary (JDC), and the House Committee on Judiciary & Hawaiian Affairs (JHA) during the 2023 legislative session. The task force was created whereas:

- ▶ Hawai'i is one of thirty-three states that primarily utilizes an indeterminate sentencing system where courts can order a maximum and minimum term, or both, and then actual time served is determined by a parole board; and
- ▶ Under existing law, the Hawai'i Paroling Authority retains the authority to set the minimum term of imprisonment a prisoner must serve before being eligible for parole; and
- ▶ This creates a two-step process in which the presiding judge determines the maximum term for a defendant convicted after reviewing the victims' statements, presentencing reports, criminal history, and other factors; and
- ▶ The Hawai'i Paroling Authority then holds another hearing to determine the minimum term before a defendant is eligible for parole; and
- ▶ This two-step process is redundant and time consuming for the Hawai'i Paroling Authority who spends approximately thirty percent of its time on the post-conviction minimum sentencing process; and
- ▶ Of the thirty-three states using an indeterminate sentencing system, Hawai'i is the only state that requires a parole board to determine the minimum sentence of imprisonment.

For those reasons, the House of Representatives of the Thirty-second Legislature of the State of Hawai'i, Regular Session of 2023, and the Senate concurring, requested that the Hawai'i Correctional System Oversight Commission convene a task force to 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.

The resolution requested that the task force:

- 1) study whether parole system models utilized by other states might be suited for Hawai'i; and
- 2) examine and compare the minimum sentences issued by the Hawai'i Paroling Authority and the courts to determine whether there are significant differences; and
- 3) recommend whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority, thereby enabling it to focus on determining and assisting prisoners' fitness for parole and supervision of parolees.

The resolution further requested that members or designees from specific agencies be included in the task force. The HCR23 Task Force was comprised of the following members:

- ▶ The Chair of the Hawai'i Correctional System Oversight Commission or the Chair's designee, who shall serve as the chairperson of the task force – *Mark Patterson, Chair of HCSOC*;
- ▶ The Chief Justice of the Hawai'i Supreme Court or the Chief Justice's designee – *Honorable Kevin Souza, First Circuit Court Judge*;
- ▶ The Attorney General or the Attorney General's designee – *Lisa Itomura, Deputy Attorney General*;
- ▶ The Director of Health or the Director's designee – *Brenda Bauer-Smith, Court Examiner Supervisor*;
- ▶ The Director of Public Safety or the Director's Designee – *Tommy Johnson, Director of Public Safety*;
- ▶ The Chairperson of the Board of Trustees of the Office of Hawaiian Affairs or the Chairperson's designee – *Kū'ike Kamakea-Ōhelo ('Oia), Director of Ōiwi Wellbeing and 'Āina Momona*;
- ▶ The Chair of the Hawai'i Paroling Authority or the Chair's designee – *Fred Hyun, Chair of HPA*;
- ▶ The Public Defender or the Public Defender's designee – *Ben Lowenthal, Deputy Public Defender*;
- ▶ One member of the House of Representatives, as appointed by the Speaker of the House of Representatives – *Representative Mark Hashem*;
- ▶ One member of the Senate, as appointed by the President of the Senate – *Senator Glenn Wakai*;
- ▶ The Prosecuting Attorney, or the Prosecuting Attorney's designee, of each county;
 - Hawai'i County – *Kelden Waltjen, Prosecuting Attorney*

- Kauai County – *Keola Siu, First Deputy*
- Maui County – *Andrew Martin, Prosecuting Attorney*
- Honolulu County – *Steve Alm, Prosecuting Attorney*
- ▶ A representative of the Crime Victim Compensation Commission – *Pamela Ferguson-Brey, Executive Director*
- ▶ Four representatives appointed by the Hawai'i Association of Criminal Defense Lawyers, including one representative from each county;
 - Hawai'i County – *Andrew Kennedy*
 - Kauai County – *Craig DeCosta*
 - Maui County – *Brandon Segal*
 - Honolulu County – *Myles Breiner*
- ▶ One member of the public who is a victim of domestic violence and has knowledge and expertise with the criminal justice system appointed by the Director of Public Safety – *S.K.*; and
- ▶ One member of the public who is a victim of sexual assault and has knowledge and expertise with the criminal justice system appointed by the Director of Public Safety – *M.R.*

Additionally, the Judiciary and Department of Corrections and Rehabilitation were requested to provide administrative support to the task force; and the task force received assistance from the Research and Statistics Branch, Crime Prevention and Justice Assistance Division, Department of the Attorney General (*Dr. Michelle Masters, Research Analyst*) and the Criminal Justice Research Institute (*Dr. Erin Harbinson, Director; Dr. Samuel Choi, Research Analyst; Mariah McCaskill, Secretary; Aerielle Reynolds, Research Analyst*).

Lastly, the task force was requested to submit any request for proposed legislation, supporting documents, information, and materials deemed necessary, to the Legislative Reference Bureau no later than August 1, 2024, and submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than October 21, 2024.

The task force had six, 3-hour meetings enabling a thorough review process. The following report includes details of the process, partnerships, research and information examined, the voting and decision-making process, and the conclusion of the task force. Due to the plethora of information the task force needed to review; the Commission requested an extension from Representative Takayama which was approved. No legislation was submitted by the task force.

Partnerships

The HCSOC partnered with the [Council of State Governments \(CSG\) Justice Center](#), the [Criminal Justice Research Institute \(CJRI\)](#), and the [Department of Attorney General](#) to assist with this task force.

The CSG Justice Center provided the following assistance to the task force:

- ▶ Provided context about parole systems across the United States.
- ▶ Conducted an analysis of Hawai'i's criminal justice data.
- ▶ Reviewed existing corrections, court, and other criminal justice policies and procedures.
- ▶ Engaged and collected input from a broad range of state and local stakeholders in the criminal justice system.
- ▶ Presented findings from the analyses to the task force and begin developing policy options.
- ▶ Produced a memorandum summarizing the analyses and policy options.

The Criminal Justice Research Institute (CJRI) was established by Act 179 (2019) following a recommendation from the Criminal Pretrial Task Force. The state of Hawai'i recognized a need to develop a research organization that could examine all aspects of the criminal justice system to help the state connect research and data in a comprehensive way. The criminal justice system is made up of several agencies, organizations, data systems, files, and rules. To study the state's criminal justice system and provide information on trends and evaluations, researchers must find ways to link these sources together (HRS § 614). As a research entity created to work in a statewide context, CJRI was listed in the resolution to provide support for the task force and as such, developed a research plan to work within the state's criminal justice landscape to provide data for the task force.

The Hawai'i Criminal Justice Data Center (HCJDC) is an agency of the Department of the Attorney General (AG) in the State of Hawai'i and is responsible for the statewide criminal history record information system (CJIS-Hawai'i), the statewide Automated Fingerprint Identification System (AFIS), the statewide Sex Offender and Other Covered Offender Registry, and the Adult Criminal Conviction Information Web Site (eCrim).

In terms of collecting and analyzing data, the Research and Statistics Branch of the Crime Prevention and Justice Assistance Division (CPJD), provided research staff and supported CJRI in data collection and analysis. The data collection and analysis were accomplished through partnerships with CJRI, CSG, and the divisions within the AG's office. Additional details of this are provided in their respective sections.

Council of State Government Findings

Examining Minimum Sentencing Policies in Hawai'i

The Hawai'i Paroling Authority (HPA) is primarily responsible for setting the minimum amount of time a person must serve in prison before becoming eligible for parole. This decision is made within six months of the individual's admission to prison. Once the person has served the minimum term, the HPA evaluates whether to grant parole at that point. Additionally, the HPA has the authority to reduce a previously set minimum term as a reward for prosocial behavior demonstrated by the individual while in prison.

HCR 23 directed the Hawai'i Correctional System Oversight Commission (HCSOC) to convene a working group to do the following:

1. Study whether parole system models used by other states might be suited for Hawai'i.
2. Recommend whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority.
3. 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.¹

The Council of State Governments (CSG) Justice Center provided HCSOC with technical assistance to meet these objectives, with funding and support provided by the Bureau of Justice Assistance through the Justice Reinvestment Initiative (JRI) Assessment Center (JAC). BJA is a component of the Department of Justice's Office of Justice Programs. Specifically, the CSG Justice Center provided four presentations to the Task Force:

1. [HCR 23 Task Force - The CSG Justice Center \(Sep. 12, 2023\)](#)
Background on various state systems for sentencing and release from prison
2. [HCR 23 Task Force - The CSG Justice Center \(Nov. 2, 2023\)](#)
Constitutional and statutory framework for each of the roles represented on the task force (judges, prosecution, defense, HPA, victims, etc.)
3. [HCR 23 Task Force - The CSG Justice Center \(June 6, 2024\)](#) Common features of states using parole, statutory minimums used in Hawai'i, litigation involving HPA minimums, and data analysis based on HPA

¹ A fourth requirement in HCR 2023 could not be addressed due to lack of data: examine and compare the minimum sentences issued by the Hawai'i Paroling Authority and the courts to determine whether there are significant differences.

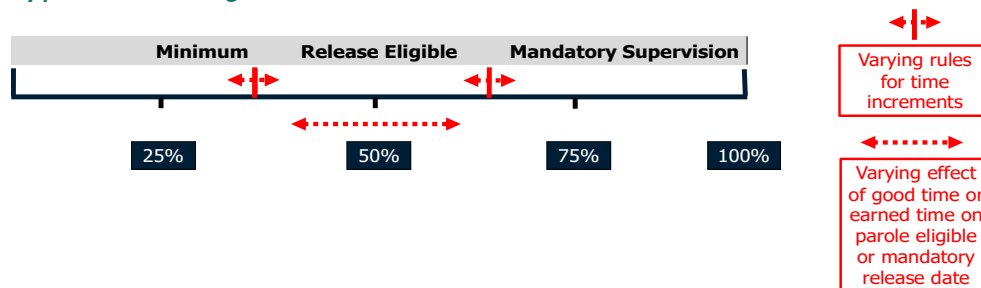
annual reports

4. [HCR 23 Task Force - The CSG Justice Center \(Sep. 12, 2024\)](#) (Sep. 12, 2024) Data analysis of 18 years of Department of Corrections and Rehabilitation (DCR) administrative data

The following are key points from these presentations:

- ▶ In 2023, among the 34 states with paroling systems, it was not uncommon for parole boards to have authority over setting minimum terms and granting parole. In 6 states, parole boards had some authority to set minimum terms, typically following fixed rules outlined in board policy.
- ▶ Hawai'i is one of only five states that do not provide time credits to individuals serving prison sentences.²This means there are no “good time” credits for consistent good behavior or “earned credits” for completing programs or reaching specific milestones. In Hawai'i, individuals must serve their full sentence day-for-day up to the maximum term, with only the Hawai'i Paroling Authority (HPA) having the discretion to adjust the time served.
- ▶ In most state systems that use parole (excluding Hawai'i), the sentence length is determined either by a sentencing judge or within a statutory range. The sentence must include the maximum term and may also include both minimum and maximum terms. In these systems, a paroling authority decides the actual length of time a person serves in prison after they reach the minimum and become eligible for parole (represented by the red vertical line on the left below). Additionally, “good time” or “earned time” credits can reduce the time served, potentially leading to a mandatory release before the maximum term (represented by the vertical red line on the right below).

Typical Paroling State Sentence Schema



² The others are Idaho, Michigan, Montana, and Wisconsin. See Reitz, K., Rhine, E., Lukac, A., & Robin Institute, *American Prison Release Systems* (Minneapolis, MN: University of Minnesota, 2022), https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-05/american_prison-release_systems.pdf.

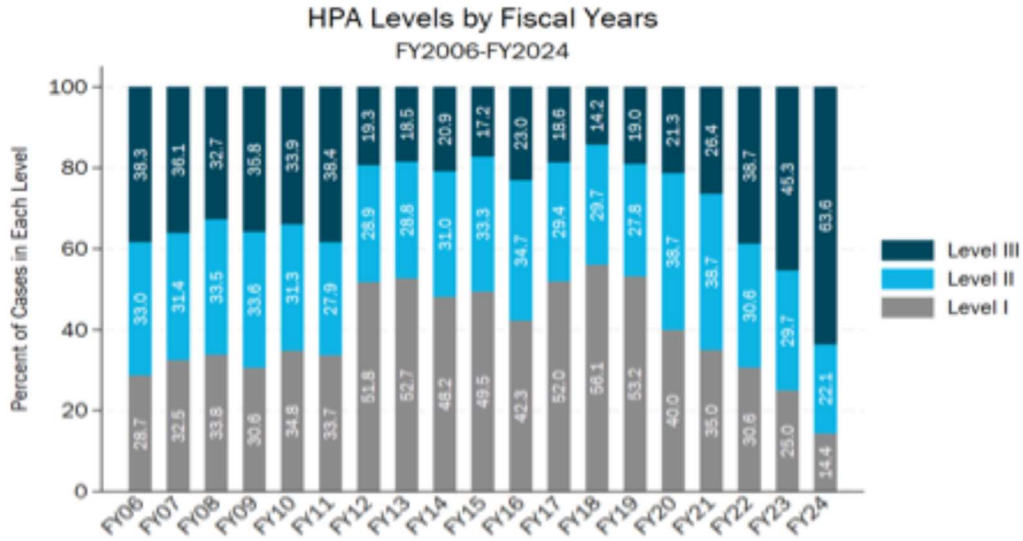
- ▶ Hawai'i uses statutory “fixed minimums” in two situations: cases that include the use of firearms and cases that involve repeat offenses.
- ▶ Analysis of 18 years of Department of Corrections and Rehabilitation (DCR) administrative data showed that a higher proportion of people are receiving a Level III (aggravated) minimum term than in prior years. This has resulted in more people spending longer periods of time in DCR custody prior to reaching eligibility for parole release.³
- ▶ As shown below, in FY 2024 there were fewer Level I outcomes and significantly more Level III outcomes than in any prior year in the analysis.⁴

³ Admissions data was provided by the (DCR) for January 2000 to May 2024. The DCR data included all pretrial admissions, misdemeanor and felony sentence admissions, as well as admissions due to revocations of probation or parole. From this large data file of over 200,000 cases, a cohort was created of people admitted to prison to serve a felony sentence either as a new commitment or as a probation revocation. Any decisions by HPA that were made following a parole revocation had to be excluded because it was unclear in the data whether a new sentence had been imposed. Additionally, data from CY 2000 to CY 2004 was excluded, as well as data from CY 2024. The earlier years were unreliable in terms of data accuracy, and the 2024 sample year was incomplete. The analysis also excluded outlier cases, defined as people convicted for life sentences and for people whose maximum sentence length exceeded the statutory maximum.

The goal of the second round of data analysis was to determine if there has been a change over time in the setting of minimum terms for people convicted of felony offenses and sentenced to prison. The analysis involved calculating the minimum amount of time to serve and then categorizing cases into the three HPA minimum term levels based on offense severity and sentence length. Due to data limitations, the final analysis was limited to providing a historical trend of minimum terms set by HPA from 2005 to 2023.

It was not possible to replicate the HPA process of setting minimum terms for each offense in the sentencing record. Only the most serious offense was available in the DOCR data, along with the severity level and sentence length associated with the most serious offense available, to calculate estimates of minimum terms. No additional data was available that would have enabled a more robust analysis. The lack of a complete criminal history for each case restricted our ability to incorporate one of the most significant factors into the analysis of how minimum terms are determined. While it was possible to estimate an individual's prior number of admissions using the DOCR data, this approach potentially biases older cases in the data. Further, risk and needs data were not available, nor was programming participation included.

⁴ Analysis of Hawai'i Department of Corrections and Rehabilitation data conducted by The Council of State Governments Justice Center, August 2024.



- ▶ The length of minimum sentences has also increased over time. On average, people serve over 50 percent of their maximum sentence before parole eligibility, regardless of felony class.⁵
- ▶ Case law summarized in the Appendix demonstrates that the courts have been regularly involved in regulating HPA minimum setting, as it implicates due process of law.

⁵ Ibid.

Criminal Justice Research Institute Findings and Methods

Summary of Findings Presented to the Task Force

Analysis Approach

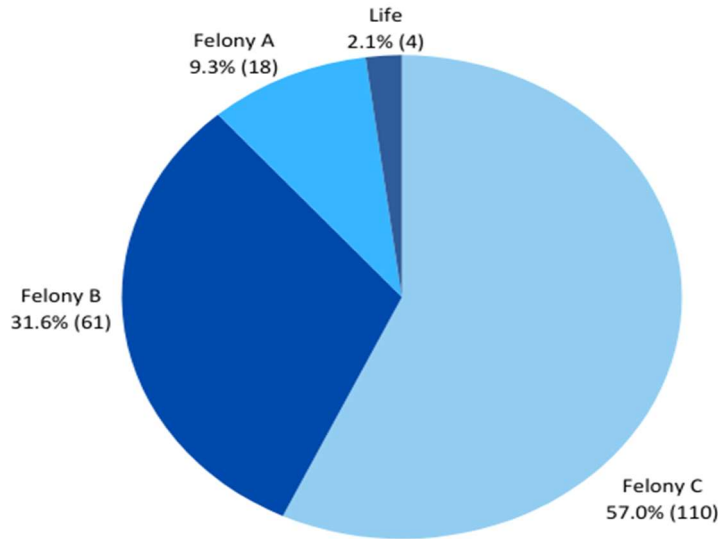
Data was analyzed with descriptive statistics using means, medians, modes, ranges, frequencies, and percentages. Sentenced individuals were the primary unit of analysis. If someone was convicted of more than one offense, their most serious offense classification was used. One set of analyses provided statistics for the twelve most frequent crimes and analyzed data across all convictions—as a single individual could be convicted of multiple crimes.

Findings

The sample (described below) ultimately consisted of 193 sentenced individuals whose minimum term hearing was held between January 2023 and June 2023. Sample characteristics were:

- Males comprised the vast majority ($n = 179$, 92.8%).
- The mean age was 39.8 years (range = 22-69 years).
- Hawaiians/part-Hawaiians were the largest group at a little over a third of the sample ($n = 68$, 35.4%), followed by Whites ($n = 39$, 20.7%).
- A little over two-thirds of the individuals committed the offense(s) related to their minimum term hearing in the City and County of Honolulu ($n = 123$, 64.8%).
- A majority of the individuals were on probation prior to their minimum term hearing ($n = 115$, 59.6%). A few individuals were on parole ($n = 9$, 4.7%).
- Over a third of individuals scored as high on the LSI-R ($n = 74$, 38.3%), followed by individuals who scored as medium ($n = 48$, 24.9%).
- Among the 193 individuals there were a total of 634 convictions comprised of 73 different offenses.
- Promoting a dangerous drug in the third degree, a class C felony, was the most frequently occurring offense in the sample ($n = 78$, 12.3%).
- There was an average of 3.2 convictions per person.
- For a little over half the individuals in the sample, class C felony was the most serious offense classification (57.0%), followed by class B felony, class A felony and Life with the Possibility of Parole.

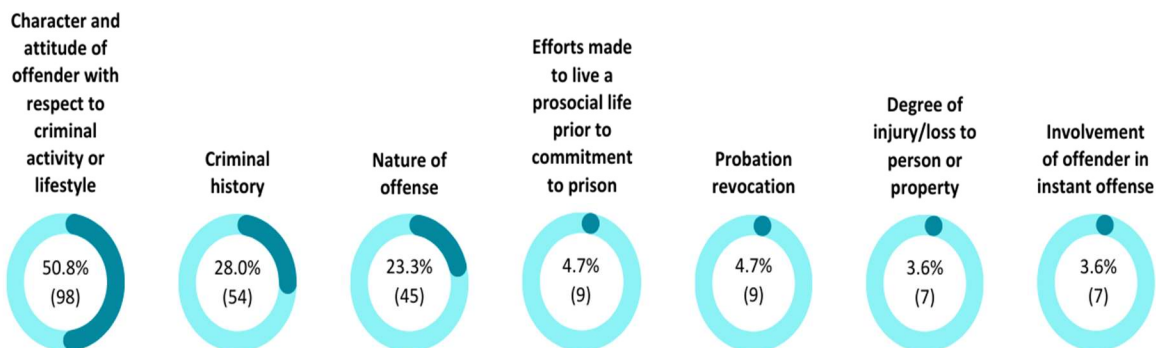
Most Serious Offense by Felony Classification of Sentenced Individuals with Minimum Term Hearing January - June 2023 (N = 193)



In addition to those characteristics, data on HPA’s policy to set minimum terms was examined. The HPA guidelines policy specifies seven criteria for board members to consider when setting a punishment level for a minimum term. HPA stated they recorded the most applicable criteria in setting a minimum term in their files. File reviews resulted in these findings:

- One to three criteria were selected per individual, with an average of 1.2 criteria recorded per individual.
- The criterion “character and attitude of offender with respect to criminal activity or lifestyle” was the most frequently recorded (*n* = 98, 50.8%), followed by “criminal history” (*n* = 54, 28.0%), and “nature of offense” (*n* = 45, 23.3%).

Frequency of HPA Criteria Used to Set Minimum Terms January - June 2023



*Some cases recorded more than one criteria from HPA’s guidelines policy, and therefore one case may have been counted more than once in the infographics presented here.

- Across the seven criteria, Level III punishments were selected most often, with Level III “character and attitude of offender with respect to criminal

activity or lifestyle” being selected most frequently, followed by Level III “criminal history,” and Level III “nature of offense.”

- Average minimum terms were 6-11 percentage points over 50% of the maximum term for all felony offense severity levels.
 - Class C felonies averaged 3.1 years, or 61.4% of the five-year statutory maximum.
 - Class B felony minimums averaged 6.0 years, or 59.5% of the 10-year statutory maximum.
 - Class A felonies (*n* = 18) averaged 11.3 years long, or 56.7% of the 20-year statutory maximum.
 - Life with the possibility of parole felonies (*n* = 4) averaged 28.8 years, or 57.5% of the 50-year minimum term guideline range maximum.

HPA Average Minimum Terms by Felony Classification Set Between January - June 2023 Relative to Statutory Maximum (N = 193)



*Indicates small sample sizes

Research Questions

The resolution outlined two potential areas where quantitative research could illuminate policies and practices around minimum terms for the task force:

- ▶ “BE IT FURTHER RESOLVED that the task force is requested to examine and compare the minimum sentences issued by the Hawai`i Paroling Authority and the courts to determine whether there are significant differences; and
- ▶ BE IT FURTHER RESOLVED that the task force is requested to recommend whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the Hawai`i Paroling

Authority, thereby enabling it to focus on determining and assisting prisoners' fitness for parole and supervision of parolees.”⁶

Research staff determined how the above focus areas could be operationalized by identifying the questions and data needed to measure and evaluate these focus areas. Additionally, research staff identified data sources that could address these questions in addition to the limitations or gaps that prevented them from being answered. The first topic area outlined above was not pursued, as HPA board members are the only people who set minimum terms in Hawai'i (with a few exceptions), and therefore there are no sentences from the courts to compare to at this time. The second topic area, which focuses on understanding the administration of justice, would require an outcome study, which could not be accomplished within the timeframe of the task force.

- ▶ **What are some of the trends around minimum terms and how might they vary over time and why might they vary?** While HPA provides the average minimum terms each year in annual reports, it is unclear how these trends have changed over time and what factors might be impacting these trends. Data from HPA was analyzed from six months of minimum term hearings to collect more information on sentencing related factors including offense classification, offense type, number of convictions at sentencing, prior supervision status, risk and needs assessments, and demographics. Additionally, data was collected from the DCR on minimum terms over a fifteen-year period to examine trends over time. These trends allow the state to monitor changes and establish benchmarks, which was analyzed by CSG.
- ▶ **How does HPA's policy for Guidelines on Setting Minimum Terms impact the minimum terms set?** Since HPA has a policy that outlines criteria to set minimum terms, data was collected to explore how the policy might relate to the decisions made by HPA board members in practice. Data on the criteria most applicable to setting a punishment level were collected to examine this administrative policy.

Research Methods and Data Collection

With the assistance of HPA, a list was generated of minimum term hearings that were held from January 1, 2023, through June 30, 2023. From this list, 193 individuals were identified as having a minimum term hearing and included in the study. HPA staff pulled these files in order for the research team to go on-site, review, code, and enter data into spreadsheets. These paper files included

⁶ H.C.R. 23, H.D. 1, S.D. 1. Thirty-Second Legislature, 2023 Regular Session. (Hawai'i 2023). https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR23_SD1_.htm

information on the background of the case the board members reviewed before hearings, such as criminal history information and conviction information, but also included different documents that record the HPA board member decisions to set terms, and explain the criteria used to set them. Research staff reviewed these files, some of which contained hundreds of pages of information. Therefore, this data was collected at a smaller scale (smaller sample and fewer variables) due to time constraints.

A data collection protocol was developed to ensure research staff were reviewing the files and coding information accurately for analysis. All three staff who collected this data had in-depth knowledge of the criminal justice system and the minimum terms process, and experience coding data for research. Additionally, the CJRI director reviewed the data collection protocol and a sample of files and data entry for quality assurance purposes. This approach to data collection was undertaken because HPA does not have a case management system that can extract electronic files of data for research purposes.

Originally, the research team arrived at the HPA with a list of several variables of interest to collect during file review. After a few days on-site, the team narrowed its information to ensure data collection would occur within the task force time frame. One of the main challenges they faced was the lack of systematic tracking of certain information, which meant the only way to collect it was to read through several pieces of information to code it. This is one of the limitations of collecting data through case file review in agencies. In the end, The research staff focused on collecting information most relevant to the setting of minimum terms. In sentencing research,⁷ many studies examine demographics, instant offense information (i.e., offense at conviction), and criminal history variables in relation to sentencing outcomes. Additionally, data related to the minimum terms policy used by the HPA board was prioritized.

Data

The research team collected demographic information for individuals who had minimum term hearings including age, sex, race and ethnicity, and county of offense. Data for all the study's demographic variables were obtained from the individual's criminal history record. The county of offense was obtained from the CJIS criminal history records.

⁷ Ulmer, J. T. (2012). Recent Developments and New Directions in Sentencing Research, *Justice Quarterly*, 29:1, 1-40.

