



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: HAWAII

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Prison-Release Discretion and Prison Population Size

State Report: Hawaii

Table of Contents

Executive Summary

Introduction

Hawaii's prison-rate history, 1972 to 2020

Organization of this report

I. General Rules of Prison-Release Discretion in Hawaii

A. General rules of parole-release eligibility

1.1. General rules of prison release

1.2. Other common forms of sentences

a. Drug offenses

b. Extended terms of imprisonment

1.3. Presumptive parole for low-risk prisoners

1.4. Reconsideration after denials of release

B. General rules on the effects of good-time, earned-time, and other discounts

1.5. Generally-available credits: types and amounts

II. Prisoners Outside the General Rules in Hawaii

2.1. Life sentences without parole

2.2. Life sentences with possibility of parole

2.3. Juvenile life sentences

2.4. Mandatory minimum prison terms

a. Firearms-related offenses



- b. Repeat felony offenders

III. Other Forms of Prison-Release Discretion (not routinely used) in Hawaii

- 3.1. Medical or “compassionate” release

- 3.2. Executive clemency

- 3.3. Emergency release for prison overcrowding

- 3.4. COVID releases

- a. Judicial releases

- b. Executive orders

IV. Modeling the Relationship Between Prison-Release Discretion and Prison Population Size in Hawaii

- 4.1. General-rules cases

- a. Timelines

- b. The “population-multiplier potential” of indeterminate sentences in Hawaii

- 4.2. Distribution of time-served discretion

- 4.3. Overall assessment

This report is part of a larger *Prison Release: Degrees of Indeterminacy Project* funded by Arnold Ventures. For other publications from the project, including additional state-specific reports, go to the Robina Institute of Criminal Law and Criminal Justice’s website at <https://robinainstitute.umn.edu>.

Definitions and Concepts

“Indeterminacy” means “unpredictability of time served.” Once we know the terms of a particular judicial sentence, can we say with confidence how much time the defendant will actually serve before the sentence’s expiration? If actual time-that-will-be-served is highly unpredictable based on the pronounced judicial sentence, then the sentence is highly indeterminate. If actual time-to-be-served is knowable within a relatively small range of possibility, then the sentence has a low degree of indeterminacy—or, we might say—it has a high degree of determinacy. “Determinacy” means “predictability of time served” at the time of judicial sentencing.

Scaling up to the systemwide level, the project explores the degree to which prison population size in each state is placed under the jurisdiction of decision makers who exercise time-served discretion after judicial sentences have been finalized. Higher degrees of indeterminacy across hundreds and thousands of individual sentences add up to greater control over prison population size by “back-end” agencies such as parole boards and departments of correction. These structural features vary enormously across U.S. jurisdictions.

Note on the project’s rankings of “degrees of indeterminacy”

To compare the degrees of indeterminacy in individual prison sentences or across the prison-sentencing systems of different jurisdictions, we use a qualitative ranking framework based on our cumulative learning while preparing the project’s 52 jurisdiction-specific reports. To avoid false precision, we place all systems within one of five categories (see table below).

Each of the five categories can be expressed in alternative terms: either the *degree of indeterminacy* or *degree of determinacy* thought to be present.

The ranking scale is subjective, although the reasoning that supports our judgments is laid out in each report. Ultimately, the rankings indicate only the rough position of specific prison-sentencing systems vis-à-vis each other. No two American prison-release systems are alike and all are highly complex, so nuanced comparative analysis requires closer inspection.

Rankings of “Degrees of Indeterminacy”

Ranking	Alternative terminology	
1	Extremely-high indeterminacy	Extremely-low determinacy
2	High indeterminacy	Low determinacy
3	Moderate indeterminacy	Moderate determinacy
4	Low indeterminacy	High determinacy
5	Extremely-low indeterminacy	Extremely-high determinacy

For individual classes of sentences, we use the following benchmarks for our classifications of higher versus lower degrees of indeterminacy:

Benchmarks for rankings of “degrees of indeterminacy”

- *Extremely high indeterminacy*: >80-100 percent indeterminacy (first prospect of release at 0-19.99 percent of judicial maximum)
- *High indeterminacy*: >60-80 percent indeterminacy (first prospect of release at 20-39.99 percent of judicial maximum)
- *Moderate indeterminacy*: >40-60 percent indeterminacy (first prospect of release at 40-59.99 percent of judicial maximum)
- *Low indeterminacy*: >20-40 percent indeterminacy (first prospect of release at 60-79.99 percent of judicial maximum)
- *Extremely low indeterminacy*: 0-20 percent indeterminacy (first prospect of release at 80-100 percent of judicial maximum)

Classifying entire sentencing systems on our five-point scale is an imprecise exercise largely because all jurisdictions have multiple different sentence classes with varying degrees of indeterminacy attached to each class. Prisoners who are present within a system at any moment in time represent a broad mixture of sentence classes, and this mixture is constantly changing with releases and new admissions. Thus, our systemwide rankings cannot reflect mathematical precision.

