



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



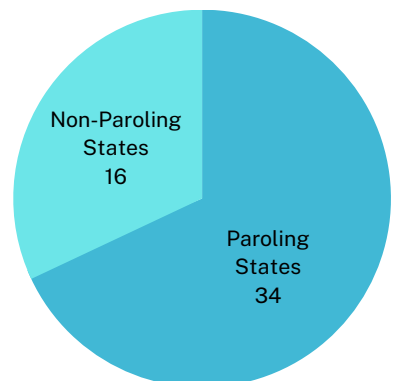
routine and reasonably knowable in advance [7]. The actual length of a prison term in states with determinate sentencing practices is not determined by later-in-time decision makers, such as parole boards [8]. For instance, a determinate sentence might include five years with a mandatory release at four 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

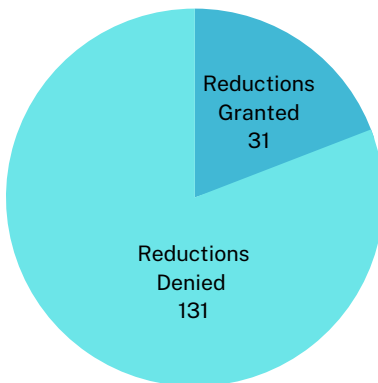


488
persons for
which minimum
terms were set

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].

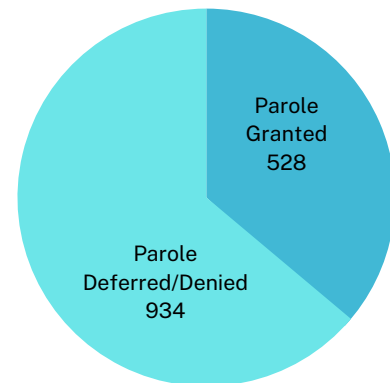


Figure 3. Applications for Reduction of Minimum Term Received in FY 2021-2022



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.



ENDNOTES

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Prepared for the HCR 23 Task Force

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

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