The research team also collected criminal justice status and legal characteristics information for people in the study, including each offense they were convicted of that resulted in the minimum term hearing (also called the instant offense), prior community supervision status (i.e., being on probation or parole at the time of their conviction), and their risk to reoffend (as determined by their *Level of Service Inventory - Revised* risk level). Offense related information, including the HRS statute and offense description, as well as offense severity level, were obtained from the individual's criminal history record and/or notice and order of fixing minimum terms of imprisonment. Prior community supervision status was obtained from orders of resentencing and/or revocation documents. LSI-R risk level was obtained from the individual's prescriptive plan or their risk assessment scoring sheet.

Term length information, including statutory maximum terms and minimum terms as determined by HPA, were obtained from an individual's notice and order of fixing minimum terms of imprisonment. Additionally, criteria that HPA board members found most applicable to setting the minimum term, was obtained from an individual's minimum term sentencing scoring sheet. This criterion relates to HPA's policy, Guidelines on Setting Minimum Terms.

Summary of Data Findings from CSG and CJRI Data Analyses

- ▶ **In recent years, the average minimum term has been set at more than halfway to the statutory maximum across offense classifications.**

This finding was consistent in both studies.

- Of the 193 people included in the HPA data, people convicted of a class C felony as their most serious offense received a minimum term set at 61.4% of the statutory maximum and those convicted of a class B felony received a minimum term set at 59.5%.
- In the CSG data analysis, between FY 21 - FY 24, people convicted of a class A felony received a minimum term set at 64.8% of the range, those convicted of a class B felony received a minimum set at 55.6% of the range, and those convicted of a class A felony received a minimum term set at 54.0% of the range.

- ▶ **The distribution among levels of punishment stayed relatively consistent over time until FY 2018, when Level III outcomes for cases increased. In FY2022, level III punishment had become the most frequent outcome and continued to rise into 2024 where it represented 63.6% of cases.**

- ▶ **The “character and attitude of offender with respect to criminal activity or lifestyle” is the most relevant factor used to set a minimum term by HPA board members.**

HPA board members can refer to an agency policy that lists seven criteria for setting minimum terms and within each criterion, additional guidance is provided to structure decision-making. The “character and attitude” criterion is one of the more subjective criteria and would be difficult to evaluate how often board members adhere to HPA policy in setting minimum terms. Some of the other criteria, such as criminal history, provide more objective guidance in applying the criterion to a minimum term and could be evaluated.

- ▶ **About two-thirds of individuals who go to HPA for a minimum term hearing are at moderate or higher risk to reoffend, indicating that a significant amount of the prison population requires prison programming and treatment in order to prepare them for release.**

The minimum amount of time that a person is required to spend in prison needs to be balanced with several competing goals of sentencing. With regard to rehabilitative goals, higher risk individuals need enough time to

complete rehabilitative programming before being eligible for release, while lower risk individuals should not be incarcerated for longer than necessary, as this could worsen criminogenic risk factors.

- ▶ **Most people who are sentenced to prison and have a minimum term hearing are convicted of a class C felony as their most serious offense, followed by class B felony, then class A.**

In part, this is expected because most arrests and convictions are for class C felonies, while violent and serious crimes are committed less often in the community. It is important to understand how less serious offenses result in incarceration to ensure that where possible, prison sentences are given because legal and community safety factors justify it.



Voting Process and Decision Making

After four three-hour meetings of background and research presented by the Council of State Governments Justice Center, and a mock parole hearing presented by the Hawai'i Paroling Authority, the fifth meeting was dedicated to providing a summary of the work that task force had completed thus far, and a presentation of questions related to the work of the task force.

The Chair, Mark Patterson, presented four main discussion questions related to the charge of the task force. After asking a question, the Chair would call on each individual member to share their opinions. The questions included:

- ▶ Do you favor (a) the current practice, where the Hawai'i Paroling Authority continues setting the minimum terms of imprisonment, or (b) an alternative minimum setting, removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority?
- ▶ If we were to retain the current practice, would you favor (a) no changes at all or (b) consideration of other recommendations—e.g., statutory or policy changes or something else?
- ▶ If we were to change the current practice to an alternative, would you favor (a) judicial setting of minimums or (b) statutory set minimums?
- ▶ What additional information would help policymakers and stakeholders reach a resolution on the charge of the Task Force?

Members were given notice through the agenda to anticipate a vote during the meeting. The specific motions and corresponding votes depended on the will of the Task Force members and the discussion portion of the meeting. However, to provide notice and the opportunity for Task Force members to consider the potential motions, the following were included.

Initial: Would the administration of justice be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority?

- Based on the response to this question, there are several options Task Force members may consider:

Potential Options:

- *Option A:* If the Task Force determines that the administration of justice is best served by maintaining the status quo, are there any recommendations regarding the current practice of the Hawai'i Paroling Authority setting the minimum terms of imprisonment?
 - *Option B:* If the Task Force determines that the administration of justice would be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority, would the administration of justice be better served by placing this responsibility with the Judiciary?
 - *Option C:* If the Task Force determines that the administration of justice would be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority, would the administration of justice be better served by placing this responsibility in statute?
- **Additional Consideration if applicable:** Act 245, signed by Governor Green on July 9, 2024, requires the Judicial Council to conduct a comprehensive review of the Hawai'i Penal Code and recommend changes. Should the Task Force request that the recommendation of this task force be incorporated into this Penal Code review?

Ultimately, after much discussion, members voted on four questions individually:

- ▶ Question One: Would the administration of justice be better served by removing the responsibility of setting minimum sentences from the Hawai'i Paroling Authority?
- ▶ Question Two: Would the administration of justice be better served by keeping the current practice of the Hawai'i Paroling authority setting the minimum terms of imprisonment with recommendations including review of the minimum setting guidelines and the recommendations presented by HPA Chair Hyun?
- ▶ Question Three: Would the administration of justice be better served by placing this responsibility with the Judiciary?

- ▶ Question Four: Would the administration of justice be better served by placing this responsibility in statute?

Outcome

Below is the breakdown of total responses to each question asked by the Chair.

- ▶ **Question One:** Would the administration of justice be better served by removing the responsibility of setting minimum terms of imprisonment from the Hawai'i Paroling Authority?

Responses:

Yes: 11 (*including proxy for Brandon Segal*)

No: 7

Abstention: 0

Absent: 1 (*Judge Souza*)

Note: Myles Breiner and Senator Wakai didn't vote

- ▶ **Question Two:** Would the administration of justice be better served by keeping the current practice of the Hawai'i Paroling Authority setting the minimum terms of imprisonment with recommendations—including review of the minimum setting guidelines and the recommendations presented by HPA Chair Hyun?

Responses:

Yes: 8

No: 9

Abstention: 2

Absent: 1 (*Judge Souza*)

Note: Brandon Segal didn't vote (didn't provide proxy for this)

- ▶ **Question Three:** Would the administration of justice be better served by placing this responsibility with the Judiciary?

Responses:

Yes: 8

No: 9

Abstention: 2 (*Senator Wakai and Representative Hashem*)

Absent: 1 (*Judge Souza*)

Note: Ku'ike Kamakea-Ōhelo didn't vote

- **Question Four:** Would the administration of justice be better served by placing this responsibility in statute? This would be setting the minimum terms of imprisonment.

Responses:

Yes: 5

No: 11

Abstention: 2

Absent: 1 (*Judge Souza*)

Note: Brandon Segal (didn't provide proxy for this) and Craig DeCosta did not vote

Below is a breakdown of each member's response to the questions above that the Chair asked.

First	Last	Department	Q1	Q2	Q3	Q4
Kevin	Souza	Judiciary	E	E	E	E
Lisa	Itomura	AG	No	Yes	No	No
Brenda	Bauer-Smith	DOH	No	Yes	No	No
Tommy	Johnson	DCR	No	Yes	No	No
Kū'ike	Kamakea- 'Ōhelo	OHA	Yes	No		Yes
Fred	Hyun	HPA	No	Yes	No	Yes
Ben	Lowenthal	Office of Public Defender	Yes	No	Yes	No
Mark	Hashem	House of Representatives	Yes	Abst.	Abst.	Abst.
Glenn	Wakai	Senate		Abst.	Abst.	Abst.
Steve	Alm	Oahu Prosecutor's Office	No	Yes	No	No
Keola	Siu	Kauai Prosecutor's Office	Yes	No	Yes	Yes
Andrew	Martin	Maui Prosecutor's Office	Yes	No	Yes	No
Kelden	Waltjen	Big Island Prosecutor's Office	Yes	No	No	Yes
Pamela	Ferguson- Brey	Crime Victim Compensation Commission	No	Yes	No	No
Myles	Breiner	Hawai'i Association of Criminal Defense Lawyers		No	Yes	No
Brandon	Segal	Hawai'i Association of Criminal Defense Lawyers	Yes (P)		Yes (P)	
Andrew	Kennedy	Hawai'i Association of Criminal Defense Lawyers	Yes	No	Yes	No
Craig	DeCosta	Hawai'i Association of Criminal Defense Lawyers	Yes	No	Yes	
S.	K.	Member of the public who is a victim of domestic violence	Yes	Yes	No	No
M.	R.	Member of the public who is a victim of sexual assault	No	Yes	No	No
Mark	Patterson	HCSOC, Chair	Yes	No	Yes	Yes

Although Question One (*Would the administration of justice be better served by removing the responsibility of setting minimum terms of imprisonment from the Hawai'i Paroling Authority?*) had a clear majority of 11 members answer YES and seven members answering NO, Question Two (*Would the administration of justice be better served by keeping the current practice of the Hawai'i Paroling Authority setting the minimum terms of imprisonment with recommendations—including review of the minimum setting guidelines and the recommendations presented by HPA Chair Hyun?*) and Question Three (*Would the administration of justice be better served by placing this responsibility with the Judiciary?*) were nearly split. The only clear consensus that came forward is the group's disagreement with placing minimum terms of confinement in statute. It should be noted that the voting options did not include the CSG recommendation on this report for default minimums, which shares minimum setting between statute and judicial discretion. It should also be noted that any change to current processes will require new legislation

Ultimately, the group did not come to a clear consensus of how to best move forward when considering whether the administration of justice would be better served by removing the responsibility of setting the minimum terms of imprisonment from the Hawai'i Paroling Authority. Therefore, the group did not submit legislation or include recommendations of what, if anything, should change.



Conclusion

The HCR23 Task Force embarked on a comprehensive evaluation of the procedures employed by the Hawai'i Paroling Authority (HPA) in setting minimum terms of imprisonment. Through collaborative partnerships, detailed data collection, and thorough analysis, the Task Force illuminated significant insights into the strengths and challenges of Hawai'i's current system.

The Task Force acknowledges efficiency, equity and transparency are important in any minimum sentencing setting framework. Task Force members did not reach a unanimous recommendation regarding the optimal entity for determining minimum terms of imprisonment. Despite this, the discussions and findings emphasized the necessity for ongoing refinement of sentencing policies to better serve the administration of justice.

This report serves as a critical foundation for future legislative and policy discussions aimed at improving Hawai'i's criminal justice system. The dedication and contributions of all involved entities and individuals underscore a shared commitment to justice and the well-being of the community.



Mahalo to all Members and Contributors

The Hawai'i Correctional System Oversight Commission shares a warm mahalo to all task force members, the Criminal Justice Research Institute, the Hawai'i Criminal Justice Data Center, the Council of State Governments for the tremendous amount of time and effort put into this project, and to HPA and DCR for devoting staff, time, and resources to share their data for this project. Additionally, the Commission shares a warm mahalo to Representative Gregg Takayama for creating this informative task force and trusting the Commission to chair it.

All meeting information, agenda, meeting handouts, and meeting recordings can be found at <https://hcsoc.Hawai'i.gov/hcr23-task-force/>.

*House Concurrent Resolution
Task Force 23 Final Report*

Appendix

Presentations:

- Thursday, September 12, 2024.....
 - Council of State Government Justice Center: Department of Corrections and Rehabilitations Data Findings – Presented by Angie Gunter and Jennifer KiselaA-001
 - Criminal Justice Research Institute: Setting Minimum Terms in Hawai'i Paroling Authority Hearing Data – Presented by Erin Harbinson, PhDA-011
- Thursday, June 6, 2024.....
 - Council of State Governments Justice Center: Sentencing System Models, Hawaii Minimum System, and Policy Options – Presented by Carl ReynoldsA-023
- Friday, March 15, 2024.....
 - Research Questions and Data Collection for Minimum Terms Pursuant to HCR 23 – Presented by Erin Harbinson, PhDA-041
- Thursday, November 2, 2023.....
 - HCR 23 Task Force – Council of State GovernmentsA-049
- Tuesday, September 12, 2023.....
 - HCR 23 Task Force – Council of State Governments Justice Center (CSG)A-070
 - HCR 23 Task Force Executive Summary – Criminal Justice Research Institute (CJRI) .A-096

Handouts:

- Thursday, September 12, 2024.....
 - Handout – The Frequency of Convictions (*for minimum term hearings held between January – June 2023*)A-109
- Tuesday, September 12, 2023.....
 - HCR 31 Task Force – Council of State Governments Technical Assistance.....A-114

Testimonies:.....

- August 21, 2023 – American Civil Liberties Union of Hawai'i (ACLU).....A-122
- September 11, 2023 – Community Alliance on Prisons (CAP)A-124
- July 22, 2024 – Hawaii Paroling Authority (HPA)A-131
- October 3, 2024 – Chasity Hovey.....A-139

PRESENTATIONS

Hawai'i HCR 23 Task Force

Task Force Meeting

September 12, 2024

Angie Gunter, Research Project Manager, CSG Justice Center
Jennifer Kisela, Deputy Program Director, CSG Justice Center

The CSG Justice Center's work with the Hawai'i HCR 23 Task Force is made possible through funding from the U.S. Department of Justice's Office of Justice Programs' Bureau of Justice Assistance.



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

Presentation Outline

- I. Summary of HCR 23 Task Force Meetings
- II. Estimated Trends in Minimum Terms: FY 2006–FY 2024
- III. Additional Opportunities to Advance Safety and Second Chances

The HCR 23 Mandate

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

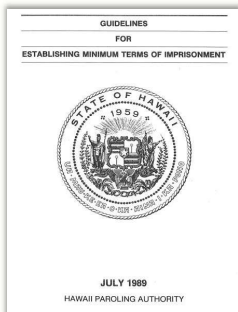
Hawaii HCR 23 Task Force Meetings

- 1 September 2023 – Reviewed the different ways that states arrange their sentencing and prison release systems along with recommendations from the “Model Penal Code: Sentencing.”
- 2 November 2023 – Walked through the state constitutional and statutory provisions for sentencing and minimum setting and the roles of judges, prosecutors, defense counsel, victims, DCR, and the HPA.
- 3 March 2024 – Observed mock scenarios for holding minimum hearings under the guidelines, based on actual cases.
- 4 June 2024 – Discussed the most common feature of other indeterminate systems—the use of fixed minimums.
- 5 July 2024 – Discussed and debated HPA, judicial, and statutory minimum setting options.

HPA uses guidelines 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 in Years and as a Percentage of the Maximum Sentence

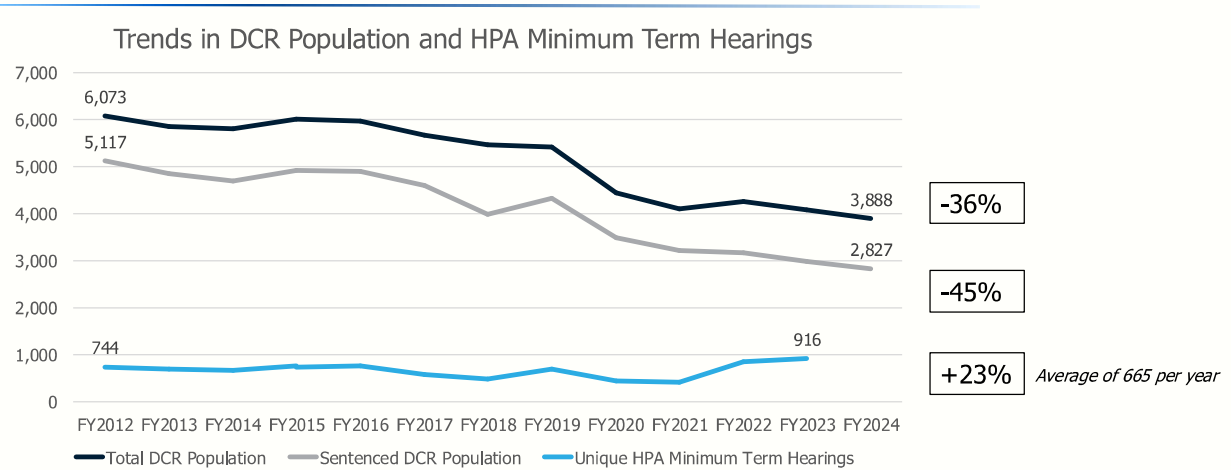
Felony Grade	Mandatory Stat. Max.	Level I	Level II	Level III
1 st Degree Murder	Life without parole	n/a	n/a	n/a
2 nd Degree Murder	Life with parole	5–10	10–20	20–50
Class A	20 years	2–5	5–10	10–20
Class B	10 years	1.5–3	3–5	5–10
Class C	5 years	1–2	2–3	3–5

Absolute Minimum Sentence in Relation to Maximum Sentence		
I	II	III
10%	25%	50%
15%	30%	50%
20%	40%	60%

Presentation Outline

- I. Summary of HCR 23 Task Force Meetings
- II. Estimated Trends in Minimum Terms: FY 2006–FY 2024
- III. Additional Opportunities to Advance Safety and Second Chances

Prison and HPA Minimum Term Hearing Trends

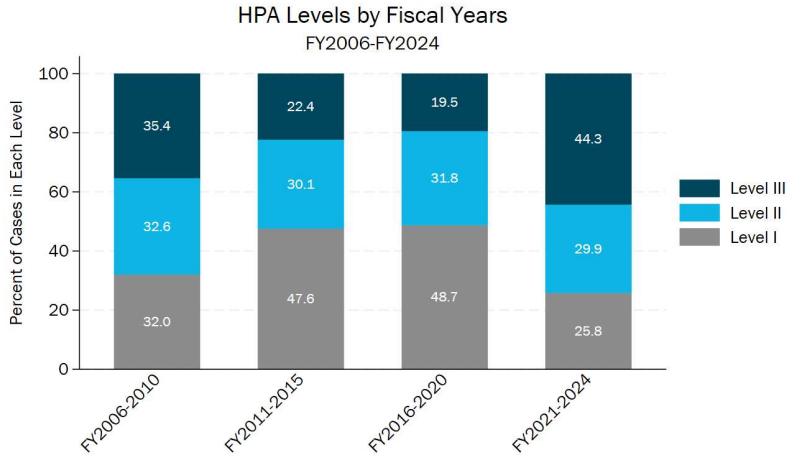


Source: Department of Corrections and Rehabilitation End-of-Month population reports (June 2012-June 2024) and Hawaii Paroling Authority fiscal year reports (FY2012-FY2023)

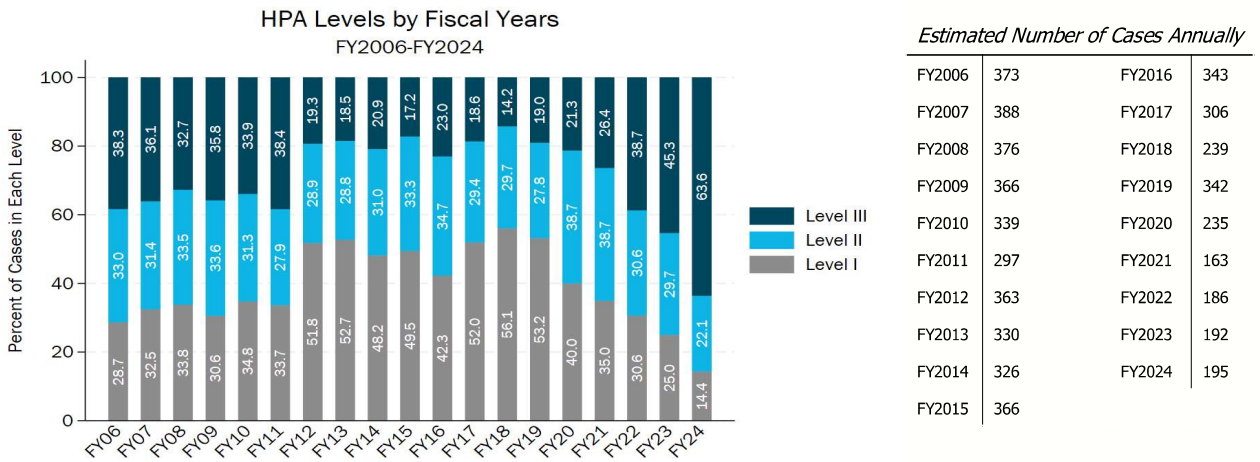
Data Overview—Estimating HPA Minimum Levels

1. **Admissions data was provided** by the Department of Corrections and Rehabilitation (DCR) for January 2000 to May 2024.
 - a) Our analysis included new commitments to prison for CY 2005–CY 2023, allowing HPA minimum term decisions to be estimated for FY 2006–FY 2024, accounting for the lag between commitment and the HPA hearing.
 - b) HPA minimum terms were estimated based on sentence start date, minimum parole eligibility date, maximum release date, and date of admission (to estimate time in custody on pretrial status). It was not possible to replicate the process of setting minimum terms for each offense in a sentence. Only the most serious offense was available in the DCR data.
 - c) Admissions of people who violated parole were excluded to avoid problems with dates in the data file.
2. **No additional data was available** that would have enabled a more robust analysis.
 - a) Prior criminal history: it was possible to estimate the prior criminal history using the number of unique admission events in the file, but this potentially biases older cases in the dataset.
 - b) Risk and needs data were not available to provide more meaningful information about the individuals in minimum term hearings.

A higher proportion of people are receiving a Level III minimum term than in prior years.



FY 2024 decisions had fewer Level I outcomes and more Level III outcomes than all prior years.

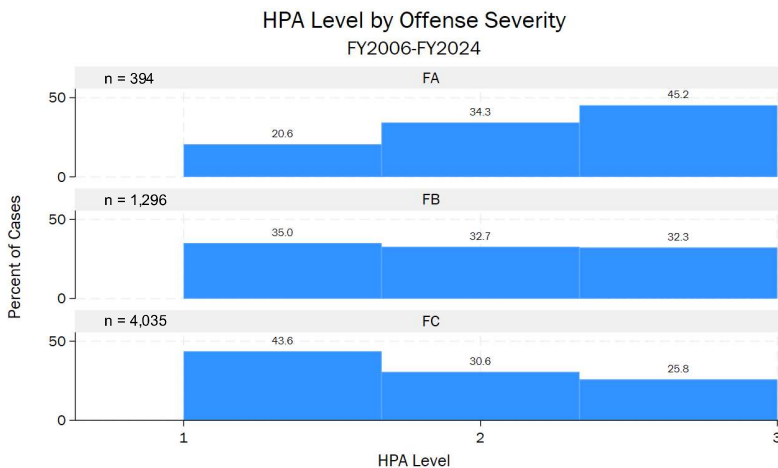


Individuals convicted of Felony A and B offenses have longer minimum terms than in prior years.

Average Minimum Term Percentage by Offense Class, FY 2006–FY 2024

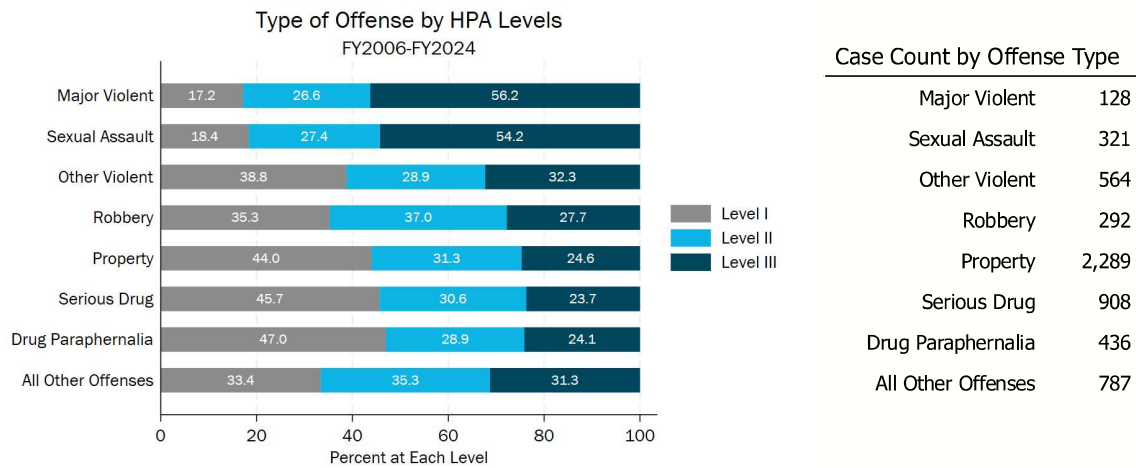
	Felony A n=394	Felony B n=1,296	Felony C n=4,035	Overall
FY06–FY10	48.62%	45.03%	52.04%	50.16%
FY11–FY15	48.20%	39.84%	42.84%	42.52%
FY16–FY20	48.56%	39.86%	42.03%	41.88%
FY21–FY24	64.75%	55.58%	53.96%	55.11%
Overall Average	50.70%	43.51%	46.96%	46.43%

Over time, Felony A offenses more often receive a Level III minimum, while Felony C offenses more often receive a Level I minimum.



For **Felony A (FA)** and **Felony C (FC)** decisions, there is a pattern to the setting of minimum terms related to severity of the offense.

The most serious offenses more frequently receive a minimum term that falls under Level III.



Presentation Outline

- I. Summary of HCR 23 Task Force Meetings
- II. Estimated Trends in Minimum Terms: FY 2006–FY 2024
- III. Additional Opportunities to Advance Safety and Second Chances

The Justice Reinvestment Initiative has two types of free technical assistance available.