In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence over prison population size that is ceded by law to back-end decision makers such as parole boards and prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board’s release decisions would be 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *longest-time-served scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (a *shortest-time-served scenario*).

Most states have several different classes of sentences, each with their own rules of prison release. Each sentence class carries its own PMP. Application of the PMP measure to entire prison systems is, at best, an approximation that requires the proration of multiple classes of sentences and their PMPs according to the numbers and percentages of prisoners who have received those different classes of sentence.

Prison-Release Discretion and Prison Population Size

State Report: Hawaii

Executive Summary

We assess the Hawaii prison-sentencing system as one with an *extremely high degree of indeterminacy* overall (see pp. iv-v). Hawaii is a strong candidate for having the most indeterminate system in the country. Its parole board is one of the most powerful in all American jurisdictions.

For most prisoners in Hawaii, minimum terms to parole-release eligibility are not determined by their judicial sentences, but by the parole board. There are few statutory limits on the board's choices of minimum terms to release consideration.

Hawaii is among a small minority of states that do not award good-time credits or similar discounts to advance one or more milestones in prisoners' sentences (for example, to shorten prisoners' minimum or maximum terms). Thus, at the back end of Hawaii's prison-sentencing system, only the parole board has authority to influence the amount of time actually served by most prisoners, with no overlapping authority in the department of corrections. There is no framework of shared discretion, or "checks and balances," in the state's prison-release framework.

. Terminology note

To be consistent with other reports in this series, this report will refer to the Hawaii Paroling Authority as the "parole board." The Hawaii Corrections Division of the Department of Public Safety will be referred to as the "department of corrections" or "DOC."

Introduction

Hawaii's prison-rate history, 1972 to 2020

At yearend 2020, Hawaii's prison rate was 195 per 100,000 general population, with a prison population of 2,740.¹ Hawaii's prison rate was 39st largest among all states.

Figure 1. Prison Rate Change in Hawaii and (Unweighted) Average Among All States, 1972 to 2020

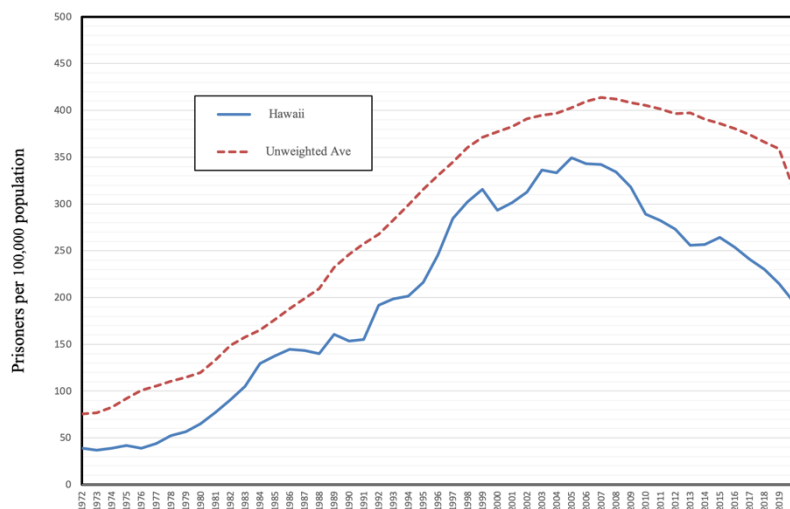
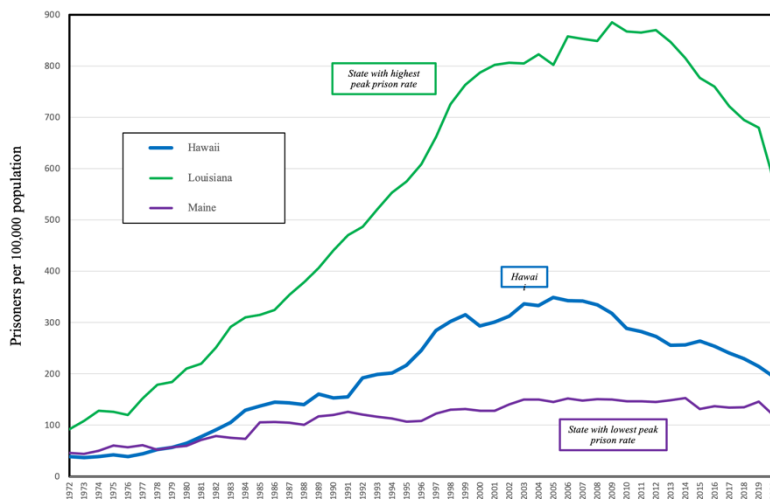