Justice Reinvestment Initiative (JRI)

State leaders work with experts to conduct agency-spanning data analysis and develop and implement data-driven, tailored solutions to address complicated criminal justice challenges.

- Bipartisan
- Interbranch
- 2–3-Year Process

JRI Assessment Center (JAC)

Targeted short-term technical assistance tailored to state and/or agency needs.

- Streamlined application process
- Can be with one or more agencies
- Typically, up to a 6-month process

Reentry 2030

Reentry 2030 is an initiative—led by The Council of State Governments Justice Center, the Correctional Leaders Association, and JustLeadershipUSA—that seeks to **dramatically scale up reentry services** and **supports** and **break down barriers to reintegration** by the end of this decade. The result will be significant gains in safety and success for people in reentry and our communities.

The logo for Reentry 2030 features a large, stylized orange letter 'R' on the left. To its right, the words 'REENTRY' and '2030' are stacked vertically in a bold, orange, sans-serif font.

Reentry 2030 can provide a range of tailored technical assistance free of charge.

Technical Assistance Areas



Housing



Behavioral Health



Economic Mobility



Budget Investments



Policy and Program Evaluation

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

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.

Setting Minimum Terms in Hawai'i: An Examination of Hawai'i Paroling Authority Hearing Data

Prepared for the HCR 23 Task Force – September 2024

Presented by Erin Harbinson, PhD
Prepared by Samuel Choi, PhD, Michelle Masters, PhD (CPJAD), and
Aerielle Reynolds, MSCJA



Overview and Objectives



1. Describe the sample to understand the characteristics of individuals who are sentenced to prison and have minimum term hearings
2. Summarize information on convictions for felony class and common offenses
3. Explore how HPA's policy on setting minimum terms is applied in practice
4. Examine the length of minimum terms people receive across felony class and punishment levels
5. Review the distribution of minimum terms across 6 months of hearings
6. Conclude with limitations and an overview of findings



Objective # 1

Describe the sample to understand the characteristics of individuals who are sentenced to prison and have minimum term hearings

Slide 3



Minimum Term Hearings from January – June 2023

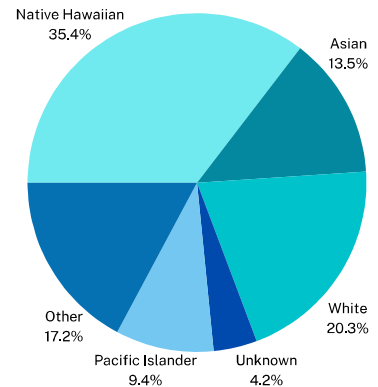
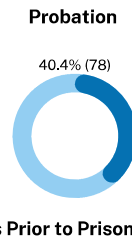
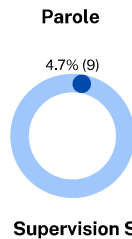
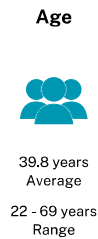
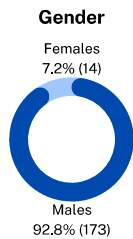


Data: 193 individuals who had a minimum term hearing, and minimum terms set for each conviction (3.2 convictions/per person on average)



Source: Hawai'i Paroling Authority case files (paper documents)

Sentenced Individuals with Minimum Term Hearing January - June 2023, by Race



Slide 4



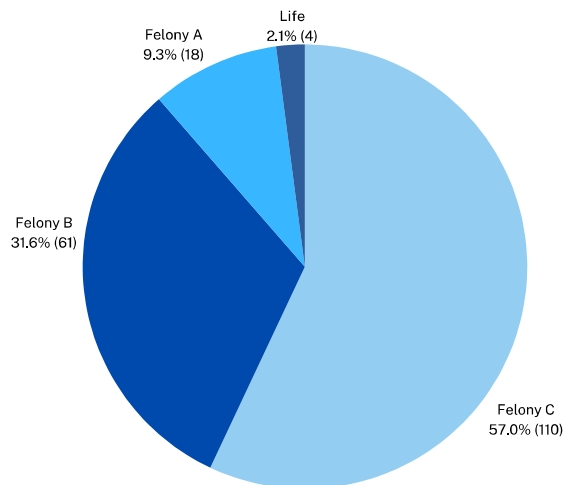
Objective # 2

Summarize information on convictions for felony class and common offenses

Slide 5

Felony Class for Most Serious Offense (N = 193)


Percentage of individuals by felony class for their most serious offense



Slide 6

Offenses with the Most Frequent Convictions

This table reflects the 12 most frequently occurring offenses in the sample, among 73 total offense types across 634 total offenses



Class	Offense	Frequency	Percentage
FC	Promoting a dangerous drug, 3rd degree	78	12.3%
FC	Unauthorized control of a propelled vehicle, 1st degree	72	11.4%
FC	Theft, 2nd degree	47	7.4%
FC	Burglary, 2nd degree	37	5.8%
FC	Unauthorized possession confidential personal information	33	5.2%
FC	Unauthorized entry into motor vehicle, 1st degree	32	5.1%
FB	Burglary, 1st degree	25	3.9%
FC	Assault, 2nd degree	24	3.8%
FB	Promoting a dangerous drug, 2nd degree	20	3.2%
FC	Terroristic threatening, 1st degree	19	3.0%
FB	Robbery, 2nd degree	18	2.8%
FB	Criminal property damage, 1st degree	15	2.4%

Slide 7

Objective # 3

Explore how HPA's policy on setting minimum terms is applied in practice



Slide 8



HPA Policy for Setting Minimum Terms

Maximum Term in Years/Months Imposed by the Court	Level of Punishment Range in Years/Months		
	LEVEL I	LEVEL II	LEVEL III
Class C Felony 5 years (60 months)	1 - 2 years (12 - 24 months)	2.1 - 3 years (24 - 36 months)	3.1 - 5 years (36 - 60 months)
Class B Felony 10 years (120 months)	1.5 - 3 years (18 - 36 months)	3.1 - 5 years (36 - 60 months)	5.1 - 10 years (60 - 120 months)
Class A Felony 20 years (240 months)	2 - 5 years (24 - 60 months)	5.1 - 10 years (60 - 120 months)	10.1 - 20 years (120 - 240 months)
Life with the Possibility of Parole	5 - 10 years (60 - 120 months)	10.1 - 20 years (120 - 240 months)	20.1 - 50 years (240 - 600 months)

Source: Table adapted from Hawaii Paroling Authority (1989). *Guidelines for Establishing Minimum Terms of Imprisonment*. Retrieved from: <https://dcr.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>

Slide 9



Examining How Often Minimum Terms Fall within HPA Policy (N = 193)

Statutory Maximum Imposed by the Court	Level of Punishment (HPA Minimum Term)		
	Level I	Level II	Level III
Class C Felony 5 years (60 months)	1 - 2 years (12 - 24 months) 1.0-2.0 years N = 10	2.1 - 3 years (24 - 36 months) 2.0 - 3.0 years N = 36	3.1 - 5 years (36 - 60 months) 2.0 - 5.0 years N = 64
Class B Felony 10 years (120 months)	1.5 - 3 years (18 - 36 months) 2.0 - 2.8 years N = 3	3.1 - 5 years (36 - 60 months) 3.0 - 5.0 years N = 13	5.1 - 10 years (60 - 120 months) 3.1 - 10.0 years N = 44
Class A Felony 20 years (240 months)	2 - 5 years (24 - 60 months) 4.0 - 4.0 years N = 1	5.1 - 10 years (60 - 120 months) 5.0 - 10.0 years N = 2	10.1 - 20 years (120 - 240 months) 5.1 - 20.0 years N = 14
Life with the Possibility of Parole	5 - 10 years (60 - 120 months) N/A N = 0	10.1 - 20 years (120 - 140 months) 20.0 - 20.0 years N = 1	20.1 - 50 years (240 - 600 months) 20.1 - 50.0 years N = 3

The ranges for minimum terms are presented for each level recommended by the HPA guidelines policy

Small sample size

Outside guidelines

Slide 10



Criteria in HPA Policy to Set Minimum Terms

1. Nature of Offense
2. Degree of Injury/Loss to Person or Property
3. Criminal History
4. Character and Attitude of Offender with Respect to Criminal Activity of Lifestyle
5. Efforts Made to Live Prosocial Life Prior to Commitment to Prison
6. Probation Revocation
7. Involvement of Offender in Instant Offense(s)

In practice, HPA records the criteria most applicable to the minimum term setting



1 - 3 criteria recorded in the guidelines per case (n = 193)



On average, 1.2 criteria recorded per case

Source: Table adapted from Hawaii Paroling Authority (1989). *Guidelines for Establishing Minimum Terms of Imprisonment*. Retrieved from: <https://dcr.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>

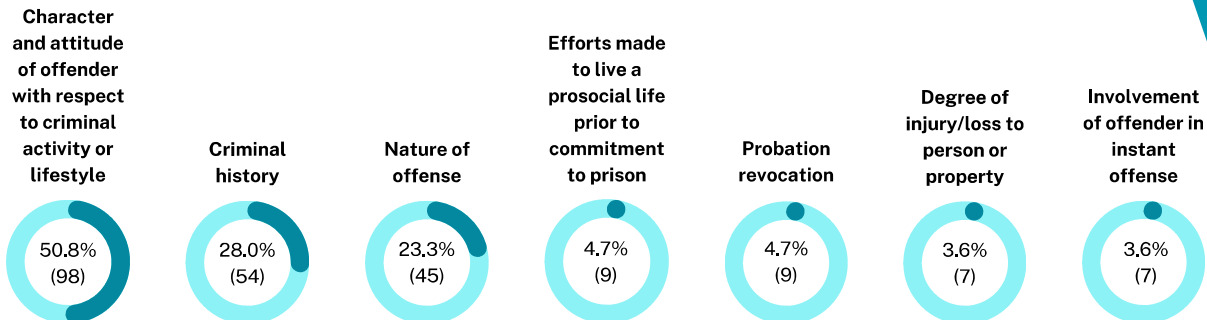
Slide 11



Criteria Used to Set Minimum Term



Percentage of cases where the criteria was recorded for setting the minimum term (N = 193)



*Some cases recorded more than one criteria from HPA's guidelines policy, and therefore one case may have been counted more than once in the infographics presented here

Slide 12



Number of Minimum Term Policy Criteria for Each Level

Factor	Level I	Level II	Level III
Character and attitude of offender with respect to criminal activity or lifestyle	4	34	60
Criminal history	0	3	51
Nature of offense	2	14	29
Efforts made to live a prosocial life prior to commitment to prison	1	2	6
Probation revocation	6	3	-
Degree of injury/loss to person or property	0	0	7
Involvement of offender in instant offense	0	2	5
Total	13	58	158

Slide 13

Objective # 4

Examine the length of minimum terms people receive across felony class and punishment levels

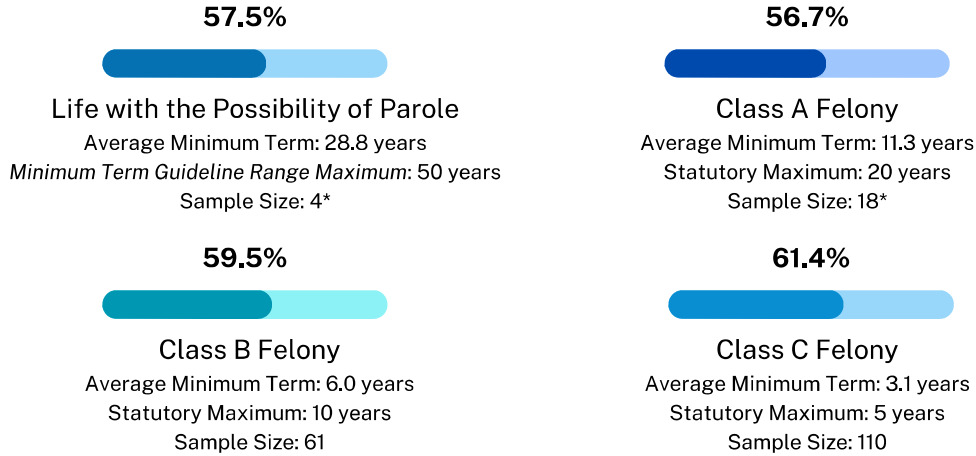


Slide 14



Minimum Terms Relative to the Maximum

The average minimum term length respective to statutory maximum term

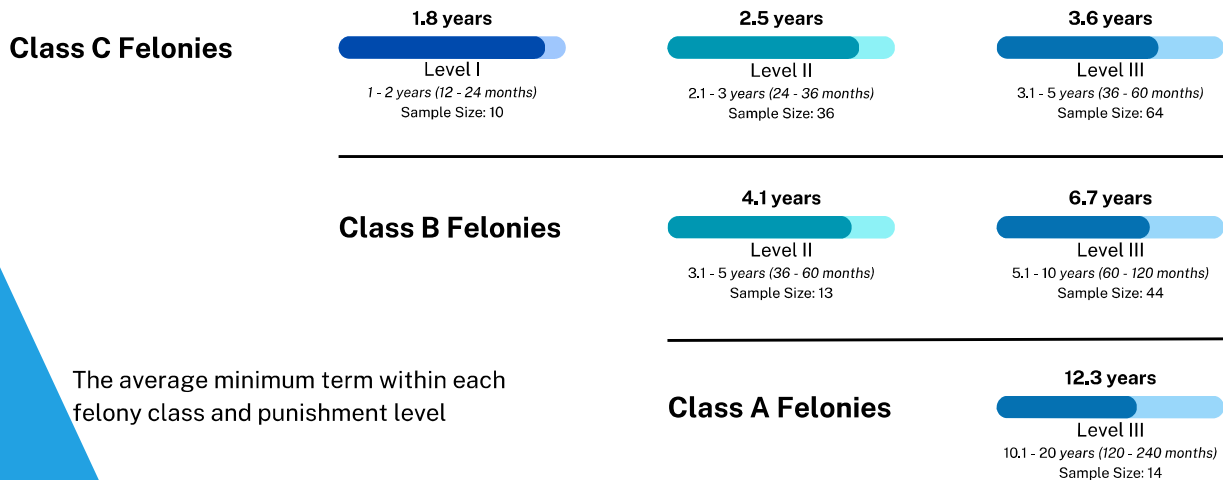


*Indicates small sample sizes

Slide 15



Average Minimum Terms Relative to the Level Range



The average minimum term within each felony class and punishment level

*Some felony classes/levels were not included in the infographics presented above due to small sample sizes.

Slide 16



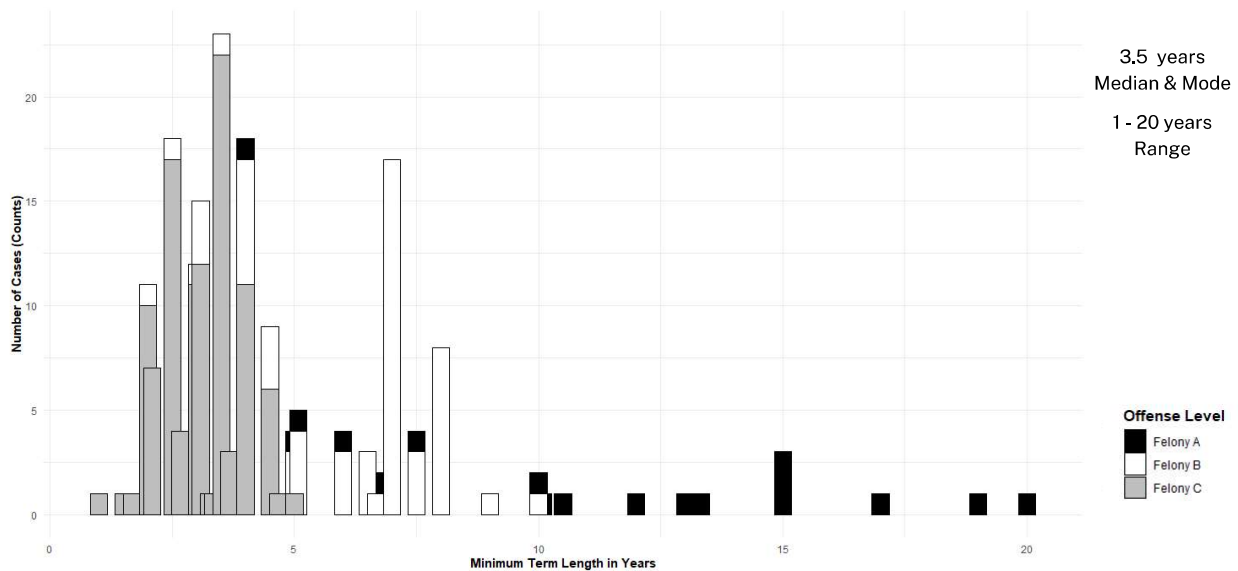
Objective # 5

Review the distribution of minimum terms across 6 months of hearings

Slide 17



The Distribution of Minimum Terms Set Across Individuals



Slide 18



Objective # 6

Conclude with limitations
and an overview of findings

Slide 19



Summarizing Findings

Gained insight on the characteristics of individuals who were sent to prison and received minimum terms from HPA

- Over 75% were medium or higher risk to reoffend
- Almost half had been on post-conviction supervision prior
- Felony C's comprised a large proportion of cases, but need to understand how Felony C cases are sentenced more generally (i.e., in/out decision, not just sentence length)

Examined the use of HPA's policy for setting minimum terms

- Character and attitude most applicable factor recorded for setting minimum terms

Investigating trends on minimum terms

- Minimum terms tend to be set slightly over 50% relative to the max, on average
- Median minimum term is 3.5 years across 6 months of hearings

Slide 20



Limitations & Considerations

Data Barriers

- Challenges in measuring validity of criteria in minimum term setting
- Case management system and not a data system
- Lack of other predictor or explanatory variables

Prioritizing Research Questions to Improve System Effectiveness

- Linking the importance of minimum term lengths to larger system issues
 - Purpose of term length in punishment
 - Impact on overall time served

Slide 21



Mahalo!

Feel free to contact us
if you have any questions.

Slide 22

Contact Information

Please contact me any time
for questions or to learn
more about what we are
doing.



cjrihawaii.com



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Slide 23

Hawai'i HCR 23 Task Force

Fourth Task Force Meeting

June 6, 2024

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

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



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

Presentation Outline

- I. Parole System Models
- II. The HPA Model
 - a. Legal Structure
 - b. Data Analysis
- III. Policy Option Discussion

The HCR 23 Mandates

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

House Concurrent Resolution 23, Thirty-second Legislature, Reg. Sess. (Hawai'i 2023).

Like most states, Hawai'i uses parole release (indeterminate) and does not use sentencing guidelines (SGLs).

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

Six other parole states give the paroling authority some minimum-setting power, but none use a hearing process.

Connecticut: Minimums are fixed at 50 percent, or 85 percent if the offense or criminal record shows the use or threat of physical force, as determined through a paper review and deliberation among two or more parole board members.

Iowa: Most prison sentences include a judicial maximum term but no minimum term, and most people are eligible for parole release immediately upon admission.

Kentucky: The parole board by policy sets fixed minimums for most people in prison: maximum 40+ years eligible in 8; maximum 2–39 years eligible at 20 percent.

Missouri: Most fixed minimums are set by regulations by the parole board, based on offense category and risk assessment, with minimums in ranging from 15 percent to 33 percent of the maximum.

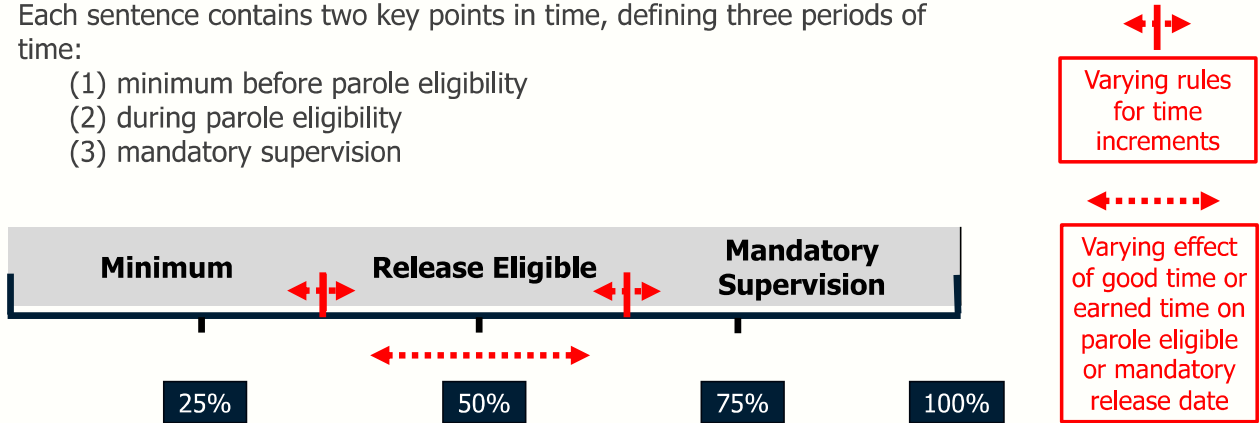
North Dakota: Most incarcerated people are eligible for discretionary parole release soon after they enter prison, and the parole board has broad discretion to set minimum terms.

Utah: The parole board is required to set a date for the first parole hearing (but not the hearing itself) within six months of the commitment to prison.

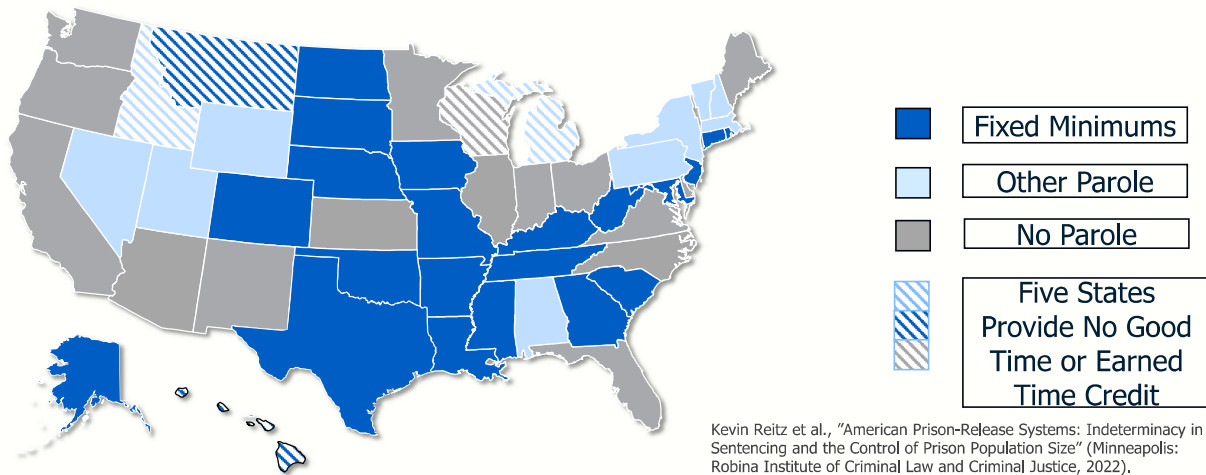
The most common features in paroling states are fixed minimums and mandatory release to supervision.

Each sentence contains two key points in time, defining three periods of time:

- (1) minimum before parole eligibility
- (2) during parole eligibility
- (3) mandatory supervision



Of 34 paroling states, 22 use fixed minimums for some or all of the prison population.



Kevin Reitz et al., "American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size" (Minneapolis: Robina Institute of Criminal Law and Criminal Justice, 2022).

Hawai'i already uses fixed minimums for repeated offenses and use of firearms.

Felony Grade	Stat. Max.	Repeat Offense Mandatory Minimums		
		1 Prior = 33%	2 Priors = 67%	3 Priors = 100%
2 nd Degree Murder	Life w/ Parole	10 yrs	20 yrs	30 yrs
Class A	20 yrs (240 mos)	80 mos	160 mos	240 mos
Class B	10 yrs (120 mos)	40 mos	80 mos	120 mos
Class C	5 yrs (60 mos)	20 mos	40 mos	60 mos

H.C.A. Sec. 706-606.5.

Key Points

1. HPA's authority to set minimums is uncommon, and using a hearing to establish the minimum is unique.
2. About two-thirds of states with parole release, including Hawai`i, have fixed minimums for some or all of the prison population.
3. Hawai`i is one of 5 states that provides no good time or earned time credits; 39 other states use some time crediting system that gives the corrections agency discretion to advance mandatory release, independent of parole.
4. Hawai`i already uses fixed minimums for repeated offenses and use of firearms.

Kevin Reitz et al., "American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size" (Minneapolis: Robina Institute of Criminal Law and Criminal Justice, 2022).

Presentation Outline

- I. Parole System Models
- II. The HPA Model
 - a. Legal Structure
 - b. Data Analysis
- III. Policy Option Discussion

General Statutory Framework for the HPA

§ 353-62 Hawai`i paroling authority; responsibilities and duties; operations; records, reports, staff

(a) . . . [T]he paroling authority shall:

- (1) Serve as the central paroling authority for the State;
- (2) Consider for parole all committed persons**, except in cases where the penalty of life imprisonment not subject to parole has been imposed, regardless of the nature of the offense committed;
- (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal; . . .

H.R.S. §353-62 Hawaii paroling authority; responsibilities and duties; operations; records, reports, staff.

Minimum Setting Statutory Framework for HPA

§ 706.669 Procedure for determining minimum term of imprisonment

“. . . no later than six months after commitment . . . hold a hearing, and on the basis of the hearing make an order **fixing the minimum term of imprisonment** . . .

. . . obtain a complete report regarding the prisoner's life before entering the institution and a full report of the prisoner's progress in the institution . . .

“The authority shall establish guidelines for the **uniform determination of minimum sentences** which shall take into account both the nature and degree of the offense of the prisoner and the prisoner's criminal history and character. . . .”

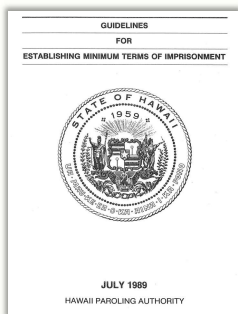
Several other sentencing statutes cross-reference to this authority as controlling.

H.R.S. §706-669 Procedure for determining minimum term of imprisonment; §706-659 Sentence of imprisonment for class A felony; § 706-660 Sentence of imprisonment for class B and C felonies; ordinary terms; discretionary terms; §706-661 Extended terms of imprisonment.

HPA uses 1989 guidelines for setting minimums.

Three levels of severity:

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



Three Main Factors:

“The criteria outlined below are, in some instances, a matter of **individual interpretation and perception and cannot be completely objective.** . . .

[T]wo of the primary criteria . . . , Nature of Offense and Degree of Injury/Loss to Person or Property, **are comparative and require an awareness and knowledge by the Authority members of offense circumstances and past Authority decisions.**”

Guidelines for Establishing Minimum Terms of Imprisonment, Hawaii Paroling Authority (1989).

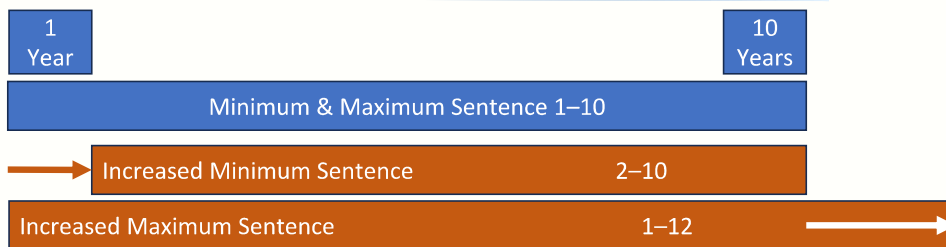
Examples of HRPP Rule 40 Case Law that Has Affected HPA Minimum Setting.

1. “[J]udicial intervention is appropriate where the HPA has failed to exercise any discretion at all, acted arbitrarily and capriciously so as to give rise to a due process violation, or otherwise violated the prisoner’s constitutional rights.”
2. “[N]either Chapter 706 nor Chapter 353 of the Hawai`i Revised Statutes (HRS) prohibit the HPA from setting a prisoner’s minimum term at a period equal to his or her maximum sentence.”
3. “[D]ue process under Article I, section 5 of the Hawai`i Constitution requires that the prisoner have timely access to all of the adverse information contained in the HPA file.”
4. “[T]he HPA is required to set forth a written justification or explanation (beyond simply an enumeration of any or all of the broad criteria considered) when it determines that the minimum term of imprisonment for the felony offender is to be set at a Level II or Level III punishment.”

The cases reflect the courts requiring basic due process and at least cursory explanation of the HPA’s justification for a minimum within the broad ranges of the guidelines.

Williamson v. Hawai`i Paroling Authority, 35 P.3d 210 (Haw. 2001); *Coulter v. State of Hawai`i*, 172 P.3rd 493 (Haw. 2007); *De la Garza v. State*, 129 Hawai`i 429, 302 P.3rd 697 (Haw. 2013); *Lewi v. State*, 145 Hawai`i 333, 452 P.3d 330 (2019); Hawaii Rules of Penal Procedure R. 40.

A sentencing factor that increases the min or the max triggers the right to a jury finding on that factor.



Examples: the SCOTUS has held that these factors, which increased the min or max based on judicial determinations, violated the right to a jury:

- **Defendant’s hate crime motivation**
- **Defendant possessed an additional 556 grams of crack**
- **Defendant acted with deliberate cruelty**
- **Defendant was organizer, leader, manager, or supervisor in the criminal activity**

Hawai'i's guideline minimums side-step this 6th Amendment constitutional requirement.

The Hawai'i approach moves the 'amount-of-punishment' decision—the length of time a person absolutely has to serve—away from the judicial and jury process altogether.

Aggravating Guideline Factors for Level III:

- "The offender displayed a callous and/or cruel disregard for the safety and welfare of others"
- "The offense was committed against the elderly, a handicapped person, or a minor"
- "The offense involved the manufacture, importation, distribution or cultivation of substantial quantities of drugs"
- "The offender's actions prior to or during the instant offense seem to indicate that he or she played a substantial role or was the instigator or leader"

Guidelines for Establishing Minimum Terms of Imprisonment, Hawaii Paroling Authority (1989)

Extended sentences can be based on similar criteria but require 6th Amendment compliance.

§706-662 CRITERIA

- Defendant is a professional criminal
- Defendant is a multiple offender
- Defendant is an offender against the elderly, handicapped, or a minor
- Defendant is a hate crime offender

"Act 1, Second Special Session Laws 2007, amended Hawaii's extended sentencing statutes, §§706-661, 706-662, and 706-664, to ensure that the procedures used to impose extended terms of imprisonment comply with the requirements of the United States Supreme Court and the Hawaii supreme court."

Task Force mock hearings illustrated positive and negative issues.

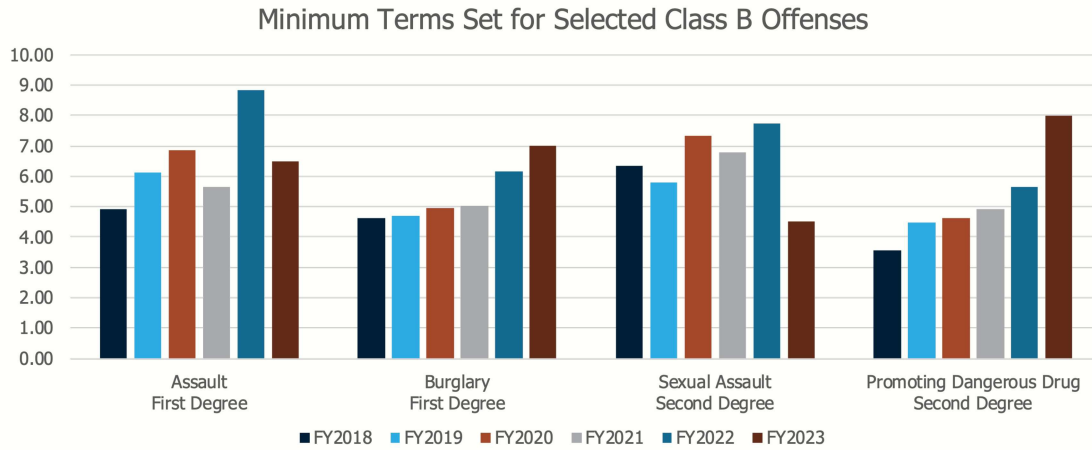
- HPA interactions with all parties were conducted in a courteous manner by the HPA members.
- Guideline factors provide a framework for argument.
- Guideline factors can point different directions, as mitigating and aggravating considerations.
- Delays are sometimes inherent from interplay with the courts.
- Minimum setting is all about determining punishment and not tied to expectations of program availability or placement.

Annual reports from FY 2018–2023 show average minimum sentences across major offense categories are at the low end of the Level III guideline range.

Felony Grade	Stat. Max.	HPA Range			Average Min. FY2018–2023
		Level I	Level II	Level III	
2 nd Degree Murder	Life w/ Parole	5–10	10–20 yrs	20–50	n/a
Class A	20 yrs	2–5	5–10	10–20	10.4 (52% of max)
Class B	10	1.5–3	3–5	5–10	5.6 (56% of max)
Class C	5	1–2	2–3	3–5	3.1 (62% of max)

Class A (Manslaughter, Robbery, Sexual Assault 1st, PDD 1st)
 Class B (Assault 1st, Burglary 1st, Sexual Assault 2nd, PDD 2nd)
 Class C (Assault 2nd, Burglary 2nd, Sexual Assault 3rd, PDD 3rd)

Annual reports from FY 2018–2023 show the potential for average minimums to vary and creep up over time.



Prior JRI findings illustrate release decisions were not timed to the minimum sentence, despite the HPA setting the minimum in the first place.

The **parole release approval rate** declined from 40 percent to 34 percent from 2006 to 2011.

- 65 percent of denials were for failure to complete required programs.
- The volume of people in prison beyond their minimum parole eligibility date increased by 77 percent.

The **volume of people "maxing out"** (leaving prison without supervision) grew by 104 percent from 2006 to 2011.

- The proportion of max-outs assessed as high risk grew from 12 percent to 41 percent.
- The max-out population had three-year rearrest rates almost double those for people released to parole supervision.

The FY 2023 Annual Report depicts 447 paroles granted from 1,685 parole consideration hearings.

"Justice Reinvestment in Hawai'i: Analyses & Policy Options to Reduce Spending on Corrections & Reinvest in Strategies to Increase Public Safety" (New York: CSG Justice Center, 2014); "Justice Reinvestment Analyses & Policy Framework" (New York: CSG Justice Center 2012).

Key Points

1. HPA's authority to set minimums is uncommon, and using a hearing to establish the minimum is unique.
2. About two-thirds of states with parole release, including Hawai`i, have fixed minimums for some or all of the prison population.
3. Hawai`i is one of 5 states that provide no time credits; 39 other states use some time crediting system that gives the corrections agency discretion to advance mandatory release, independent of parole.
4. Hawai`i already uses fixed minimums for repeated offenses and use of firearms.
5. Minimum setting is explicitly subjective and has required court oversight under Rule 40.
6. The Hawai`i system sidesteps the Constitution by moving the "amount-of-punishment" decision away from the judicial and jury process altogether.
7. Average minimums are higher than the mid-range and are increasing over time.
8. Parole release rates are low despite HPA setting the minimum in the first place; max-outs have been historically common.

Presentation Outline

- I. Parole System Models
- II. The HPA Model
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The HCR 23 Mandates

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

House Concurrent Resolution 23, Thirty-second Legislature, Reg. Sess. (Hawai`i 2023)

Stakeholders appear to be divided.

Agencies and crime victim advocates favor the status quo.

Judges are unprepared for setting minimums and concerned about inconsistency.

Defense lawyers highlight the delay in programming inherent in the HPA process.

Community advocates view the HPA process as arbitrary and opaque.

Pre-sentence investigations, judicial training, and court security are topics to address in any scenario.

PSIs provide important information for the HPA and HDCR.

- Courts need sufficient funding for staffing to make PSIs possible, and statute should make clear that *post*-sentence (pre-supervision) investigations may and shall be provided to the HPA and HDCR.

The judicial branch should ensure there is victim-focused and trauma-informed training for judges.

Court security should be enhanced to help victims feel safe in and around the courthouse.

If the status quo is retained, consider reversing some case law by statute.

1. Judges currently have limited authority to reduce legislated mandatory minimums for “strong mitigating circumstances” under §706.606.5(6). But that authority can be defeated by action of the HPA, resetting the judicial minimum to a longer term.

- **The legislature could clarify that a judicially mitigated mandatory minimum under § 706.606.5(6) cannot be increased by the HPA.**

2. The Supreme Court of Hawai`i has held that “neither Chapter 706 nor Chapter 353 of the Hawai`i Revised Statutes (HRS) prohibit the HPA from setting a prisoner’s minimum term at a period *equal to his or her maximum sentence.*”

- **The legislature could explicitly prohibit HPA from setting a minimum equal to the maximum.**
 - Preserve a degree of indeterminacy, to reinforce the legislature’s discretion to determine which conduct merits “no parole.”
 - Reconcile §706.669 with the general duty of the HPA in §353-62 to “consider for parole all committed persons . . .”

The guidelines should not reach the max and should use midpoint, presumptive minimums in each level; departures should have explanations.

Felony Grade	Stat. Max.	HPA Range					
		Level I	Midpoint	Level II	Midpoint	Level III	Midpoint
2 nd Degree Murder	Life w/ Parole	5–10	7.5	10–20 yrs	15	20–40 50	30
Class A	20 yrs	2–5	2.5	5–10	7.5	10–16 20	13
Class B	10	1.5–3	27 mos	3–5	4	5–8 10	6.5
Class C	5	1–2	18 mos	2–3	2.5	3–4 5	3.5

The HCR 23 Mandates

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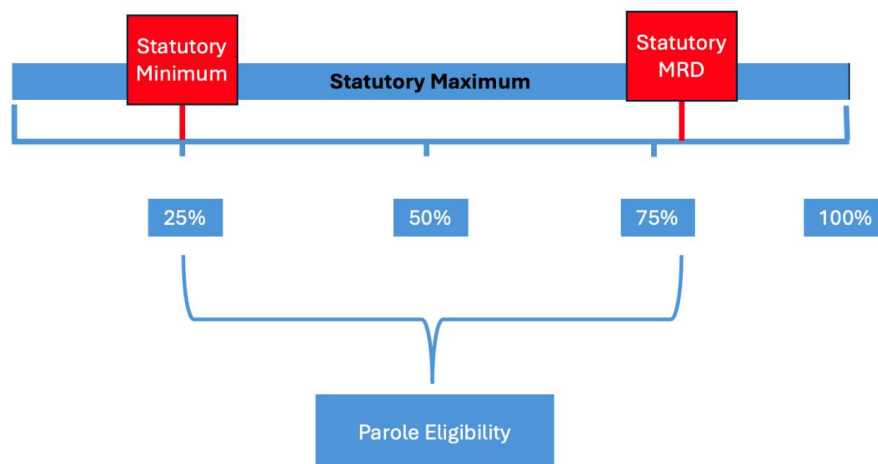
House Concurrent Resolution 23, Thirty-second Legislature, Reg. Sess. (Hawai'i 2023)

The Task Force outcome should advance the Oversight Commission's statutory mission to improve the administration of justice.

1. Oversee . . . Investigate complaints . . . facilitate a correctional system transition to a rehabilitative and therapeutic model;
2. . . . inmate population limits . . . policies and procedures
3. . . . *monitor and review the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees . . .*
4. *Ensure . . . programs and services that result in the timely release of inmates on parole when the minimum terms have been served*

H.R.S. §353L-3 Hawaii correctional system oversight commission; powers and duties. [Subsection effective until December 31, 2023.]

No single state is a model for Hawai'i but two very common features should be considered: fixed minimums and mandatory release to supervision.



Benefits of Simply Fixing Minimums by Statute

1. Certainty of release decision timing for victim
2. Certainty of minimum for the incarcerated person to work toward
3. Cleanly cures “right to a jury” issue and delays from interplay with courts
4. Simplifies work for HPA, courts, AG’s office, prosecution, defense
5. Immediate movement from RAD to programs
6. Opportunity for program modules based on predictable minimums

Fixed minimums would advance the comprehensive reentry system required under Chapter 353H and the statutory objective to “provide programs and services that result in the timely release of inmates on parole when the minimum terms have been served.”*

*H.R.C. §353L-3 Hawai`i correctional system oversight commission; powers and duties.

The fixed minimum could be a “default” with some flexibility built in.

By statute, define the default minimum sentence as a fixed percentage of the maximum. It should be lower than 33 percent to stay aligned with existing mandatory minimums.

To individualize exceptional cases,

- Allow the default minimum to be increased as part of judicial sentencing, subject to constitutional safeguards; and
- Allow the default minimum to be reduced by the HPA to preserve their current feature of incentivizing behavioral effort in prison.

Key Points Revisited

1. HPA's authority to set minimums is uncommon, and using a hearing to establish the minimum is unique.
2. About two-thirds of states with parole release, including Hawai`i, have fixed minimums for some or all of the prison population.
3. Hawai`i is one of 5 states that provides no time credits; 39 other states use some time crediting system that gives the corrections agency discretion to advance mandatory release, independent of parole.
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Thank You!

Join our distribution list to receive updates and announcements:

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

For more information, please contact:

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Carl Reynolds at creynolds@csg.org

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Research Questions and Data Collection for Minimum Terms Pursuant to HCR23

Presented by Erin Harbinson, PhD
Prepared by Samuel Choi, PhD

Overview

- 
- Review research partnership to fulfill HCR 23 goals
 - Summarize research methods including data and limitations to current data systems
 - Introduce and discuss research questions with task force members



Research Partnership for HCR23

HCSOC is chairing the task force to ensure members complete requirements established by the Legislature



Prioritizes and clarifies research priorities

HCR 23 requires the Criminal Justice Research Institute to provide assistance to the task force



Identifies data sources and research agenda



Review findings and prepare for task force members to inform discussions

CSG Justice Center is partnering with HCSOC and providing technical assistance including research support at no cost to the state



Prepares and analyzes data on trends and research questions



Research Methods

Sources of Data



OffenderTrack electronic extractions (Department of Corrections & Rehabilitation)

- Data files from past 15 years of prison admissions & releases
- Important dates on sentencing i.e., start of prison sentence, minimum term/first parole eligibility, end date, release date
- Demographics i.e., age, gender, race/ethnicity
- Instant offense information i.e., most serious offense for conviction



On-site file review of parole files (Hawaii Paroling Authority)

- Review files from three months of minimum term hearings & enter data in spreadsheet
- Information from the minimum term hearing including the date, the factors recorded in the minimum term hearing forms/guidelines, the minimum term set for each conviction, and reason provided by board for minimum term set



Criminal history records from CJIS electronic extractions (Hawaii Criminal Justice Data Center, Department of Attorney General)

- Data files on arrests and convictions for individuals
- Demographics i.e., age, gender, race/ethnicity
- County i.e., for arrest and sentencing

*This is not an exhaustive list of all data, but a list of some key data elements

Barriers to Data Collection & Research

Data analysis on minimum terms is limited to the information collected by agencies, especially in electronic form



Technology: HPA cannot extract electronic files for research purposes, as a result research staff need to read minimum term hearing files on-site and enter data manually.



Disconnected: Data on sentencing and time served can be found across more than one database including prisons, courts, and arrest records.



Timing: Some questions require more complex statistical models or more data sources, therefore longer timeframes are needed to prepare the data for analyses on certain sentencing trends.

Research & Data Agreements

Data sharing agreements will be followed by participating researchers

Datasets will be stored in secure electronic file storage

Individuals will not have their names or other identifying information stored in the dataset


Results will be presented at the aggregate level such as metrics or trends



Research Questions




RQ# 1



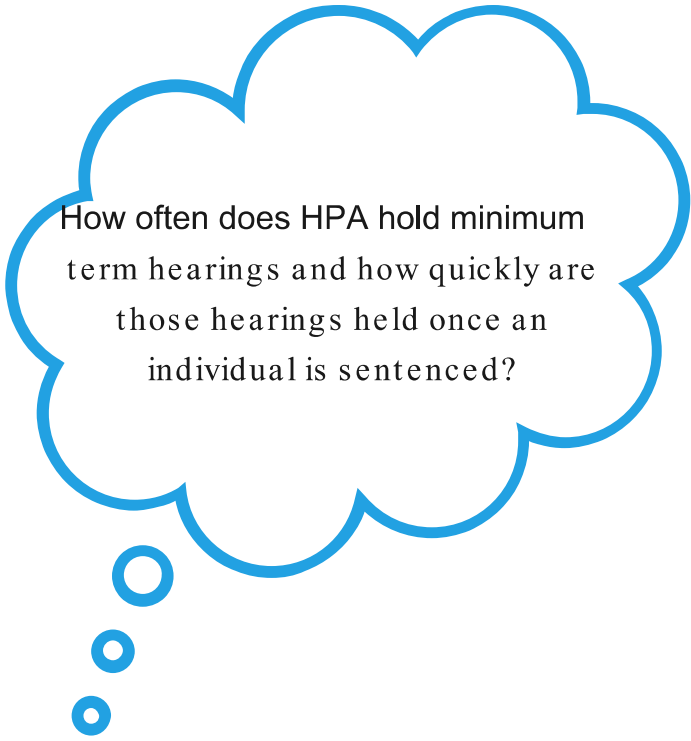
What trends exist in minimum terms,
and how might they vary over time
and why might they vary?

RQ# 2



What are trends over time around
the reduction of minimum terms?

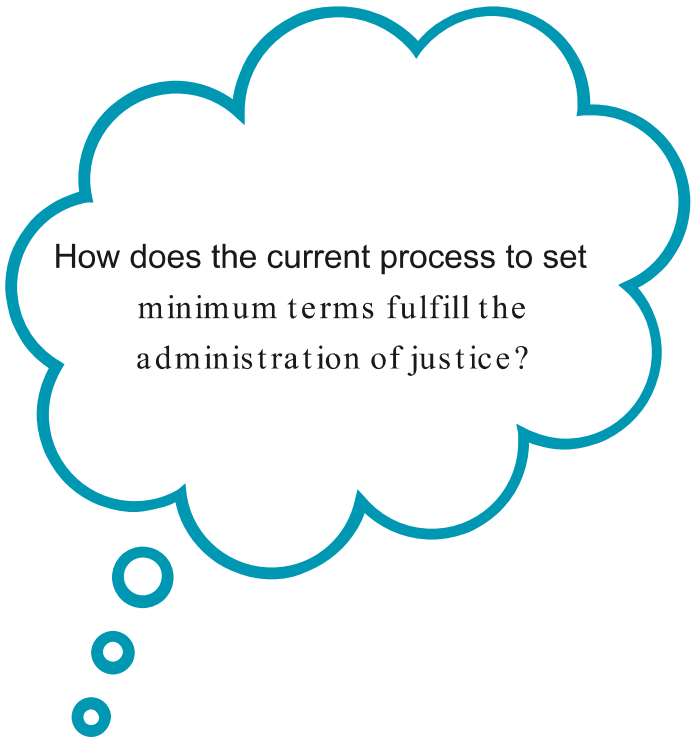
RQ# 3



How often does HPA hold minimum term hearings and how quickly are those hearings held once an individual is sentenced?

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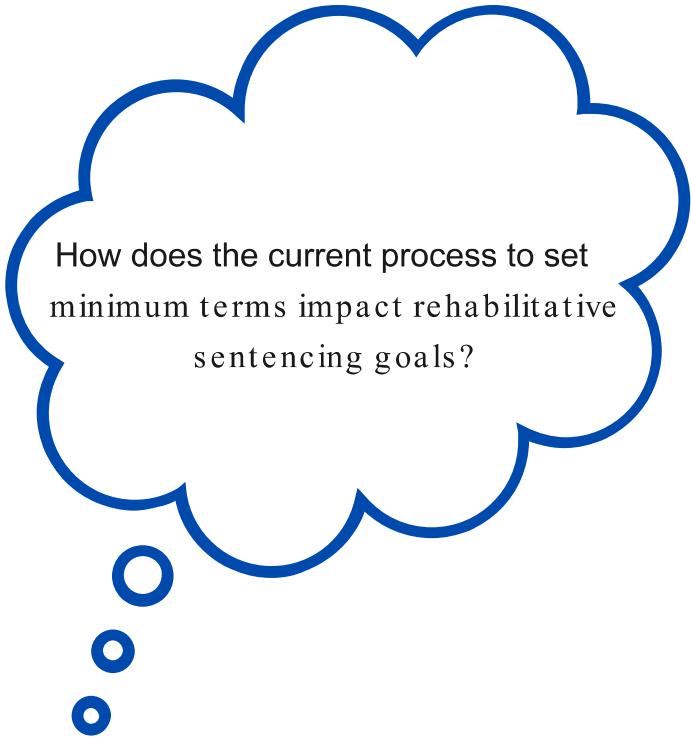
RQ# 4



How does the current process to set minimum terms fulfill the administration of justice?

A thought bubble with a teal outline and three smaller circles leading to it. The text is centered within the bubble. In the top right corner of the page, there is a small icon of a teal square with a white arrow pointing up and right, and a teal wavy line.

RQ# 5



How does the current process to set minimum terms impact rehabilitative sentencing goals?

A thought bubble with a blue outline and three smaller circles leading to it from the bottom left. The text inside the bubble is centered and reads: "How does the current process to set minimum terms impact rehabilitative sentencing goals?".

Research Question Discussion



What are some of the data gaps?

- Interviews with individuals who have gone through minimum term hearings
- Sentencing data
- Any others?



Are there any specific questions within the topics presented that are really important to you?

Are there questions we have not asked?



Thank you!

Feel free to contact us if you have any questions.

Contact Information

Please contact us any time for questions or to learn more about what we are doing.



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Hawai'i HCR 23 Task Force

Task Force Second Meeting
November 2, 2023

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

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



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

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. **Victim rights when a crime is committed**
 - Hawai'i rules of professional conduct of prosecution and defense
- II. **Judicial role in sentencing by statute**
 - Overall framework
 - PSIs
 - Roles of prosecution and defense
 - Data points
- III. **HPA role in setting minimum by statute and policy**
 - Rights of victims and accused
- IV. **Corrections role in preparing people for release**
- V. **Office of Hawaiian Affairs perspective**
- VI. **Oversight Commission perspective**

Victims have statutory rights in the judicial process (and beyond).

H.R.S. Chapter 801D Rights of Victims & Witnesses in Criminal Proceedings

801D-1 Legislative intent

801D-2 Definitions

801D-3 Eligibility of victims

801D-4 Basic bill of rights for victims and witnesses

801D-5 Responsibility for rights and services

801D-6 Intergovernmental cooperation

801D-7 Televised testimony

5

H.R.S. §353 Corrections, Part VII Automated Victim Information and Notification System; H.R.S. §801D-801D-5 Rights of Victims & Witnesses in Criminal Proceedings



The victim bill of rights stresses notification and information, supported by the AVIN system.

§ 801D-4 Basic bill of rights for victims and witnesses

Victims and surviving immediate family members of crime have the right to be:

- ✓ **Notified** of major developments
- ✓ **Consulted and advised** about plea bargaining
- ✓ **Informed** of final disposition
- ✓ **Notified** of hearing cancellation
- ✓ **Protected** from threats or harm
- ✓ **Informed** of financial assistance and other social services available
- ✓ **Informed** of changes to custodial status that allows or results in release into the community

Chapter 353 Corrections. Part VII Automated Victim Information and Notification System

6

H.R.S. §801D-4 Basic bill of rights for victims and witnesses; H.R.S. §353-137 et seq. Automated victim information and notification system



The accused also has constitutional and statutory rights in the judicial process.

Hawai'i Constitution Article I. Bill of Rights

SECTION 10. INDICTMENT; PRELIMINARY HEARING; INFORMATION; DOUBLE JEOPARDY; SELF-INCRIMINATION

SECTION 12. BAIL; EXCESSIVE PUNISHMENT

SECTION 14. RIGHTS OF ACCUSED

SECTION 25. SEXUAL ASSAULT CRIMES AGAINST MINORS

Article V. The Executive

SECTION 5. EXECUTIVE POWERS

... The governor may grant **reprieves, commutations and pardons**, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same. . .

Hawai'i Revised Statutes Rights of Accused

801-1 Indictment or information

801-2 Witnesses; defense

801-3 Jury list, witnesses

801-4 Fees not payable by defendant

Victims have specific rights related to sentencing.

§706-601 Pre-sentence diagnosis and report

“ . . . [I]n felony cases, the prosecuting attorney shall inform, or make reasonable efforts to inform, the victim or the victim’s surviving immediate family members of their rights to be present at the sentencing hearing and to provide information relating to the impact of the crime, including any requested restitution.”

§706-602 Pre-sentence diagnosis, notice to victims, and report

PSI court staff to provide notice of the Crime Victim Compensation Act

§706-604 Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department

“In all circuit court cases, regardless of whether a pre-sentence report has been prepared or waived, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant’s disposition, before imposing sentence.”

Discussion

- What is the victim experience from the criminal event through the judicial process?
 - ✓ Law enforcement
 - ✓ Victim advocate
 - ✓ Prosecutor
 - ✓ Judicial hearings
- How do prosecutors engage with victims and how do they use victim input?
- How do judges engage with victims and use victim input in decision-making?

Presentation Outline

- I. **Victim rights** when a crime is committed
 - Hawai'i rules of professional conduct of prosecution and defense
- II. **Judicial role in sentencing by statute**
 - Overall framework
 - PSIs
 - Roles of prosecution and defense
 - Data points
 - Sample of data on mins
 - More detail in policy
- III. **HPA role in setting minimum by statute and policy**
 - Rights of victims and accused
- IV. **Corrections** role in preparing people for release
- V. **Office of Hawaiian Affairs** perspective
- VI. **Oversight Commission** perspective

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

Legislative	Judicial	Executive
<p>Hawai'i statutes establish:</p> <ul style="list-style-type: none"> • Offenses and sentencing options • Maximum sentence length by felony class • Parole board's authority to set minimum and then to release • Mandatory minimums 	<ul style="list-style-type: none"> • Determines offense committed • Determines sentencing disposition: probation or prison • Pronounces maximum based on statute • May mitigate mandatory minimum 	<p>HPA:</p> <ul style="list-style-type: none"> • Standards for minimum • Hearings for minimum • Changing the minimum • Parole release • Parole revocation <p>DOC:</p> <ul style="list-style-type: none"> • No good time authority

Statutory Framework for Judicial Sentencing

§706-605 Authorized disposition of convicted defendants. Main options are probation, prison, fine, community service; compensation fee and restitution are mandatory

§706-606.5 Sentencing of repeat offenders. Sub. (6) allows reduced minimum for “strong mitigating circumstances.”

§706-620 Authority to withhold sentence of imprisonment. Probation not allowed for murder, most Class A crime, etc.

§§ 706-656 - 706.660. [Terms of imprisonment — see table.]

Felony Grade	Mandatory Stat. Max.
2nd Degree Murder	Life w/ Parole
Class A	20 years
Class B	10 years
Class C	5 years

Statutory Framework for Pre-sentence Investigations (PSIs)

§706-601 Pre-sentence diagnosis and report

Court shall order for felony case unless waived by agreement of the parties or by the judge in an accepted plea.

§706-602 Pre-sentence diagnosis, notice to victims, and report

“ . . . circumstances attending the commission of the crime . . . history of delinquency or criminality, physical and mental condition . . . the effect that the crime committed by the defendant has had upon [the] victim, including but not limited to, any physical or psychological harm or financial loss suffered. . . .”

§706-604 Opportunity to be heard with respect to sentence

“ . . . [court shall furnish to the parties a] copy of the report of any pre-sentence diagnosis or psychological, psychiatric, or other medical examination and afford fair opportunity . . . to controvert or supplement them. . . .”

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H.R.S. §706-601 Pre-sentence diagnosis and report; H.R.S. §706-602 Pre-sentence diagnosis, notice to victims, and report; H.R.S. §706-604 Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department.



Hawai'i Rules of Professional Conduct for Prosecution and Defense

Rules of Professional Conduct

Preamble: A Lawyer's Responsibilities

“These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests.”

Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

“In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.”

Rule 3.8. Performing the Duty of Public Prosecutor

“A public prosecutor or other government lawyer . . . shall not [prosecute when] charges are not supported by probable cause; . . . Shall make timely disclosure of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted”

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“Hawaii Rules of Professional Conduct (SCRU-11-0001047),” Supreme Court of Hawaii (2013).



Data Points for the Criminal Judicial Process

Excerpts of Table 7 Caseload Activity, FY 2021–22, Circuit Courts Proper—All Circuits

Criminal Cases Pending = 14,661		Criminal Cases Terminated = 4,011		Clearance rate = 104%	
Type of Termination	Guilty/No Contest		Acquitted/Dismissed/ Nolle Prosequi		Other
	1,634		1,600		777

**Termination Types for Criminal Cases: Guilty Pleas include deferred plea agreements; Others includes Change of Venue, Remand to District Court, Conditional Release, and "Others."*

Data Points for the Criminal Judicial Process

Excerpts of Table 12 Sentences Imposed in Criminal Cases, FY 2021–22, Circuit Courts Proper—All Circuits

Fine/ Restitution	Incarceration	Community Service	Counseling/ Treatment	Other	Total
5,639	2,509	77	415	2,953	11,593

**Sentences were imposed on 3,051 defendants in 2,972 cases statewide.*

Discussion

- What information do judges have at sentencing?
 - Is the information different for plea bargaining versus cases that go to trial?
- What information are prosecutors using to recommend sentence dispositions?
 - How prevalent is charge bargaining that would change the offense class?
 - How are aggravating and mitigating factors considered?
- What information are defense attorneys using to recommend sentence lengths?
 - How are decisions made to waive a PSI?
 - In what percentage of cases are PSIs waived?
- How are victims involved in the PSI and sentencing process?

Presentation Outline

- I. **Victim rights when a crime is committed**
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 - Data points
- III. **HPA role in setting minimum by statute and policy**
 - Rights of victims and accused
- IV. **Corrections role in preparing people for release**
- V. **Office of Hawaiian Affairs perspective**
- VI. **Oversight Commission perspective**
- **Hawai'i rules of professional conduct for prosecution and defense**
- **Sample of data on minimums**
- **More detail in policy**

Summary of the Scope of the HPA's Authority

Legislative	Judicial	Executive
<p>Hawai'i statutes establish:</p> <ul style="list-style-type: none"> • Offenses and sentencing options • Maximum sentence length by felony class • Parole board's authority to set minimum and then to release • Mandatory minimums 	<ul style="list-style-type: none"> • Determines offense committed • Determines sentencing disposition: probation or prison • Pronounces maximum based on statute • May mitigate mandatory minimum 	<p>HPA:</p> <ul style="list-style-type: none"> • Standards for minimum • Hearings for minimum • Changing the minimum • Parole release • Parole revocation • Parole discharge • Clemency

General Statutory Framework for the HPA

§353-62 Hawai'i paroling authority; responsibilities and duties; operations; records, reports, staff

(a) . . . [T]he paroling authority shall:

- (1) Serve as the central paroling authority for the State;
- (2) Consider for parole all committed persons;
- (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal;
- (4) Establish rules of operation to determine conditions of parole applicable to any individual granted parole;
- (5) Provide continuing custody, control, and supervision of paroled individuals;

General Statutory Framework for the HPA

(cont.) (8) Interpret the parole program to the public in order to develop a broad base of public understanding and support;

(9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration; . . .

(b) In its operations, the paroling authority shall:

(1) Keep and maintain a record of all meetings and proceedings;

(2) Make public no more than thirty days after a parole release hearing the following information: (A) The prisoner's name; and (B) Whether the parole request was approved or denied;

(3) Send a detailed report of its operations to the governor every three months.

Minimum Setting Statutory Framework for HPA

§ 706.669 Procedure for determining minimum term of imprisonment

“ . . . no later than six months after commitment . . . hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment . . .

. . . obtain a complete report regarding the prisoner's life before entering the institution and a full report of the prisoner's progress in the institution . . .

. . . may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until the prisoner has a record of continuous exemplary behavior. . . .

. . . After sixty days notice to the prosecuting attorney, the authority in its discretion may reduce the minimum term fixed by its order”

HPA's Hawaii Administrative Rules, Chapter 23-700, adopted in 1991

HAWAII PAROLING AUTHORITY	
CHAPTER 700	
Subchapter 1 Hawaii Paroling Authority	
23-700-1	Definitions
23-700-2	General
Subchapter 2 Minimum Sentence	
23-700-21	Jurisdiction
23-700-22	Procedure for fixing of minimum term
23-700-23	Factors to be considered in fixing a minimum sentence
23-700-24	Mitigating Factors to be considered in setting a minimum sentence
23-700-25	Aggravating factors to be considered in setting a minimum sentence
23-700-26	Request for reduction of minimum term(s) of imprisonment; submission guidelines
23-700-27	Request for reduction of minimum term of imprisonment; procedure
23-700-28	Issuance of decision on reduction of minimum term of imprisonment
23-700-29	Reducing previously established minimum terms of imprisonment; guidelines

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Hawaii Administrative Rules, "Hawaii Paroling Authority: Chapter 23-700", accessed September 25, 2023, <https://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Administrative-Rules-Chapter-23-700.pdf>.



Justice Center

HPA Minimum Term Guidelines, Adopted in 1989

H.R.S. § 706.669

"[E]stablish guidelines for the uniform determination of minimum sentences which shall take into account both the nature and degree of the offense of the prisoner and the prisoner's criminal history and character. . . ."

Guidelines levels of severity:

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

Seven Areas of Focus, Three in Particular:

- ❖ 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

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H.R.S. §706-669 Procedure for determining minimum term of imprisonment. [Subsection effective until December 31, 2023]; Guidelines for Establishing Minimum Terms of Imprisonment, Hawaii Paroling Authority (1989), <https://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>



Justice Center

HPA Guideline Minimum Ranges by Offense Class and Level

Felony Grade	Mandatory Stat. Max.	Level I	Level II	Level III
2nd Degree Murder	Life w/ 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

25 Guidelines for Establishing Minimum Terms of Imprisonment, Hawaii Paroling Authority (1989), <https://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>.



Roles and Rights in the HPA Minimum Process

Defense and Prisoner

". . . Be given reasonable **notice** of the hearing . . . Be permitted to be heard by the [HPA]. . . . Be permitted to **consult** with any persons the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for the hearing . . . Be permitted to be **represented** and assisted by counsel at the hearing . . . Have **counsel appointed** to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel . . . [and]

"Be **Informed** of the prisoner's rights [above]"

Prosecution and Victim

"The State shall have the right to be represented at the hearing by the prosecuting attorney who may **present written testimony and make oral comments** and the authority shall consider such testimony and comments in reaching its decision. The authority shall notify the prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing. The **hearing shall be opened to victims** or their designees or surviving immediate family members **who may present a written statement or make oral comments.**"

26 H.R.S. §706-669 Procedure for determining minimum term of imprisonment. [Subsection effective until December 31, 2023.]



HPA minimums have survived a constitutional question under the 6th Amendment.

Supreme Court of the United States

"[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed." —*Apprendi*

"Elevating the low-end of a sentencing range heightens the loss of liberty associated with the crime: the defendant's "expected punishment has increased as a result of the narrowed range." —*Alleyne*

Hawai'i Intermediate Court of Appeals

"[T]his court has noted that the HPA Guidelines do not set an initial starting point and increase (or decrease) the minimum term based upon certain criteria, but rather, "[a]ll relevant criteria are evaluated and a level of punishment is determined[.]"

—*Draizen* [and other unpublished opinions]

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Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *Alleyne v. United States*, 570 US 99 (2016); *Draizen v. State*, No. CAAP-12-0000708, 2015 WL 775031 at *2 (Haw. App. Feb. 24, 2015) (SDO).



Data Points for the HPA Process

All case types peaked at over 4,000 in FY2019 and were about 3,000 in FY2022.

- Parole release considerations outnumber all other decision types combined.
- Minimum term hearings in FY2022 were 16 percent of HPA's caseload, but anecdotally about twice that much of their workload.

Average minimum sentences across major offense categories and from FY2018 to 2022:

Class A **10.2 yrs** (Manslaughter, Robbery, Sexual Assault 1st, PDD 1st)

Class B **5.8 yrs** (Assault 1st, Burglary 1st, Sexual Assault 2nd, PDD 2nd)

Class C **3.3 yrs** (Assault 2nd, Burglary 2nd, Sexual Assault 3rd, PDD 3rd)

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CSG Justice Center staff analysis of HPA data sources: <https://dps.hawaii.gov/hpa/files/2022/12/Annual-Report-FY-2022.pdf> and <https://dps.hawaii.gov/wp-content/uploads/2019/12/2019-Annual-Report.pdf>.



Discussion

- What information does HPA have available for minimum setting?
 - How does HPA weigh the information when setting minimums?
 - Do certain factors have more weight than others?
- How are victims engaged in minimum setting?
- How are defense attorneys engaged in minimum setting?
- Are prosecutors providing input into minimum setting?
 - How does HPA setting minimums impact plea bargaining?
- What are the effects when HPA sets the minimum higher than a judge recommends?

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- VI. **Oversight Commission** perspective

Samples from the Statutory Framework for PSD Corrections

Chapter 353 Corrections and Rehabilitation (after 1/1/2024)

Covering health care, community centers, conditional release centers, mental health testing, substance use testing, community partnering, furlough, employment, etc.

Chapter 353E Statewide Integrated Sex Offender Treatment Program

Chapter 353G Criminal Offender Treatment Act

Chapter 353H Comprehensive Offender Reentry System

Chapter 354D Hawai'i Correctional Industries

Discussion

- How do minimum hearings impact staffing and workload of PSD?
- What is the process for a person to request a reduction in their minimum sentence?
- What factors does HPA consider for a reduction in minimum sentences?
- How does PSD use the reduction of minimums as incentives for behavior management?
 - How does PSD incentivize behavior if a minimum reduction is denied or if minimum time has passed?
- How do minimums and reductions in minimums impact programming placements?
- How are defense attorneys engaged in the minimum reduction hearings?
- How are victims impacted by reductions in minimums?

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 - More detail in policy
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- VI. **Oversight Commission** perspective

Statutory Mission for the Office of Hawaiian Affairs

1. Betterment of conditions of native Hawaiians
2. Betterment of conditions of Hawaiians
3. Coordination of programs and activities relating to native Hawaiians and Hawaiians
4. Assessing the policies and practices of other agencies . . . and conducting advocacy efforts
5. Applying for, receiving, and disbursing grants and donations
6. Serving as a receptacle for reparations

Discussion

- What has been the historical context of native Hawaiians' interactions with the judiciary (judges and prosecutors)?
- What has been the historical context of native Hawaiians' interactions with HPA?
- What has been the historical context of native Hawaiians' interactions with PSD?
- What comes to mind from a native Hawaiian perspective that the task force should be aware of or consider moving forward regarding sentencing and minimum setting?

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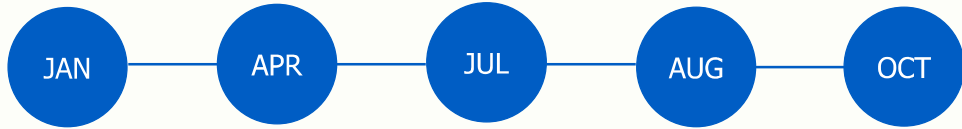
Statutory Duties of the Correctional System Oversight Commission

1. **Oversee . . . Investigate complaints . . . facilitate a correctional system transition to a rehabilitative and therapeutic model;**
2. **. . . inmate population limits . . . policies and procedures**
3. **. . . monitor and review the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees . . .**
4. **Ensure . . . programs and services that result in the timely release of inmates on parole when the minimum terms have been served**

Discussion

- **How does HCSOC's statutory mission affect or inform the issue of minimum setting?**
- **What observations and community input has HCSOC experienced related to the issue of minimum sentences?**

Task Force Meeting Planning for 2024



What information do task force members want to hear about to inform findings and recommendations?

What voices do task force members want to hear from to inform findings and recommendations?

What data do task force members want to see analyzed?

August 1
Legislative
Recs Due

October 21
Report Due

Activities the Justice Center Can Pursue to Inform the Task Force Deliberations

Review and Feedback

- PSI content and policies
- Assessment policies and practices for judicial and corrections (criminogenic risk, mental health, substance use, and sex offense)
- HPA minimum setting and reduction policies
- PSD policies on assessment, programming placement, case planning, and minimum reductions

Observations

- PSI
- Assessments
- Judicial sentencing hearings
- HPA minimum setting hearings

Focus Groups/Interviews

- Incarcerated people to understand their knowledge of processes and experiences with sentencing and minimum setting

Stakeholder Engagement

- Judges
- Prosecutors
- Defense attorneys
- Victims
- Institutional case managers
- Associations
- Legislators
- People with lived experience in Hawai'i's system
- Advocates

Data analysis—What else should we be analyzing?

Judicial Dispositions

- By offense class
- Probation vs. prison

Minimums by HPA

- By offense class
- Compared to the guidelines
- Compared to judicial minimums
- Minimum hearings proportion of HPA caseload
- Breakdown by race, ethnicity, and gender

Prison population over time

- By offense
- By race, ethnicity, and gender

Reductions in Minimums

- By offense class
- Breakdown by race, ethnicity, and gender
- Number requested versus number approved
- By facility

Releases from Prison

- Length of time served
- Minimum versus actual time served
- By offense class
- Breakdown by race, ethnicity, and gender

Thank You!

Join our distribution list to receive updates and announcements:

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

For more information, please contact:

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Carl Reynolds at creynolds@csg.org

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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



Sephria 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.



Justice Center
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

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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"

14 See slide 52 for sources.



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

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"State Expenditure Report Fiscal Years 2020-2022," National Association of State Budget Officers (2022).



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

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

Legislative	Judicial	Executive
<p>Hawai'i statutes establish:</p> <ul style="list-style-type: none"> • Offenses and sentencing options • Maximum sentence length by felony class • Parole board's authority to set minimum and then to release • Mandatory minimums 	<ul style="list-style-type: none"> • Determines offense committed • Determines basic sentencing option • Pronounces maximum based on statute 	<p>HPA:</p> <ul style="list-style-type: none"> • Standards for minimum • Hearings for minimum • Changing the minimum • Parole release • Parole revocation <p>DOC:</p> <ul style="list-style-type: none"> • 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

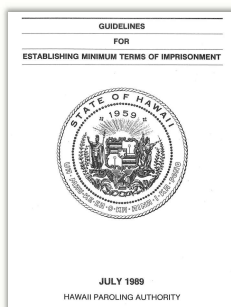
21 H.R.S. §§ 706.656 - 706.660.



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

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Guidelines for Establishing Minimum Terms of Imprisonment, Hawaii Paroling Authority (1989) <https://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>; Email correspondence between CSG Justice Center and Hawaii Paroling Authority, August 29, 2023.

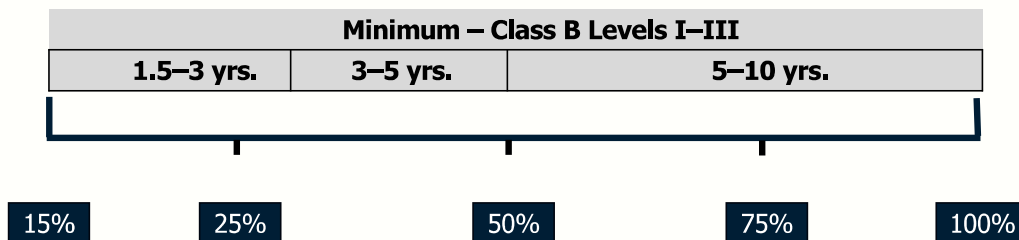


The HPA minimum ranges are broad.

Felony Grade	Mandatory Stat. Max.	Level I	Level II	Level III	Absolute Minimum Sentence in Relation to Maximum Sentence		
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	I	II	III
Class A	20 years	2–5	5–10	10–20	10%	25%	50%
Class B	10 years	1.5–3	3–5	5–10	15%	30%	50%
Class C	5 years	1–2	2–3	3–5	20%	40%	60%

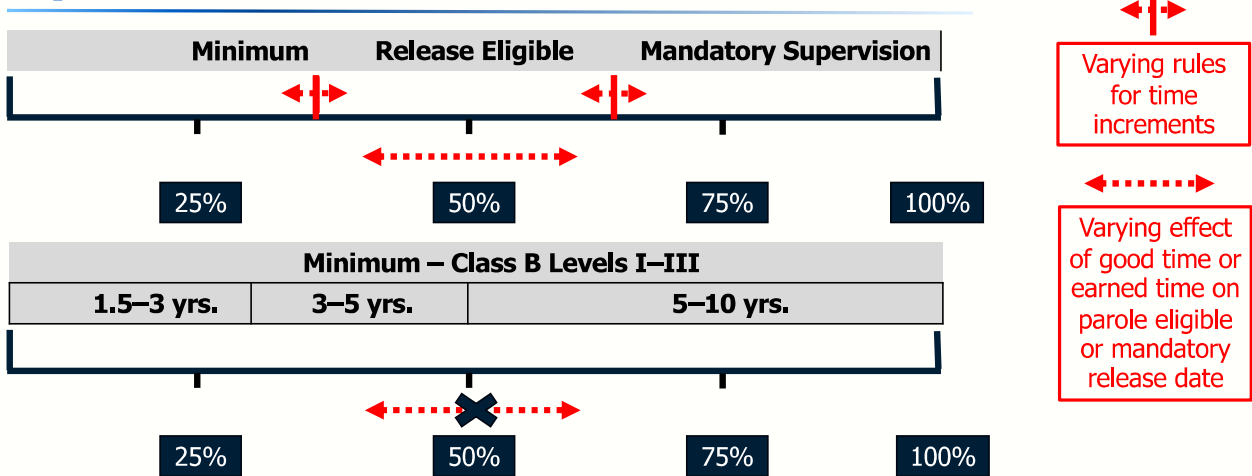
23

Hawai'i Sentencing and Release System Design



24

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



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

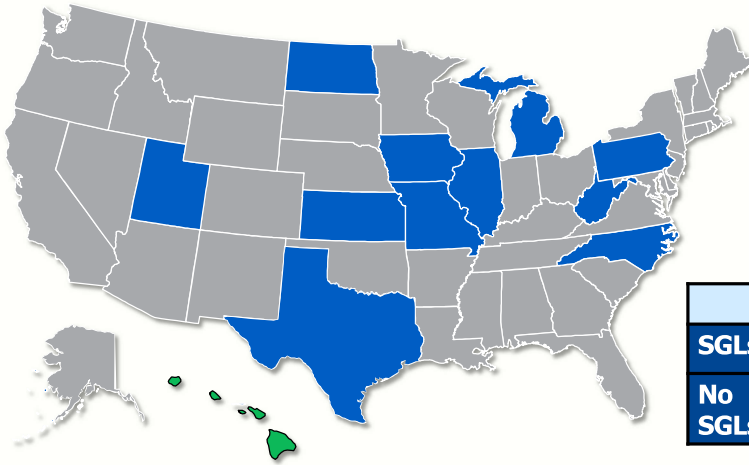
Fixed term that may be reduced by good time or earned time; no parole body; post-release supervision may be included in sentence.

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 Hawaii's system
- Similarities to Hawaii'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

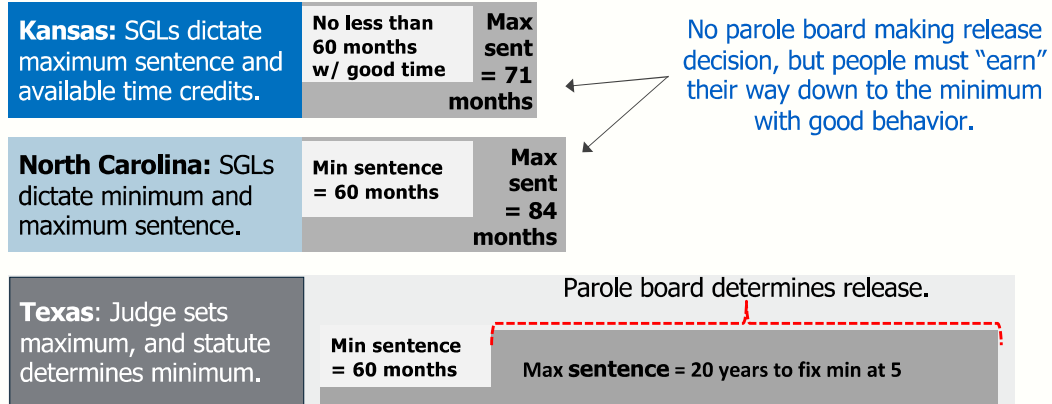
- ❖ Offense seriousness and criminal history rankings
- ❖ Sentence ranges narrower than statutory minimum and maximum are adopted by a sentencing commission
- ❖ Judges expected to sentence within the guideline range or justify departure
- ❖ Departures subject to appellate review

Kansas Non-drug Offense Sentencing Grid

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

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	1 Person Prison	2 Person Prison	1 Person & 1 Suspended Prisoner	2 Person Prison	3 Person Prison	4 Person Prison	5 Person Prison	6 Person Prison	7 Person Prison
I	600-600	600-600	600-600	600-600	600-600	600-600	600-600	600-600	600-600
II	400-400	400-400	400-400	400-400	400-400	400-400	400-400	400-400	400-400
III	300-300	300-300	300-300	300-300	300-300	300-300	300-300	300-300	300-300
IV	175-180	180-185	185-190	190-195	195-200	200-205	205-210	210-215	215-220
V	150-155	155-160	160-165	165-170	170-175	175-180	180-185	185-190	190-195
VI	125-130	130-135	135-140	140-145	145-150	150-155	155-160	160-165	165-170
VII	100-105	105-110	110-115	115-120	120-125	125-130	130-135	135-140	140-145
VIII	75-80	80-85	85-90	90-95	95-100	100-105	105-110	110-115	115-120
IX	50-55	55-60	60-65	65-70	70-75	75-80	80-85	85-90	90-95
X	25-30	30-35	35-40	40-45	45-50	50-55	55-60	60-65	65-70

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

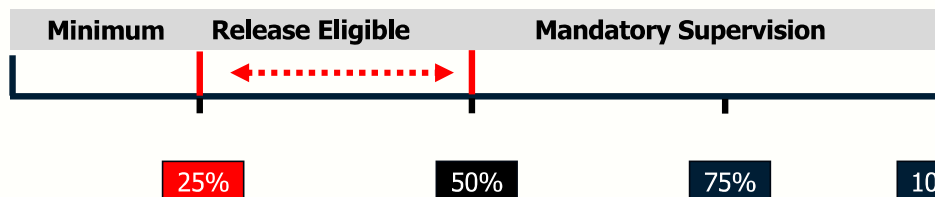


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Texas is indeterminate with no SGLs and illustrates how statutory minimums are calculated off the judicial maximum.

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



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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

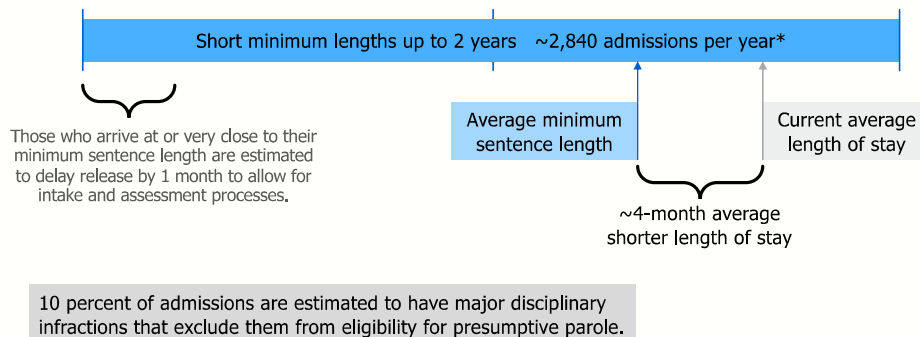
Level	DSS	Prior Record Score					RPEL	RELOC	AGG/MT	
		0	1	2	3	4				5
LEVEL 5	14	72-SL	84-SL	96-SL	120-SL	168-SL	192-SL	204-SL	SL	~12
	13	60-7B	66-84	72-90	78-96	84-102	96-114	108-126	240	+12
	12	48-66	54-72	60-78	66-84	72-90	84-102	96-114	120	+12
	11	36-54	42-60	48-66	54-72	60-78	72-90	84-102	120	+12
	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	+1-9
	7	6-14	9-16	12-18	15-21	18-24	24-30	35-45	NA	+1-6
LEVEL 3	6	3-12	6-14	9-16	12-18	15-21	21-27	27-40	NA	+1-6
LEVEL 2	5	RS-9 P2 (225-330)	1-12	3-14	6-16	9-16	12-18	24-36	NA	+1-3
	4	RS-3 P1 (180-192)	RS-9 P2 (225-330)	RS-12 P2 (300-315)	3-14	6-16	9-16	21-30	NA	+1-3
	3	RS-1 P1 (90-75)	RS-6 P1 (135-175)	RS-9 P2 (225-330)	RS-12 P2 (300-315)	3-14	6-16	12-18	NA	+1-3
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	+1-3
	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	+1-3

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

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



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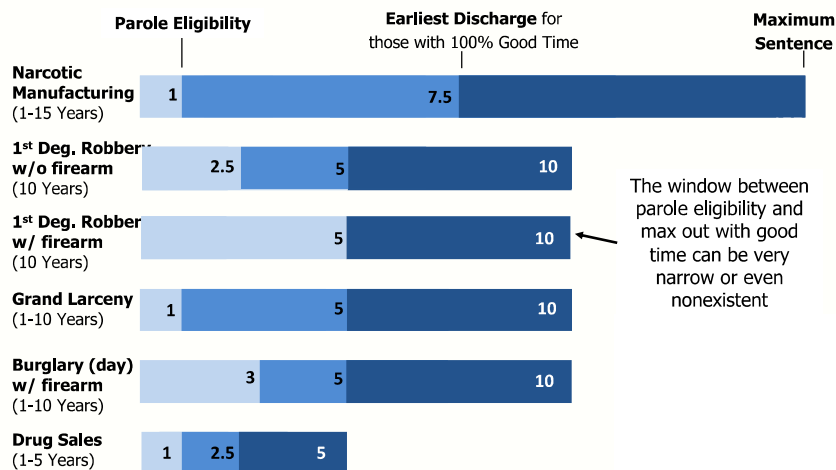


Like Pennsylvania, Michigan uses SGLs to guide judicial minimums and retains wide parole discretion.

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.

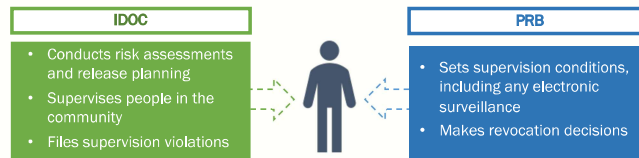
West Virginia is indeterminate, without SGLs, and illustrates the complexity of variable minimums and good time, which can lead to a max-out problem.



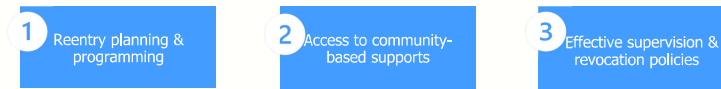
Illinois eliminated parole release but retained a Prisoner Review Board to set conditions and adjudicate revocations.

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?



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.

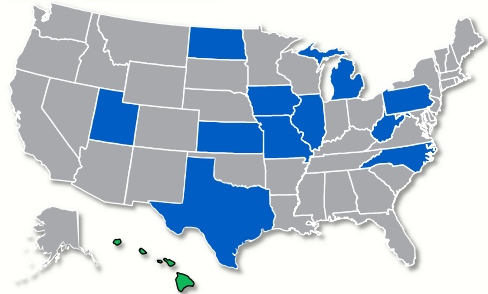
Michigan: SGLs guide the min. Judges set min and max, and min can not exceed $\frac{2}{3}$ max. Prison pop determined by parole rate.

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.



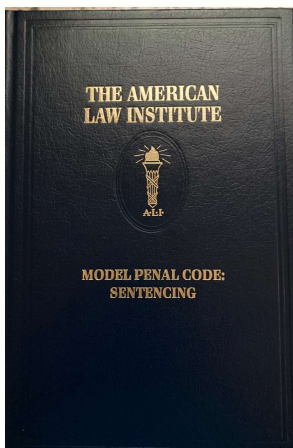
Presentation Outline

- 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

45 American Law Institute, *Model Penal Code : Official Draft and Explanatory Notes : Complete Text of Model Penal Code* (Adopted at the 1962 Annual Meeting of the American Law Institute at Washington, D.C., May 24, 1962. Philadelphia, Pa. :The Institute, 1985), Section 1.02 Purposes of Sentencing and the Sentencing System.



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.

46 American Law Institute, *Model Penal Code : Official Draft and Explanatory Notes : Complete Text of Model Penal Code* (Adopted at the 1962 Annual Meeting of the American Law Institute at Washington, D.C., May 24, 1962. Philadelphia, Pa. :The Institute, 1985), Section 1.02 Purposes of Sentencing and the Sentencing System.



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?

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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?

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Thank You!

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Citations for slide 14

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HOUSE CONCURRENT RESOLUTION

NO. 23 TASK FORCE

EXECUTIVE SUMMARY

The House Concurrent Resolution (HCR) 23 Task Force was established in the 2023 legislative session and requests members to examine and make recommendations regarding the existing procedures of the Hawai'i Paroling Authority (HPA) in setting minimum terms of imprisonment. This includes exploring the sentencing and parole systems of other jurisdictions and best-practices, evaluating the minimum terms issued by the HPA and the courts for significant differences, as well as recommending whether the setting of minimum terms should remain vested in the HPA's responsibilities or with another entity. Provided below is a background on relevant parole and sentencing issues for task force members.

Defining Parole

The National Institute of Corrections defines *parole* as both a procedure by which a board administratively releases individuals from prison as well as a provision for post-release supervision [1]. The HPA defines parole as a privilege that if granted, provides an opportunity for a person convicted of a felony to serve a portion of their sentence under the supervision of the HPA in the community [2].

Overview of the Hawai'i Paroling Authority

In Hawai'i, the HPA is responsible for the protection of the community and reintegration of an individual from prison into the community, which is accomplished by fixing an appropriate minimum term of imprisonment,



granting or denying parole, revoking parole, and supervising the individual on parole (Hawai'i Administrative Rules § 23-700-2). When carrying out these duties, the HPA makes other decisions that impact minimum terms and parole supervision. For example, they can grant a reduction of minimum terms (Hawai'i Revised Statutes § 706-669). Related to parole supervision, they can revoke parole (HRS § 353-66) or grant early discharge (HRS § 353-70) from parole supervision. The HPA is also involved in medical and compassionate release, pardons and clemency (HRS § 353-72), suspension of parole (HRS § 353-66), and program determination for sex offender treatment (HRS § 353E-1).

Nominees to the parole board are selected by a panel consisting of the chief justice of the Hawai'i Supreme Court, or the chief justice's designee, the director of the Department of Public Safety (DPS), or the director's designee, the president of the Hawai'i State Bar Association, or the president's designee, a representative designated by the head of Interfaith Alliance Hawai'i, a member of the general public appointed by the governor, and the president of the Hawai'i chapter of the National Association of Social Workers, or the president's designee (HRS § 353-61). The parole board consists of five members who are appointed by the governor and confirmed by the Senate (HRS § 353-61) - the chairperson, who serves full-time, and four part-time members (HRS § 353-63). The HPA functions as a quasi-judicial body and is administratively attached to the DPS (HAR § 23-700-2). In addition to parole board members, the HPA also consists of parole officers who supervise individuals who have been released into the community on parole supervision (HRS § 353-71).

Each parole board hearing shall consist of a panel of three of its members (HRS § 353-62). In addition to the person who is incarcerated and parole board members, other individuals that might be present at minimum term hearings include defense counsel, a prosecutor, victim and/or family advocates, and the DPS, who provides an initial prescriptive plan (IPP) and risk assessment [3]. Those present for parole consideration hearings, in



addition to the person who is incarcerated and parole board members, could include defense counsel, DPS case managers, who provides a prescriptive plan update (PPU), and a pre-parole officer, who provides a pre-parole report; the prosecutor's attendance at these hearings is optional. If the individual is participating in the Bridge Program or work furlough, a case manager or representative, respectively, will attend the parole consideration hearing.

While the HPA has a range of duties that impact prison terms, what is most important to understand regarding the HPA's responsibilities for the purposes of the HCR 23 Task Force is that HPA board members conduct minimum term hearings for individuals sentenced to prison.

There are some exceptions to their role in setting minimum terms. Additional information on sentencing and minimum terms relevant to the task force is provided below.

Indeterminate and Determinate Sentencing Systems in the United States

In the United States, sentencing practices are classified as either indeterminate or determinate. *Indeterminate* prison sentences are those in which an individual's date of release cannot be predicted with fair accuracy from the court's sentence at the conclusion of a criminal trial [4]. An indeterminate sentence has discretionary parole release eligibility prior to the expiration of its maximum term, and the individual's length of term is not fixed in a manner that is routine or reasonably knowable in advance [5]. For example, an individual may be eligible for their first parole hearing after one year, but they will not know if they are serving more than one year until they attend their first parole hearing. *Determinate* prison sentences are those in which an individual's date of release can be predicted with fair accuracy from the court's judgement at the conclusion of the criminal trial [6]. A determinate sentence has no parole-release eligibility, and the individual's length of term is adjusted in a manner that is



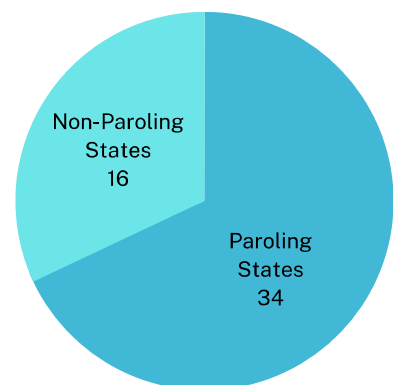
routine and reasonably knowable in advance [7]. The actual length of a prison term in states with determinate sentencing practices is not determined by later-in-time decision makers, such as parole boards [8]. For instance, a determinate sentence might include five years with a mandatory release at four and a half years with six years of post-release supervision. In practice, determinate sentences tend to carry more certainty around time served, whereas indeterminate sentences might be less predictable since an individual is subject to a release date that is set at the discretion of the paroling authority.

Furthermore, sentencing practices have varying *degrees of indeterminacy*, or unpredictability, of actual time served in prison from the moment of judicial sentencing [9]. In practice, sentencing systems are never purely determinate or indeterminate, and the amount of time served can vary because of a range of sentencing decisions. When exploring sentencing and prison-release systems across the United States, it is important to remember that each system is unique, and comparing the practices and outcomes of different systems requires caution [10]. Even within the state of Hawai'i, sentencing differs based on the offense level and offense type, and the degree of certainty can vary across sentences depending on statute or decisions made by the HPA and the courts.

HPA's Role in Setting Minimum Terms of Imprisonment

In Hawai'i, the HPA has the responsibility of setting minimum terms of incarceration for persons convicted of a felony and sentenced to prison with some exceptions to this process. Hawai'i is one of 34 paroling states (see Figure 1), however, it is one of

Figure 1. Paroling and Non-Paroling States



Hawai'i is one of 34 paroling states.



the few paroling authorities that sets minimum terms [11]. Minimum terms in other states are set by the sentencing judge with mandatory minimum sentencing laws, sentencing guidelines, or a statutory formula, often taking the form of a fixed ratio [12]. For most felony sentences, sentencing judges in Hawai'i identify the maximum term of incarceration according to statute, which takes into account offense seriousness (see Table 1). Judges have a limited in role in setting the minimum term except under certain circumstances in the law [13].

Table 1. Mandatory Maximum Prison Sentences and Determination of Minimum Sentences for Most Felony Offenses

For many felony offenses in Hawai'i, the HPA sets the minimum term at a hearing and the maximum amount of the term is set in law. An individual might be released before their maximum term ends if the HPA grants them parole at a parole hearing. The maximum terms vary by felony grade.

Felony Grade	Minimum Term	Mandatory Judicial Maximum Term
First-degree murder	None without commutation	Life without parole
Second-degree murder	Set by parole board	Life with parole
Class A	Set by parole board	20 years
Class B	Set by parole board	10 years
Class C	Set by parole board	5 years

Table adapted from Reitz et al., 2023. *Prison-release discretion and prison population size: State report: Hawaii.*

The exceptions to this process depend on the specific offense and grade. For example, judges can set a maximum term within a statutory range



for many class B and C felony drug offenses, but HPA will still set the minimum term (HRS § 706-660(2)), or there are other statutory requirements for mandatory minimums such as those outlined under the “sentencing of repeat offenders” (HRS § 706-606.5). Additionally, unlike many individuals convicted of felonies, those convicted of misdemeanors in Hawai‘i are given determinate sentences fixed by the sentencing judge (HRS § 706-663) [14]. When reviewing the role of the HPA in setting minimum terms, it is important to acknowledge that certain offenses and grades have different practices related to sentencing and time served, and sentences for some offenses may not be impacted as much by minimum term hearings.

The HPA issues a tentative parole date - effectively an individual's minimum term length - through a minimum term hearing, which is held no later than six months after commitment to incarceration (HRS § 706-699) [15]. The parole release hearing is a different type of review that determines whether someone is ready for release from prison after they have served the required minimum amount of their sentence. There are administrative rules for the HPA that include factors that should be considered for setting the minimum term, however, these factors are not the same as those used for determining the actual date of release [16]. In Hawai‘i, most felony prison sentences have no statutory minimum, and discretionary parole release is allowed, in theory, on the day of admission to prison [17]. In other words, the parole board could set actual sentence length served within a range of a few minutes to the full maximum term [18]. It should be noted that neither HRS Chapter 706 or Chapter 353 prohibits the HPA from setting a prisoner’s minimum term at a period equal to their maximum sentence, effectively eliminating parole release.

To summarize, the HPA holds hearings for both setting minimum terms and for prison release for many individuals sentenced for felony offenses. This sentencing practice could be classified as having a high



degree of indeterminacy since individuals must serve time based on a series of HPA decisions, which have criteria in policy but allow for HPA discretion [19]. Though there are exceptions, the HPA has a prominent role in impacting an individual’s time served with each hearing.

In Fiscal Year 2021-2022, the HPA fixed 1,337 minimum terms for 488 individuals (see Figure 2) [20]. Over the three most recent fiscal years for which data is available, the HPA fixed an average of 1,337 minimum terms for an average of 430 individuals. In any given fiscal year, there are more minimum terms fixed by the HPA than persons who had a minimum term fixed - each charge that a person is convicted of is associated with its own minimum term, and a person convicted of multiple charges will subsequently be assigned multiple minimum terms.

Figure 2. Minimum Terms of Imprisonment Set by the HPA in FY 2021-2022



1,337
minimum terms
set

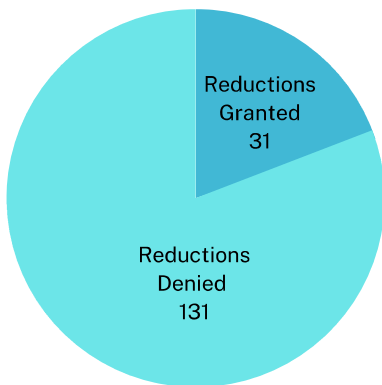


488
persons for
which minimum
terms were set

The HPA received 162 applications for a reduction of minimum sentence in FY 2021-2022, of which 31 (19%) reductions were granted (see Figure 3). Reductions of a minimum sentence may be granted based on factors related to treatment, programming, or other improvements in prosocial behavior (HAR § 23-700-29). The HPA also held 1,861 parole consideration hearings in FY 2021-2022, considering 1,462 persons for parole, in which 528 persons were granted parole (see Figure 4). If parole is denied, the HPA must hold additional hearings at least every 12 months, until parole is granted or the maximum term of imprisonment expires (HRS § 706-670(1)) [21].

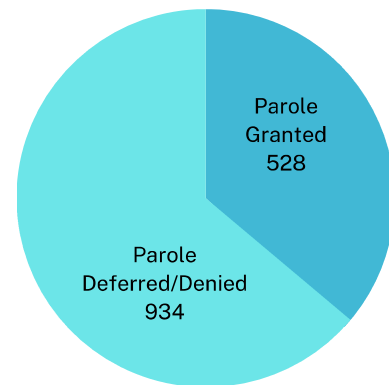


Figure 3. Applications for Reduction of Minimum Term Received in FY 2021-2022



Out of 162 applicants, 31 individuals were granted a reduction of minimum sentence.

Figure 4. Individuals with Parole Consideration Hearings in FY 2021-2022



Out of 1,462 persons considered for parole, 528 persons were granted parole.

Parole administrative rules outline reasons someone might be denied parole including factors such as institutional misconduct or refusal to engage in prison programming, to illustrate a few (HAR § 23-700-33).

The Relationship Between Sentencing, Time Served, and Rehabilitation

Sentencing is designed to accomplish multiple goals for the criminal justice system which can make it difficult to create or evaluate an "effective" sentencing structure. For example, a probation sentence might be the most effective way to reduce recidivism for one person, but their crime might have been severe enough to result in incarceration. Regardless of how prison terms are set, they are part of a larger framework that must consider the correctional goals of deterrence, rehabilitation, incapacitation, retribution, restoration, and restitution for the state to administer justice [22]. Because the HPA sets the minimum term *and* decides when someone is ready for release, for most felony sentences, HPA board members have the most discretion to impact someone's time served in prison and to fulfill the state's goals in sentencing. While reviewing the state's current process to establish



minimum terms and reviewing the sentencing structures of other states, task force members may want to consider the following:

- *Utilization of resources and planning:* Hawai'i's current process for setting minimum terms is a two-step process involving judicial sentencing and the HPA's minimum term hearing. Coupled with the parole release process, the HPA holds at least two or more hearings that can impact an individual's time served. This process might also limit the DPS's ability to project its future capacity, resource, programming, and staffing needs. When examining sentencing decisions, it is important to consider how policies impact the ability to plan and gather resources that create continuity for programming and services for individuals in prison through release into the community.
- *Impact on providing timely programming:* The current minimum term hearing process could result in undue delays related to prison programming, since an individual's admittance to a program can depend on time of sentence remaining. Prisons often place individuals in programs closer to their projected release, therefore individuals with shorter sentences may have difficulty getting into programs on time in order for them to be eligible for parole release.
- *Degree of predictability for time served:* Indeterminate systems have less predictability in time served, which can have consequences for people who are incarcerated, their families, victims, and the community. Family members may be unsure how to plan and prepare for an individual's release. Related, less certain sentences may not be as effective at deterring individuals if they are unclear about consequences post conviction. However, determinate systems might lack flexibility, which can be helpful for rehabilitative aims such as incentivizing individuals to participate in programming that reduces their recidivism.
- *Creating an effective sentencing process to achieve sentencing goals:* In theory, it does not matter who sets terms to accomplish sentencing goals; instead, the focus should be on developing laws and policies



that align with these goals. For example, a state with a paroling authority could still implement punitive policies if laws permitted excessive term lengths and the paroling authority did not release individuals who participated in programs. Conversely, a state with sentencing guidelines could be rehabilitative by setting reasonable term lengths and requiring prisons to offer rehabilitative programs. Regardless of what entity sets the minimum terms, these decision-makers should carry out the state's vision of sentencing and corrections, and state policy should identify the best entity to do so.

- *Role of time served in achieving sentencing goals:* There is no clear evidence that suggests certain term lengths are more or less effective at reducing recidivism or deterring individuals from crime [23]. Rather, sentence lengths are a reflection of multiple goals and the value the community places in these goals. Sentencing systems must balance providing the best processes for holding people accountable to accomplish these goals while also ensuring that evidence-based rehabilitative services are timed effectively to prepare individuals for release in order to reduce recidivism.
- *Factors that impact minimum term lengths:* Currently, the HPA has policies that include different factors (e.g., nature of offense) board members use to set minimum terms [24]. The decisions of the HPA at the minimum term hearing function similar to other sentencing policies such as sentencing guidelines that judges might use in other states. Regardless of who makes the decision to set the minimum term, it is important to examine what factors are used to set the minimum term and consider whether they are relevant to shortening or lengthening someone's time served. Additionally, it is helpful to understand how often the HPA adheres to the guidelines. Most communities expect consistent sentences for similarly situated individuals, and guidelines can assist with that if they are followed.



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Prepared for the HCR 23 Task Force

Aerielle Reynolds, MSCJA, Erin Harbinson, PhD, and Pamela Oda

September 2023

HANDOUTS



The Frequency of Convictions

For Minimum Term Hearings Held Between January – June 2023

Class	Offense	Frequency	Percentage
FC	Promoting a dangerous drug, 3rd degree	78	12.3%
FC	Unauthorized control of a propelled vehicle, 1st degree	72	11.4%
FC	Theft, 2nd degree	47	7.4%
FC	Burglary, 2nd degree	37	5.8%
FC	Unauthorized possession confidential personal information	33	5.2%
FC	Unauthorized entry into motor vehicle, 1st degree	32	5.1%
FB	Burglary, 1st degree	25	3.9%
FC	Assault, 2nd degree	24	3.8%
FB	Promoting a dangerous drug, 2nd degree	20	3.2%
FC	Terroristic threatening, 1st degree	19	3.0%
FB	Robbery, 2nd degree	18	2.8%
FB	Criminal property damage, 1st degree	15	2.4%
FC	Fraudulent use of a credit card	10	1.6%
FC	Resisting an order to stop a motor vehicle, 1st degree	10	1.6%



The Frequency of Convictions (cont.)

Class	Offense	Frequency	Percentage
FA	Robbery, 1st degree	10	1.6%
FB	Sexual assault, 2nd degree	10	1.6%
FC	Abuse of family and household member	9	1.4%
FC	Identity theft, 3rd degree	9	1.4%
FB	Place to keep pistol or revolver	9	1.4%
FC	Theft of credit card	9	1.4%
FC	Escape, 2nd degree	8	1.3%
FB	Ownership or possession prohibited firearm; ammunition by a person convicted of certain crimes	8	1.3%
FC	Sexual assault, 3rd degree	8	1.3%
FC	Criminal property damage, 2nd degree	7	1.1%
FB	Assault, 1st degree	6	0.9%
FC	Habitual property crime	6	0.9%
FB	Identity theft, 2nd degree	6	0.9%
FC	Forgery, 2nd degree	5	0.8%



The Frequency of Convictions (cont.)

Class	Offense	Frequency	Percentage
FC	Habitually operating a vehicle under the influence of an intoxicant	5	0.8%
FB	Ownership or possession prohibited	5	0.8%
FC	Assault against a law enforcement officer or a police officer, 1st degree	4	0.6%
FA	Carrying or use of firearm in the commission of a separate felony	4	0.6%
FB	Computer fraud, 2nd degree	4	0.6%
FA	Manslaughter	4	0.6%
FC	Attempted theft, 2nd degree	3	0.5%
FC	Felony abuse of family household member	3	0.5%
FC	Negligent injury, 1st degree	3	0.5%
FB	Theft, 1st degree	3	0.5%
FC	Unauthorized entry into a dwelling, 2nd degree	3	0.5%
MD	Unauthorized entry into a motor vehicle, 2nd degree	3	0.5%
FB	Attempted burglary, 1st degree	2	0.3%

Page 3



The Frequency of Convictions (cont.)

Class	Offense	Frequency	Percentage
LWP	Attempted murder, 2nd degree	2	0.3%
FC	Computer fraud, 3rd degree	2	0.3%
FC	Intimidating a witness	2	0.3%
FA	Kidnapping	2	0.3%
LWP	Murder, 2nd degree	2	0.3%
FC	Reckless endangering, 1st degree	2	0.3%
FB	Accomplice to computer fraud, 2nd degree	1	0.2%
FC	Accomplice to unauthorized entry into a motor vehicle, 1st degree	1	0.2%
FB	Accomplice to identity theft, 2nd degree	1	0.2%
FB	Accomplice to sexual assault, 2nd degree	1	0.2%
FB	Accomplice to theft, 1st degree	1	0.2%
FA	Arson, 1st degree	1	0.2%
FB	Arson, 2nd degree	1	0.2%
FC	Arson, 3rd degree	1	0.2%



The Frequency of Convictions (cont.)

Class	Offense	Frequency	Percentage
MD	Assault against a law enforcement officer, 2nd degree	1	0.2%
FC	Attempted burglary, 2nd degree	1	0.2%
FC	Attempted felony abuse of a family or household member	1	0.2%
FA	Attempted manslaughter	1	0.2%
FB	Attempted promoting a dangerous drug, 2nd degree	1	0.2%
FC	Attempted unauthorized control of propelled vehicle, 1st degree	1	0.2%
FC	Bail jumping, 1st degree	1	0.2%
FC	Bribery of or by a witness	1	0.2%
FB	Burglary of a dwelling during an emergency period	1	0.2%
FB	Carrying or possessing a loaded firearm on a public highway	1	0.2%
FA	Continuous sexual assault of a minor under the age of 14 years	1	0.2%
FC	Extortion, 2nd degree	1	0.2%
FA	Manslaughter based on extreme mental or emotional disturbance	1	0.2%

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The Frequency of Convictions (cont.)

Class	Offense	Frequency	Percentage
FB	Negligent homicide, 1st degree	1	0.2%
FC	Negligent homicide, 2nd degree	1	0.2%
FB	Place to keep unloaded firearms other than pistols & revolvers	1	0.2%
FB	Unauthorized entry into a dwelling, 1st degree	1	0.2%
FC	Unlawful imprisonment, 1st degree	1	0.2%



The Number of Punishment Levels Selected by Factor and Offense Class For Minimum Term Hearings Held Between January – June 2023

Factor	Offense Level	Level I	Level II	Level III
Character and attitude of offender with respect to criminal activity or lifestyle	Felony C	3	25	31
	Felony B	1	8	22
	Felony A	0	1	7
	Life w. Parole	0	0	0
Criminal history	Felony C	0	2	31
	Felony B	0	0	15
	Felony A	0	1	5
	Life w. Parole	0	0	0
Nature of Offense	Felony C	1	6	7
	Felony B	0	6	12
	Felony A	1	1	7
	Life w. Parole	0	1	3

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The Number of Punishment Levels Selected by Factor and Offense Level (cont.)

Factor	Offense Level	Level I	Level II	Level III
Efforts made to live a prosocial life prior to commitment to prison	Felony C	1	2	3
	Felony B	0	0	2
	Felony A	0	0	1
	Life w. Parole	0	0	0
Probation Revocation	Felony C	5	1	-
	Felony B	1	2	-
	Felony A	0	0	-
	Life w. Parole	0	0	-
Degree of injury/loss to person or property	Felony C	0	0	3
	Felony B	0	0	2
	Felony A	0	0	2
	Life w. Parole	0	0	0



The Number of Punishment Levels Selected by Factor and Offense Level (cont.)

Factor	Offense Level	Level I	Level II	Level III
Involvement of offender in instant offense	Felony C	-	1	3
	Felony B	-	1	0
	Felony A	-	0	1
	Life w. Parole	-	0	1

**H.C.R. 31 Task Force
CSG Technical Assistance
ACLU OF HAWAI'I RESOURCE LIST
08-23-23**

I. HAWAI'I LEGISLATION

A. PAROLE REFORM

HB2341 HD1 (Companion bill to SB2515) – Died

https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=2342&year=2022

Testimony relating to HB 2341

https://www.capitol.hawaii.gov/sessions/Session2022/Testimony/HB2342_TESTIMONY_CMV_02-16-22_.PDF

SB 2515 - Died

https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2515&year=2022

Testimony relating to SB 2515

https://www.capitol.hawaii.gov/sessions/Session2022/Testimony/SB2515_TESTIMONY_PSM_02-03-22_.PDF

EARNED TIME CREDIT (2015) - Died

https://www.capitol.hawaii.gov/sessions/session2015/bills/HB367_.HTM

B. PROBATION REFORM

SB 2514 (2022) - Died

https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2514&year=2022

Testimony relating to SB2514

[SB2514_TESTIMONY_PSM_02-03-22_](#)

(See p. 9-11 Attorney General opposition; Judiciary opposition pp. 12-19)

[SB2514_SD1_TESTIMONY_JDC_02-28-22_](#)

[SB2514_SD1_TESTIMONY_JDC_03-01-22_](#)

Committee Report

SB2514_SD1_SSCR2169_

HB2344 (Companion Bill to SB2514)

Pretrial Unsecured bail SB 192 (Discretionary unsecured bail; NEVER implemented in HI since law enacted); Judiciary opposed this measure despite leading the Pretrial Fairness Task Force

https://www.capitol.hawaii.gov/sessions/Session2019/Testimony/SB192_TESTIMONY_JDC_02-07-19_.PDF

https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=192&year=2019

Testimony

https://www.capitol.hawaii.gov/sessions/Session2019/Testimony/SB192_HD2_TESTIMONY_FIN_03-29-19_.PDF

II. BACKGROUND INFORMATION

A. HPA Report

Parole Decision Making in Hawaii: Setting Minimum Terms, Approving Release, Deciding on Revocation, and Predicting Success and Failure on Parole, Gene Kassebaum, Janet Davidson-Coronado and Paul Perrone (2001)

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/parole-decision-making-hawaii-setting-minimum-terms-approving>

B. HPA Chair Fred Hyun

The HPA Chair, Administrator and Parole officers on different islands submitted testimony in opposition to these parole reform bills despite the Chair's assertion that he supports reform.

** In 2021, Governor Ige appointed HPA Chair Hyun to serve as "Special Master" to oversee the Dept of Public Safety (PSD) and to make systemwide recommendations after the former PSD Director Noland Espinda went on personal leave. (A year later, Mr. Espinda committed suicide).

<https://www.civilbeat.org/2020/09/ige-appoints-special-master-to-oversee-department-of-public-safety/>

C. Special Master’s Report pp. 38-45 HPA Functional Statement; pp. 18-23 Recommendations

<https://dps.hawaii.gov/wp-content/uploads/2021/06/Special-Master-Report-2021.pdf>

III. HAWAII TASK FORCE COMMISSIONS

<https://www.oha.org/governance/criminal-justice/>

Hawaii Criminal Pretrial Reform Task Force Recommendations (2018)

<https://www.oha.org/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform-Final-Report-12.14.18.pdf>

Native Hawaiian Criminal Justice Task Force

https://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf

IV. HAWAI’I SUPREME COURT DECISIONS RE: HPA

A. *Williamson v. HPA* (2001)

We hold that neither Chapter 706 nor Chapter 353 of the Hawai’i Revised Statutes (HRS) prohibit the HPA from setting a prisoner's minimum term at a period equal to his or her maximum sentence. Therefore, we reverse the ICA's opinion.

<https://caselaw.findlaw.com/court/hi-supreme-court/1364367.html>

B. *Rapoza v. State* (2021)

<https://law.justia.com/cases/hawaii/supreme-court/2021/scwc-16-0000532-1.html>

<https://www.prisonlegalnews.org/news/2022/may/1/hawaii-supreme-court-orders-new-parole-hearing-prisoner-held-1979/>

V. COMMUNITY ALLIES

A. Criminologists

1. Dr. Janet Davidson at Chaminade University
2. Dr. Marilyn Brown, University of Hawai’i at Hilo

B. Attorneys

1. Jennifer Brown, Hawaii Innocence Project and Beyond Guilt Clinic at the William R. Richardson School of Law at the University of Hawaii at Manoa
2. Professor Ken Lawson, Hawaii Innocence Project and Beyond Guilt Clinic at the William R. Richardson School of Law at the University of Hawaii at Manoa
3. Ben Lowenthal, Deputy Public Defender on Maui
4. Taryn Tomasa, Deputy Public Defender on O'ahu

C. Re-entry Programs

1. YWCA Women's Fernhurst Program (O'ahu – Noriko Yamaki)
2. Habilitat (O'ahu – Jeff Nash)
3. Ho'omau Ke Ola (O'ahu)
4. Pu'u honua Prison Project (O'ahu Auntie Fran Dudoit)
5. First LAP (Life After Prison) (O'ahu Matt Taufatee)
6. Pua Foundation – (O'ahu Dr. Toni Bissen)
7. 'Ekolu Nui Mea (O'ahu Dr. Jamee Miller)
8. Going Home Hawai'i (Hawai'i – Les Estrella)
9. Men of PA'A (Hawai'i – Iopa Maunakea or Ric Parish)
10. BISAC (Hawai'i)
11. Maui Economic Opportunity Program B.E.S.T. Reintegration Program (Maui Debbie Cabebe or Cassi Yamashita)
12. Andy Tong – Sex Offender Treatment Program

VI. ISSUES

A. Minimum Sentences

1. Minimums Higher than in the past for some offenses

B. Reincarceration for Technical Violations

1. 97-100% rates of re-incarceration for technical violations; see Annual Report
2. No "maximum" or ceiling on the number of years that one must serve if parole is revoked; it could be 3 months or years

C. Lack of Data

1. Race & ancestry
2. Sex & gender identity
3. Age
4. Specific offenses
5. Annual Report – limited data
6. No Specific Goals/proposed outcomes

D. HPA Members

1. Reports of unprofessional conduct and comments (i.e. comments pertaining to race, ancestry, sex and gender)
2. No Minimum qualifications
3. No knowledge of best practices
4. Political Appointees
5. Lack of training

E. Racial Disparities in Parole Decisionmaking

1. See OHA's Report (see links below)
2. The Minimum sentence impacts a person's length of incarceration. OHA's report confirmed that Native Hawaiians were exported to private prisons on the continent at EVEN higher rates compared to other racial and ethnic groups.

[Download the Executive Summary \(PDF\)](#)

[Download the Full Report \(PDF\)](#)

[Download the Study Fact Sheets \(PDF\)](#)

[Download the Press Release \(PDF\)](#)

F. Lack of Transparency

G. Failure to Follow their Own Rules

1. HPA holds hearings with less than 3 HPA members
2. Reentry law that requires people who are held out of state to return home within one year of their release

H. Programming Requirements

1. Mandated Programs are unevaluated or have poor evaluative outcomes
2. Programs unavailable in some facilities
3. PSD/Core Civic refuses various modalities of learning

I. Compassionate Releases

1. Limited releases

J. Reductions in Minimum Sentences

1. Infrequently granted

K. COVID Pandemic

1. Less releases on parole despite Court's order to expedite releases

J. RFPs for Services

TESTIMONIES



August 21, 2023

Chair Mark Patterson
Oversight Coordinator Christen Johnson
Hawaii Correctional System Oversight Commission
235 S. Beretania Street, 16th Floor
Honolulu, HI 96813

Aloha Chair Patterson and Oversight Coordinator Johnson:

I am writing in follow-up to last Thursday's Oversight Commission meeting regarding the new Task Force appointed to study Hawaii Paroling Authority's power to set minimum sentence as established by *H.C.R. 23*.

https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR23_SD1_.HTM

The ACLU of Hawai'i strongly encourages the Task Force, led by the Oversight to Commission, to ensure that the H.C.R. 23 Task Force meetings are open to the public. Public meetings promote the twin goals of transparency and accountability, particularly where the authority and actions of a governmental agency are at the heart of the discussion – and the governmental agency is funded by taxpayers.

Despite HPA having quasi-judicial functions, they have operated in secrecy for decades. Many attorneys and individuals participating in HPA minimum sentence, parole and parole revocation hearings have reported unprofessional comments by HPA members. We have also received reports of HPA making decisions that impacts a person's liberty based on favoritism, rather than standards of fairness and in alignment with parole best practices and their own guidelines.

Given the composition of the Task Force, the ACLU of Hawai'i, is concerned that the majority of governmental stakeholders will give undue deference to the Hawai'i Paroling Authority's framing of issues and interpretation of limited data, rather than conducting an independent and critical analysis of HPA duties and outcomes.

While the ACLU of Hawai'i is encouraged that the Council of State Government will assist the Task Force, we remain convinced that the public plays an important "watchdog" role in ensuring that the Task Force fulfills its mandate. By opening these Task Force hearings to the public, community members and the media have an opportunity to listen in, and offer feedback in writing or verbally to effectuate the purpose of the Task Force.

Significantly, there is precedence for opening Task Force meetings to the public, and allowing time for public testimony. The H.C.R. 85 Task Force on Effective incarceration Policies and Improving Hawaii's Correctional System held general and subcommittee meetings open to the public. In fact, prior minutes of the Task Force and its' subcommittee meetings reflect the participation of community members who care deeply about these issues and/or have been affected by the criminal legal system.

<https://www.facebook.com/events/supreme-court-of-hawaii/next-hcr-85-task-force-meeting/1935278020122518/>

In closing, the ACLU of Hawai'i requests your leadership in ensuring that the H.C.R. 23 Task Force meetings are open to the public.

Mahalo for your thoughtful consideration of this request.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota

Policy Director

ACLU of Hawai'i

cshiota@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

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CAP TESTIMONY BEFORE HCR 23 TASK FORCE

COMMUNITY INPUT MEETING

Monday, September 11, 2023

5pm-7pm

University of Hawai'i, Manoa

Campus Center, Executive Dining Room

2465 Campus Road, Honolulu, Hawai'i 96815

Aloha e Chair Patterson and Members of the HCR 23 Task Force,

Mahalo for this opportunity to share our thoughts, concerns and suggestions as you embark on your work for the next year improving the quality of justice in Hawai'i nei!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost 30 years. This testimony is respectfully offered on behalf of the 3,953 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety as of September 4, 2023. We are always mindful that 872 of our people are in Arizona -- 44% of the total male prisoned population - 1980² especially since our prisons are not overcrowded² -- it is the jails that are obscenely overcrowded. Why are so many of Hawai'i's imprisoned people serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands when there is room in Hawai'i?

One of the biggest issues facing Hawai'i government is the lack of communication between agencies, the legislature and the community. This has been highlighted by the Lahaina fires where the community was left on their own to navigate this disaster. This problem is evidenced in every government system.

Today, Community Alliance on Prisons presents our testimony in three sections: Issues; Practices; and Resources.

¹ Department of Public Safety, Weekly Population Report, September 4, 2023.

<https://dps.hawaii.gov/wp-content/uploads/2023/09/Pop-Reports-Weekly-2023-09-04.pdf>

² Why are 48% of Hawai'i's male prison population sent thousands of miles from home when the following prisons in Hawai'i have room here: Halawa is at 87.6%; Halawa Special Needs Facility is at 0%; Kulani is at 42%; Waiawa is at 47.6% of operational capacity.

ISSUES:

HCR 23 PAROLE TASK FORCE MEETING ARE CLOSED TO THE PUBLIC???

The notice on the HCSOC website announces that the meetings of the HCR 23 Parole Task Force are closed to the public! Community Alliance on Prisons certainly hopes that a publicly-funded agency and its task force understands that shutting the public out of discussions about an issue that impacts so many of our families is immoral and anti-democratic. This type of government behavior only serves to promote distrust in the community.

Community Alliance on Prisons respectfully requests that the HCR 23 Task Force meetings are made publicly available online at the time of the meeting. Even if the public is not invited to attend the meetings or participate in the discussion online, we could listen in and submit comments to HCSOC for the Task Force's consideration. Community Alliance on Prisons is pushing for transparency AND accountability. The meeting minutes should be posted on the HCSOC website along with any testimony and resources consulted.

VITAL TASK FORCE MEMBERSHIP ELEMENTS ARE MISSING: PEOPLE WITH LIVED EXPERIENCE AND THEIR FAMILIES

Community Alliance on Prisons is again dismayed at the lack of transparency regarding the members of the Task Force. One excuse proffered was that the legislature picked the task force membership and it couldn't be changed.

However, the HCR 85 Task Force - whose members were also chosen by the legislature - held open meetings and created subcommittees where the community was invited to the table - sometimes to make presentations, sometimes to participate in the discussion. This led to wide-spread support for the establishment of the Hawai'i Correctional System Oversight Commission.

The Hawai'i Correctional System Oversight Commission has consistently held monthly meetings since 2020 and there are always 2 slots on the agenda for public participation. THIS IS WHAT DEMOCRACY IS ALL ABOUT.

Community Alliance on Prisons respectfully requests that the Task Force invite people who have been through the parole process to help the Task Force understand the first-hand experience of people who have successfully completed the parole process.

These insights can help the Task Force understand what practices are employed and can lead to development of better ways to understand and assist people making the transition from institutional to community life.

THE VOICES OF THOSE WITH LIVED EXPERIENCE

Here are some comments made by justice-involved people in California and Mississippi:

“People who have gone through the system have the best perspective.”

“Parole puts out their fairness, but it relies on an old paradigm.”

“Parole is more focused on maintaining the status quo.”

“Hearings tend to look like resentencing hearings.”

“Multiple parole hearings are traumatizing.”

PRACTICES:

IS HPA ABOUT PUNISHMENT OR SUCCESSFUL REENTRY?

Community Alliance on Prisons read the July 1989 Guidelines for Establishing Minimum Terms of Imprisonment wherein the first three pages of the 8 page report ‘punishment’ is mentioned 6 times! This highlights the problem.

Punishment should NOT be within the purview of the Hawai`i Paroling Authority - their main objective should be to assist people who have been incarcerated in safely and smoothly transitioning back to their communities.

This misunderstanding seems to be the fundamental problem with parole - many people who work in that agency believe that their job is punishment and surveillance. We have heard this characterization from people who have been interviewed for positions at HPA. How can anything change with that mentality?

THE IMPORTANCE OF LANGUAGE

How people are referenced makes a difference in how they see themselves. All throughout the Guidelines for Minimum Terms (as well as Hawai`i Revised Statutes) the term “offender” is used for the person that comes before the parole board.

That the state continues to use these labels that stigmatize, not only the person but their families also, and then expects that a person can make a smooth transition upon release is naïve and potentially dangerous.

People who have been released need to reintegrate into community life. Constantly reminding them of their past transgressions does not facilitate a successful reentry to their communities.

One of the most impactful presentations I ever heard was a gentleman who was justice-involved speaking at the Riverside Church in NYC. He spoke of doing time and the struggle with reentry when a person bears so many labels – so much stigma. He emphasized, “I am not a convict. I am not an inmate. I am not the worst thing I have ever done. I AM A MAN!”

WHY DO PEOPLE CHOOSE TO SERVE THEIR MAXIMUM SENTENCE?

Community Alliance on Prisons has spoken to many people inside who have chosen to max-out rather than go through the parole labyrinth. What we have learned is that people scheduled for parole rarely, if ever, receive any assistance in developing a parole plan that they can present to the board. In our experience, most people have no idea what to expect or how to actually present themselves to the board, who many believe are focused on the original crime and not how they have changed and learned from their behavior.

Recidivism Rates, by Offender Type, FY 2016 Cohort³

	Probationers (N=1,301)*	Parolees (N=531)	Maximum-Term Release Prisoners (N=317)
Recidivism	54.6%	50.1%	57.1%

These numbers depict probationer, parolee, and maximum-term released prisoner recidivism rates. Recidivism is defined as any new arrest, or the revocation of probation or parole, within three years of the start of supervision, released to parole, or prison release date.

The data reveal a 54.6% recidivism rate for probationers; a 50.1% recidivism rate for parolees; and a 57.1% recidivism rate for maximum-term released prisoners. The differences in recidivism rates by offender type are statistically significant at the p<.01 level. The overall recidivism rate for the entire FY 2016 study cohort is 53.8%.

Supportive services are crucial for successful reentry. When so many people choose to serve their maximum sentences, isn’t that a call to review what is going on at parole and its contribution to mass incarceration?

RESOURCES:

Here are some wonderful resources that can help the Task Force develop viable recommendations:

³ Interagency Council on Intermediate Sanctions, March 2021, Timothy Wong, ICIS Research Analyst State of Hawaii, FY 2016 Cohort - 2019 Recidivism Update, page 3.
<https://icis.hawaii.gov/wp-content/uploads/2021/05/2019-Hawaii-Recidivism-Update.pdf>

- ***MacArthur Justice Center's National Parole Transformation Project (NPTP)***⁴

Community Alliance on Prisons recently tuned in on two PAROLE panels hosted by The Marshall Project and the MacArthur Justice Center's National Parole Transformation Project (NPTP). NPTP is a coordinated campaign of strategic impact litigation and community-based advocacy directly challenging the parole systems feeding mass incarceration. These systems of surveillance and control have expanded unchecked, funneling hundreds of thousands of people into prisons. Through collaboration with a growing network of advocates, lawyers and systems-impacted individuals, NPTP develops and supports local and national efforts to end the expansion of carceral systems of post-conviction supervision across the country.

The two parole teach-in panels from California and Mississippi provide incite into the parole process that is important.

- ***The Importance of Supporting Family-Connections to Ensure Successful Reentry***⁵

WHY DO FAMILY CONNECTIONS MATTER?

- They offer critical emotional and psychological support
- They may help incarcerated individuals gain practical support that aids successful re-entry
- They may mitigate the harm parental incarceration has on children
- Family connections are an important part of family reunification
- Family connections promote public safety

CONCLUSION

Behind most incarcerated individuals is a family that is critical to encouraging positive change on the inside and supporting them as they prepare for life on the outside. Despite this, government policies and family circumstances often impede the ability of families to stay connected during incarceration. However, changes to government policies, community-based partnerships and the expansion of family-oriented programming can help families overcome these obstacles, with great benefit both to individuals and to society as a whole.

⁴ MacArthur Justice Center, National Parole Transformation Project, 2023.
<https://www.macarthurjustice.org/litigation/national-parole-transformation-project/>

⁵ ***The Importance of Supporting Family-Connections to Ensure Successful Reentry***
R STREET SHORTS NO. 63
Emily Mooney and Nila Bala
October 2018
6 pages
<https://www.rstreet.org/wp-content/uploads/2018/10/Final-Short-No.-63-1.pdf>

- **Comprehensive Policies Can Improve Probation and Parole**⁶

Framework offers solutions to strengthen community supervision

The advisory council organized its recommended policies according to the following objectives:

Enact alternatives to arrest, incarceration, and supervision.

Research has consistently shown that supervision is not effective for individuals with a low risk of reoffending and can even increase that risk.⁴ Additionally, probation and parole may be overly punitive for people who commit minor offenses. The council recommends using alternative sanctions, including community service for people convicted of low-level offenses such as traffic violations and minor drug crimes.

Implement evidence-based policies centered on risks and needs.

Evidence-based decision-making is the foundation of effective supervision that yields positive outcomes, and its essential components are the principles of risk, need, and responsivity (RNR)—an assessment methodology that enables parole and probation officers to develop case plans tailored to individuals’ needs and level of risk to reoffend. The council recommends that agencies assess people’s risk and needs using validated tools and tailor case plans and supervision intensity based on those assessments.

Adopt shorter supervision sentences and focus on goals and incentives.

Two main factors have driven growth in the community corrections population: the number of people sentenced to probation and placed on parole and the length of time they spend under supervision. Research has demonstrated that long supervision terms deliver diminishing public safety benefits.⁵ To address these challenges, agencies should adopt earned compliance credits and other incentives and policies that offer early termination of supervision for people who follow rules or meet other criteria.

Establish effective and appropriate supervision conditions.

People on supervision must follow a long list of standard conditions and sometimes special requirements as well. Individuals who fail to follow these rules can face sanctions, which can include incarceration.⁶ The council recommends locating officers and treatment programs near the people they serve to support compliance and limiting conditions to those that are most likely to enhance public safety and align with each person’s case plan goals and assessed risks, such as by using drug testing only when necessary to determine a treatment need.

Develop individualized conditions for payment of legal financial obligations.

People are often ordered to pay fines, fees, and restitution as part of a criminal sentence. And many supervision agencies require the people they supervise to pay for drug testing, electronic monitoring, and other programs and conditions. Although these financial obligations can help enforce accountability and mitigate victims’ losses, they also impose

⁶ **Comprehensive Policies Can Improve Probation and Parole**, Framework offers solutions to strengthen community supervision, PEW PUBLIC SAFETY PERFORMANCE PROJECT, FACT SHEET April 23, 2020, 4 pages. <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2020/04/comprehensive-policies-can-improve-probation-and-parole>

economic burdens that can hinder supervision success.⁷ The council provided guidance to help agencies better manage the imposition and collection of fines and fees and recommended that states, agencies, and departments take steps to mitigate the harms associated with these costs to help people successfully complete supervision.

Reduce use of and pathways to incarceration.

Supervision revocations, especially for technical violations—noncompliance with one or more supervision rules that may result in a sanction—are a major driver of costly incarceration, and even short jail stays can cause people serious hardship, including loss of employment, decreased wages, housing insecurity, and family instability.⁸ The council recommends limiting the use of arrest and incarceration as a sanction for technical violations and before revocation hearings and guaranteeing counsel in those hearings.

Support community supervision agencies.

Meaningful and lasting reform will require upfront investments. States must ensure that agencies are equipped with the resources they need to implement evidence-based practices while supporting the work of probation and parole officers to enhance successful supervision completion.

THE COMMUNITY IS VITAL TO SUCCESSFUL REENTRY

If Hawai'i is truly interested in reentry decades after the 2007/Act 8 Community Safety Act was passed – we would work in systems – not silos. We would be working to assist people who have lost their way or those who have never found it. Wrongdoing is the result of poverty, lack of education, mental and physical health challenges, and bad policies that demonize certain sectors of our communities.

In closing, we appreciate the task force reviewing policies of other jurisdictions and urge you to promote transparency and accountability, not only from the people appearing before the board, but by the board itself. People should receive the assistance they need to create a parole plan to present to the board.

Parole systems should give every incarcerated person ample opportunity to earn release and have a fair, transparent process for deciding whether to grant it. A growing number of organizations and academics have called for states to adopt policies that would ensure consistency and fairness in how they identify who should receive parole, when those individuals should be reviewed and released, and what parole conditions should be attached to those individuals.⁷

Mahalo for this opportunity to testify.

⁷ Grading the Parole System of all 50 states, By Jorge Renaud, February 26, 2019.
https://www.prisonpolicy.org/reports/grading_parole.html

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
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EDMUND "FRED" HYUN
CHAIR

GENE DEMELLO, JR.
MILTON H. KOTSUBO
JENNIFER M. MERKLE
LINDA L. RICH
MEMBERS

COREY J. REINCKE
ACTING ADMINISTRATOR

No. _____

TO: Hawaii Correctional System Oversight Commission

FROM: Edmund "Fred" Hyun, Chair 

SUBJECT: HAWAII PAROLING AUTHORITY'S RECOMMENDATIONS
CONCERNING ITS MINIMUM TERM PROCEDURES

The 2023 Legislature created the House Concurrent Resolution No. 23 Task Force "to examine and make recommendations regarding existing procedures of the Hawaii Paroling Authority setting the minimum terms of imprisonment to increase efficiency of the procedures[.]" "study whether parole system models utilized by other states might be utilized be suited for Hawaii[.]" "examine and compare the minimum sentences issued by the Hawaii Paroling Authority and the courts to determine whether there are significant differences[.]" and "recommend whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the Hawaii Paroling Authority, thereby enabling it to focus on determining and assisting prisoners' fitness for parole and supervision of parolees[.]" House Concurrent Resolution No. 23, H.D.1, S.D.1, Thirty-Second Legislature (2023), p. 2.

The Task Force has spent the last several months examining and studying the Hawaii Paroling Authority's (HPA) procedures used in setting minimum terms of imprisonment, the ways in which other states handle parole, and how the courts determine mandatory minimum terms as authorized by sections 706-606.5, 706-660.1, and 706-660.2, Hawaii Revised Statutes (HRS). Now the Task Force seeks to make recommendations concerning the HPA's minimum

term procedures and whether the responsibility of setting minimum terms should be removed from the HPA.

The proposal made by the Council of State Government (CSG) at the Task Force's meeting of June 6, 2024, however, is based on a misunderstanding of the law in Hawaii. In CSG's Power Point presentation to the Task Force, it proposed removing minimum term setting from the HPA and replacing it with minimum terms set by statute, claiming that "Hawaii's guideline minimums side-step this 6th Amendment constitutional requirement" in the United States Supreme Court rulings in Apprendi v. New Jersey, Blakely v. Washington, Booker v. United States, and Alleyne v. United States. CSG Power Point presentation, June 6, 2024, p. 16. In those cases, the United States Supreme Court ruled that pursuant to the 6th Amendment of the United States Constitution any fact which increases the penalty for a crime beyond the prescribed statutory maximum or a mandatory minimum sentence must be submitted to a jury and proven beyond a reasonable doubt.

CSG's statement in its Power Point presentation is untrue. The Intermediate Court of Appeals in Hawaii specifically ruled that the 6th Amendment requirement set out in Apprendi and Alleyne (and in Blakely and Booker) do not apply to the HPA's setting of minimum terms of imprisonment. The Hawaii Supreme Court then denied the inmates' requests for review of the ICA's rulings. See Draizen v. State, 134 Hawaii 477, *2, 344 P.3d 361 (App.2015) (unpublished), cert. denied, No. SCWC-12-0000708, 2015 WL 3649462 (Haw. June 9, 2015) (unpublished); Star v. State, 143 Hawaii 141, *1-2, 425 P.3d 603 (App.2018) (unpublished), cert. denied, No. SCWC-17-0000642, 2019 WL 181416 (Haw. Jan. 14, 2019) (unpublished). Thus the main justification for CSG's proposed overhaul of the HPA minimum term procedures is not the law in Hawaii, and its proposal should not be considered when deciding what recommendations should be made to the Legislature or the Legislative Reference Bureau.

Another example of CSG's misunderstanding of Hawaii law is its claim that "Hawaii already uses fixed minimums for repeated offenses and use of firearms," conflating the mandatory minimum terms of imprisonment set by the circuit courts pursuant to sections 706-

606.5, 706-660.1, and 706-660.2, HRS, with the minimum terms set by the HPA pursuant to section 706-669, HRS. The mandatory minimum terms set by the circuit courts are limited to cases involving repeat offenders, the use of a firearm in the commission of a crime, and victimization of the elderly, disabled, or minors. In contrast, the HPA must set minimum terms for all offenders convicted of felonies and sentenced to imprisonment pursuant to section 706-669, HRS. In addition, the Intermediate Court of Appeals has noted that a “trial court’s sentencing decisions and the HPA’s parole decisions (including the HPA’s minimum term determination) are subject to different statutory schemes.” Nichols v. State, 134 Hawaii 390, 398, 341 P.3d 1190, 1198 (App.2015). These different statutory schemes explain how the Hawaii Supreme Court and the Intermediate Court of Appeals distinguish mandatory minimum terms set by sentencing courts from minimum terms set by the HPA.

CSG’s Power Point presentation on June 6, 2024, also referred to outdated data when it stated that “release decisions were not timed to the minimum sentence, despite the HPA setting the minimum in the first place.” The data is from 2006 to 2011, which is thirteen to eighteen years ago. CSG Power Point presentation, June 6, 2024, p. 22. Such data should not be considered when there is much more recent data which shows how the HPA is functioning.

		Fiscal Year					
		17-18	18-19	19-20	20-21	21-22	22-23
MINIMUMs	individuals	493	681	429	412	856	916
Admissions	New, PTF,SFP	664	734	723	548	743	701
ROMs	Applications	202	165	167	217	162	142
	Granted	17	21	19	42	31	19
		9%	13%	11%	19%	19%	13%
	Denied	185	144	148	175	131	123
		91.50%	87%	88.60%	80.60%	80.80%	86.60%
Parole	# hearings	2940	2923	2582	2,431	1861	1685
Consideration	individuals	2066	1932	1761	1656	1462	1277
	re-hear	874	991	821	775	339	408
	Granted	852	768	803	900	528	447
	%	41%	39%	45%	54%	36%	35%
Deferred		294	459	237	428	205	180

MAX OUTS-NP		240	209	251	189	173	224

The data in this table is taken from the HPA’s annual reports from the fiscal years listed. “ROMs” refer to requests for reduction of minimum terms which may be considered by the HPA after a convicted offender has served one third of their minimum term. “New” refers to convicted offenders straight from court. “PTF” refers to pre-trial felons sentenced at court and “SFP” refers to sentenced felon probationers where the court revoked the probation and resentenced to imprisonment. “Deferred” refers to convicted offenders who have had their parole granted but had their release deferred for various reasons, such as a residential substance abuse program not being able to accept the offender at that time. “MAX OUTS-NP” refers to convicted offenders who finished their sentences in custody – this number includes but is not limited to offenders who were previously granted parole but violated institutional policies prior to their release date; offenders who refused to participate in programs recommended by the Department of Corrections and Rehabilitation (DCR); offenders who refused to prepare a verifiable parole plan or whose parole plan was unacceptable, such as not obtaining a residence; offenders who committed misconducts in prison such as escape; offenders who later had their sentences reduced to lengths which didn’t allow for programs and therefore parole; and offenders who asked to stay in custody to finish programs or to earn more money in work furlough. The HPA has set minimum terms the same length as maximum indeterminate sentences in relatively few cases.

The high number of parole hearings listed on the table is due to the statutory requirement that the HPA hold parole hearings at least once a year for all convicted offenders eligible for parole and to the fact that the parole board will at times hold more than one parole hearing a year for offenders. For example, a convicted offender may appear at their parole hearing but may not be finished with their programming at that time. The board can schedule another parole hearing for the convicted offender a few months later, when they are set to finish the programs.

The highlighted portion of the table shows the number of convicted offenders the HPA granted release on parole. The relatively low percentage of offenders being granted parole over the six years covered by the table is due to several factors, including: 1) the multiple hearings many offenders receive before being granted parole; 2) severe staff shortages at DCR facilities, which lead to programs being shut down or limited and preventing convicted offenders from participating and completing their rehabilitation; 3) convicted offenders committing serious violations of institutional policies, which affect their security classification and prevent them from participating in programs while serving their sanctions; 4) some convicted offenders refusing to participate in programs completely; 5) some convicted offenders initially refusing to participate in programs then belatedly agreeing to participate, delaying their completion of the programs; and 6) some convicted offenders who previously served terms of probation, earned enough detention credit that by the time they were sentenced to imprisonment their maximum sentence is too short for them to complete all their recommended programs.

Another factor in the low percentage of parole granted in 2020-2021 and after was the COVID-19 pandemic, which shut down all programs in the correctional facilities and work furlough. This shut-down created a backlog of convicted offenders trying to finish their recommended rehabilitation before their parole hearings, which then delayed other convicted offenders from entering and finishing their recommended rehabilitation. The HPA took the shut-down of programs, age and medical conditions into consideration when deciding parole during this period, leading to the slightly higher percentage of convicted offenders obtaining parole in 2020-2021. Since then, programs and work furlough have re-started and the parole board has returned to looking at the completion of programs before granting parole.

An independent assessment of the HPA's paroling procedures (which includes its minimum term procedures) previously concluded that it was the second-best parole system in the nation. On February 19, 2019, the Prison Policy Initiative judged Hawaii and the HPA to be the second-best parole release system in the nation based on five general factors: 1) whether the state legislature allows the parole board to offer discretionary parole to most sentenced

individuals; 2) the opportunity for the person seeking parole to meet face-to-face with the board members and other factors about witnesses and testimony; 3) the principles by which the parole board makes its decisions; 4) the degree to which staff help every incarcerated person prepare for their parole hearing; and 5) the degree to which the parole board is transparent in the way it incorporates evidence-based tools. Wyoming was the top-ranked state, with a grade of B-, and Hawaii was second with a grade of C+. Jorge Renaud, “Grading The Parole Systems Of All Fifty States,” prisonpolicyinitiative.org (February 19, 2019), https://www.prisonpolicy.org/reports/grading_parole.html.

The Prison Policy Initiative is a non-profit started in 2001 that describes itself as “produc[ing] cutting edge research to expose the broader harm of mass criminalization, and then spark[ing] advocacy campaigns to create a more just society.” The fact that a national organization critical of the criminal justice system analyzed Hawaii’s laws and the HPA’s procedures and found its parole release system second best in the country belies the criticism that the HPA’s minimum term procedures are somehow unconstitutional and in need of replacement.

Instead of CSG’s proposal unveiled at the June 6, 2024, meeting, the Task Force should instead recommend improvements to the current procedures used by the HPA. The Hawaii Paroling Authority was created in 1931 by the Legislature to set minimum terms of imprisonment and decide whether to grant parole. Hawaii is the only state in the nation which sets minimum terms of imprisonment after hearings which include not only board members reviewing sentencing documents, but input from crime victims as required by Hawaii statute, statements from prosecutors as well as direct presentations by defendants and their counsel to the board members. Arguments about minimum terms are made directly to HPA board members and this is unique to Hawai’i, ensuring convicted individuals have an opportunity to shape their futures and allowing HPA board members to talk with the convicted offenders. As a result of Hawai’i’s distinctive minimum hearing procedures, HPA has essential information to assess how to balance individual circumstances with fairness and consistency with prior HPA minimum sentencing decisions.

In order to improve the current procedures in setting minimum terms and strive to be the top parole system in the nation, the HPA makes the following recommendations to the Task Force for submission to the Legislature:

- Convert one part-time position on the HPA to a full-time Vice-Chair position that overlaps the Chair's term for continuity (353-63, HRS)
- Add one Office Assistant and/or Secretary 1 position to assist with public access to hearings (new position)
- Hire contract position with legal background to draft amendments and/or updates to Hawaii Administrative Rules Chapter 700
- Amend section 353-63, HRS, to require HPA board members to have a background in at least one of the following: the criminal justice system; law enforcement; the judiciary; the prison system; criminal law; treatment programs; or other related experience
- Amend section 706-601, HRS, to remove the ability to waive the preparation of a presentence investigation report for felonies
- Pass legislation to allow the HPA to reduce court-imposed mandatory minimum terms for repeat offenders to allow parole upon program or furlough completion
- Create an integrated database between the Judiciary, the Department of Corrections and Rehabilitation, the Department of Law Enforcement, the HPA, the Crime Victim Compensation Commission, and the Department of the Attorney General

In addition to the recommendations for the HPA, the Crime Victim Compensation Commission (CVCC) also makes the following recommendation to the Task Force for submission to the Legislature:

- Funding for three Victim Advocate positions within CVCC to provide direct services to crime victims throughout the parole process. These positions are needed to provide victims with support during minimum and parole hearings, safety planning, victim notification, community referrals and to ensure that victims can exercise their

statutory rights during the parole process. These services were previously provided through a joint CVCC and HPA project that was federally funded. Unfortunately, a decrease in federal VOCA funds resulted in the project being discontinued.

The Department of Corrections and Rehabilitation (DCR) also makes the following recommendations to the Task Force for submission to the Legislature:

- 20 additional facility case managers (social workers and/or human services professionals) to lower the current caseloads of staff so the DCR can do real integrated case management services
- \$4 million annually to provide “reach in wrap around” reentry services to offenders. These services include staff to act as navigators to assist with connection to community-based services, including social services, benefits, housing, etc.
- \$2 million annually to provide initial tool belts, minimal tools, safety boots, safety equipment, etc., and living wages to offenders participating in apprenticeship programs with various trade craft unions
- \$200,000.00 annually for bus passes, replacement birth certificates, real state ID cards, and replacement social security cards prior to offender’s release from prison.

Chasity Hovey
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Thursday, October 3, 2024

Mr. Mark Patterson, Chairperson
HCR23 Task Force
Hawaii Correctional System Oversight Commission
235 S. Beretania Street
Honolulu, HI 96813

Subject: Testimony on House Concurrent Resolution No. 23 (HCR23)

Dear Mr. Mark Patterson and Members of the HCR23 Task Force,

I am writing to provide my testimony regarding House Concurrent Resolution No. 23 (HCR23). As a resident of Hawaii and an engaged member of our community, I believe it is important to share my perspective on this resolution, particularly in relation to my experience with Criminal Case No. 1CPC-21-0000774 - State v. Kevin Manners.

My name is Chasity Hovey, and I have taken on the mission of actively participating in the discussion surrounding criminal justice reform, having been thrust into this position as a surviving family member of a deceased victim. This unexpected turn of events has compelled me to share my insights, which are rooted in my direct experience with the case. I have witnessed the implications of current policies in action, giving me a unique understanding of the challenges faced by both the post-conviction process and the individuals navigating it.

My testimony advocates for removing the responsibility of setting minimum terms of imprisonment from the Hawaii Paroling Authority. This change would enhance the administration of justice by allowing the Authority to focus on its primary functions: assessing prisoners' fitness for parole and supervising parolees. By refocusing their efforts on these critical areas, the Hawaii Paroling Authority can more effectively contribute to the rehabilitation and successful reintegration of offenders into society.

I believe that the recommendation should primarily involve the State (Department of the Prosecuting Attorney) and the Defense in determining the final minimum term(s) of imprisonment, as they are intimately familiar with the case.

Comprehensive Case Knowledge to Determine Minimum Term(s): The State and the Defense are well-acquainted with the details of the case from its inception through every judicial stage. In contrast, the Hawaii Paroling Authority (HPA) may not be able to review case files as thoroughly, as the Board consists of one full-time member and four part-time members. As stated in HCR23, the Board spends approximately thirty percent of its time solely on the post-

conviction minimum sentencing process, while also managing other equally important tasks. This comprehensive understanding allows both the State and the Defense to make more informed decisions regarding minimum terms of imprisonment. This is particularly true in cases that have not gone to trial but have undergone rigorous negotiations, resulting in a plea agreement.

Parole Board's Training, Annual Training, and Expertise: Despite the Board members' impressive backgrounds and accolades, the audio recording of the hearing in Criminal Case No. 1CPC-21-0000774 - State v. Kevin Manners reveals their collective inability to remain impartial and to ask critical follow-up questions that aim to seek the truth. This raises concerns about the training and frequency of such training that Board members receive to ensure they perform their responsibilities to the highest standards. The State and Defense in criminal cases are highly skilled in trial room interviewing, giving them an upper hand in seeking truth through critical and follow-up questions.

Over-Reliance on Defense Presentations and Assertion: The Board appears to accept and rely heavily on the Defense Attorney's presentation, the defendant's oral testimony, the defendant's written personal statement, and character letters of support in Criminal Case No. 1CPC-21-0000774 - State v. Kevin Manners, without thorough independent verification. Moreover, there seems to be a lack of independent knowledge of the facts of the case prior to the Minimum Term(s) Hearing. As heard on the audio, at about 18:33, Male Board Member 1 states, *"Kay. It's clear from the support letters, yeah, and the letter you wrote regarding your character, yeah, and how in these instances, it did not appear that you were the perpetrator or the instigator, that you were actually the victim in the abuse. Would you agree with that?"* Additionally, as heard on the audio, at about 29:26, Male Board Member 2 asks the Defense Attorney, "I mean that was that was on all of the misc. pubs?" This question was raised after the Defense Attorney attempted to assert that both the victims' and the offender's families were supportive of the offender and understood the underlying issues that led to the situation, implying that the victim was the "actual" abuser. To provide a bit more context, "misc. pub" refers to the Honolulu Police Department's reporting classification. This classification is used for circumstances where no criminal elements exist but documentation is needed. The Defense Attorney is suggesting to the Parole Board that the "misc. pub" documents, which detail disturbances involving the victim and the offender, are evidence of abuse perpetrated by the victim. This reliance suggests a lack of inquisitiveness and an unhealthy level of trust, especially given the absence of oath-taking or affirmation under penalties of law to ensure the truthfulness of statements, raising the question of what the Board has read to gain comprehensive knowledge of this felony case.

Precedent of Plea Negotiations Undermined: The Board's actions in Criminal Case No. 1CPC-21-0000774 - State v. Kevin Manners, particularly their drastic deviation from the recommended joint agreement of a minimum of 10 years imprisonment to just three years, undermine the extensive plea negotiations conducted by both the State and the Defense. These actions have rendered the entire plea negotiation process, as well as the overall judiciary process, ineffective. Furthermore, if this case had gone to trial and been subjected to the scrutiny of a judge or jury, would the post-conviction parole board process ultimately render that trial meaningless? It appears that this two-step redundancy serves no meaningful purpose.

Predetermined Bias and Ineffective Questioning: The Board’s line of questioning and comments during the hearing suggest a predetermined bias, particularly in the context of Criminal Case No. 1CPC-21-0000774 - State v. Kevin Manners. This bias is evident in how they portray the defendant as a victim rather than holding him accountable for his actions. Furthermore, the lack of pointed follow-up questions indicates a failure to conduct a thorough examination of the case, raising concerns about the objectivity of the proceedings.

For example, in the audio recording at approximately 8:53, the offender begins to describe the incident. His recollection of events starkly contrasts with those of the two witnesses: the victim and the offender’s juvenile daughters. While the witnesses did not observe the actual murder, they were present and actively calling the police and yelling for help. According to the Honolulu Police Report on the murder in the second degree (later pled to manslaughter), the witnesses observed their father, the offender, lying on top of their mother, the victim, who was struggling to breathe and could later be heard gurgling during her last breaths. Before taking the victim’s life, the offender shut and locked the door to prevent their daughters from witnessing the event, intervening, or both.

At no time did the Board ask focused, truth-seeking follow-up questions such as, “Your recollection of events differs from those of the two witnesses. Can you explain why that might be? Where were the witnesses during this incident? Did the witnesses say anything to you or ask you to do anything? Can you describe how your wife, the victim, approached you? Can you describe your wife’s physical stature and her physical capabilities or limitations (such as medical issues, athleticism, cardio endurance, and any martial arts training)? Can you describe your own physical stature and capabilities or limitations (including medical issues, athleticism, cardio endurance, and any martial arts training)?”

Another example of the lack of impartiality is the statement made by Male Board Member 1 at approximately 18:33, which is referenced and quoted above.

Inconsistency and Overreach of the Hawaii Paroling Authority: A significant concern is the inconsistency and potential overreach of the Hawaii Paroling Authority (HPA) in the application of "diminished responsibility" when determining minimum terms of imprisonment. The Board referenced 'diminished responsibility,' indicating that the offender's mental illness or severe emotional stress contributed to the offense, yet did not absolve them of penal responsibility. However, the Deputy Prosecuting Attorney clarified that “extreme mental or emotional disturbance” was not a factor in this case. This inconsistency raises questions about the Board's ability to accurately assess such factors, especially since “diminished responsibility” was not a factor during the State and Defense’s plea negotiation. Consequently, removing the responsibility for setting minimum terms of imprisonment away from the HPA could lead to a more consistent and equitable application of the justice.

Increase Transparency by Accessible Information: Given the immense responsibility of the Hawaii Paroling Authority, it is imperative to value and promote transparency and accessibility. A robust and user-friendly website is a perfect vehicle for achieving this goal. The site should prominently display contact information, ensuring that users can easily reach out for assistance. Incorporating searchable PDF documents and editable forms will streamline access to important

materials and facilitate user interaction. Providing clear instructions on how to request public records, including 92F requests, will further promote openness. An "About" page, a "Meet the Board Members" section, and an organizational chart will help users understand the structure and key personnel of the HPA. Additionally, a comprehensive FAQ page can address common inquiries, reducing the need for direct contact and enhancing the user experience. Regularly updating the website, including the opening message, will ensure that information remains current and relevant. By focusing on these elements, the HPA webpage can truly become a model of transparency and accessibility.

Ensuring Impartiality in Board Hearings: The Board consists of five members—one employed full-time and the other four part-time. There is concern about whether they have enough time to thoroughly understand a case without outside influence from the State, Defense, or letters of support or objection. It is crucial for the Board to maintain an unbiased and impartial standpoint going into any hearing, especially the Minimum Terms Hearing, which sets a timeline for any given case.

Need for Oversight: Ensuring Transparency and Fairness: The significant discretionary power of the HPA, as detailed in the Parole Handbook (available in PDF format on the HPA website), emphasizes the necessity of establishing robust oversight mechanisms. The subjective criteria for minimum term(s) determination, parole eligibility, minimal due process in revocation proceedings, and the absence of external audits collectively highlight an urgent need for transparency and fairness. Without these critical checks and balances, the HPA's decisions may result in inconsistent and potentially unjust outcomes. This situation underscores the essential role of accountability in protecting the rights of individuals under parole supervision, victims of crimes, surviving family members of deceased victims, and the community at large.

Since August 24, 2024, I have contemplated daily how justice for my murdered sister might have been better served if the Hawaii Paroling Authority did not hold such immense responsibility, and if that role had instead belonged to the Judiciary. Additionally, I have been reflecting on the immediate changes the Authority could implement to make the post-conviction process and proceedings easier to navigate and, more importantly, more effective. While the Hawaii State Legislature determines the long-term future, I firmly believe that meaningful strategies could be enacted right away to better serve victims, surviving family members of deceased victims, offenders, and the community as a whole.

Meaningful Strategies for Immediate Improvement


1. **Require State Presence at Minimum Term Hearings:** The State's presence at the Minimum Term(s) Hearing is crucial for the Parole Board's determination of minimum terms of imprisonment. This hearing occurs shortly after sentencing. In the short term, this requirement could be established as a policy through a mutual agreement with the Department of the Prosecuting Attorney's office. In the long term, the Hawaii Paroling Authority (HPA) and the HCR23 Task Force should propose and advocate for this change in the next legislative session to update the Hawaii Administrative Rules, Title 23, Department of Public Safety, Subtitle 5,

Hawaii Paroling Authority, Chapter 700. With the focus of the Hawaii State Legislature, now is the time to propose meaningful changes to the law.

2. **Implement Oath Requirement at Hearings:** Implement penalties under the law requiring all parties testifying at the Minimum Term Hearings to take an oath or affirmation to tell the truth.
3. **Set Timeline for Hearing Determinations:** Require the Parole Board to submit minimum hearing determinations no earlier than ten (10) working days after the hearing and no later than thirty (30) days, as stated in the HPA Parole Handbook. This timeline provides a reasonable period to address any disputes that may arise during the hearing.
4. **Revamp HPA Website:** Revitalize the HPA's website to make it robust and user-friendly, prominently displaying contact information and incorporating searchable PDF documents and editable forms. This will streamline access to important materials and facilitate user interaction. Providing clear instructions on how to request public records and including sections such as an "About" page, a "Meet the Board Members" section, and an organizational chart will enhance the user experience. Regular updates, including the opening message, are essential.
5. **Adopt Complete Criminal Justice Flow Chart:** Adopt and display on the HPA's website a comprehensive "Criminal Justice Flow Chart" that extends from the offense to the post-conviction process. Partnering with the State of Hawaii Department of the Attorney General, which already has a digital flow chart, will expedite this process.
6. **Enhance Notification Process:** The HPA needs to take ownership of properly notifying offenders, victims, and surviving family members about Minimum Term Hearings, parole consideration hearings, and parole violation hearings. Notifications should be timely and not solely reliant on tools like VINE link.
7. **Improve HPA Parole Handbook for Victims:** Revamp the HPA Parole Handbook to include information helpful for victims and surviving family members of deceased victims. Currently, the handbook primarily focuses on the offender, and additional resources should be made available for victims seeking information.
8. **Promote Transparency through 92F Requests:** An effective tool for promoting transparency is the 92F request, which provides access to government records in Hawaii. The HPA should proactively inform the public about this availability and the procedure for making such requests.

In conclusion, I urge the committee to consider the insights I have shared from my experience with Criminal Case No. 1CPC-21-0000774 as it relates to HCR23. I hope that my testimony highlights the importance of reforming our approach to parole. I would be more than happy to speak with any member of the task force or legislator about the contents of this testimony. Thank you for your time and attention to this matter.

Sincerely,


Chasity Hovey