Figure 2. Prison Rate Change in Hawaii, Louisiana, and Maine, 1972 to 2020



Sources: Timothy J. Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on

¹ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 11 table 4, 15 table 7.

December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps>; E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018); E. Ann Carson, *Prisoners in 2020-Statistical Tables* (Bureau of Justice Statistics, 2021), at 15-16 table 7 (for 2019-2020).

Hawaii reached its peak prison rate in 2005 at 349 per 100,000, which dropped to 195 per 100,000 in 2020. This is a net difference of -154 per 100,000, which was the 19th largest prison-rate drop of all states from their peak positions (in various years) through 2020

Figures 1 and 2 span two important periods in American criminal-justice history. From 1972-2007, the United States saw 35 years of uninterrupted growth in the nationwide aggregated prison rate. This might be called the Great Prison Buildup. Since 2007, national prison rates have been falling. From 2007 through yearend 2019 (prior to the COVID pandemic), the average drop in states' prison rates was about 1.2 percent per year, with much variation across individual states.

The COVID period

We view American prison rates following the arrival of the COVID pandemic in March 2020 as discontinuous with earlier rates and trends. Whatever factors were at work to determine state prison rates in the “before times,” the pandemic introduced a major new causal force that, at least temporarily, diverted the course of prison-rate change nationwide.²

In calendar year 2020, most states saw unusually large drops in their prison rates. Prison rates fell in 49 states, the District of Columbia, and the federal system. The aggregate 50-state prison rate for the U.S. dropped by about 15 percent in a single year. From yearend 2019 to yearend 2020, the (unweighted) average state prison rate fell from 359 to 308 prisoners per 100,000

² In Figures 1 and 2 above, the COVID period arrives in the very last year of data that has been reported by the Bureau of Justice Statistics (BJS) as of this writing—from yearend 2019 to yearend 2020. Figures 1 and 2 rely exclusively on BJS data covering the years 1972-2020. For a tentative update, the Vera Institute of Justice has collected state imprisonment counts reaching into December 2021, which are not fully compatible with BJS reports. See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022).

general population, for an average incremental downturn of -51 per 100,000.³ We believe this was the largest one-year decline in state prison rates in American history.⁴

In calendar year 2021, U.S. prison rates did not continue to descend at the same dramatic pace. Preliminary data from the Vera Institute indicate that the aggregate 50-state prison population fell by about 1.8 percent from January to December 2021. Prison populations actually rose in 19 states.⁵

Given the focus of this project and the unprecedented size of prison-rate change during COVID's first year, it is relevant to ask whether indeterminacy in American prison sentences played a consequential role in events. An adequate history cannot yet be written, but considerable data have already been assembled.

Nationwide, COVID-driven changes in prison-release practices were not the main driving force of prison population shrinkage from early 2020 through the end of 2021. This is not to say that there was no expansion of prison release during the pandemic. Thirty-six states and the federal government did at least *something* to expedite releases, each jurisdiction choosing from a grab bag of different strategies—e.g., expedited parole release, loosened release criteria, increased or restored credit awards, early release of prisoners already close to their mandatory release dates, expanded compassionate release for the elderly or medically infirm, increases in clemency grants, invocation of overcrowding emergency provisions, and court orders. Such steps did not yield large numbers of “COVID releases” in most states, however, and many COVID releases were not much earlier than they would have been in the pandemic's absence.⁶

The available data suggest that the 2020 plunge in state prison rates was primarily due to reduced *admissions* caused by a number of factors, including fewer arrests, fewer new court

³ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 1, 7 table 2. Across 2020, prison rates fell in every state except Alaska, where the rate increased by 1.2 percent.

⁴ Historical sources show no one-year decline in average state prison rates that approaches -51 per 100,000. See Margaret Werner Cahalan, *United States Historical Correctional Statistics, 1850-1984* (Bureau of Justice Statistics, 1986); Margaret Cahalan, *Trends in Incarceration in the United States since 1880: A Summary of Reported Rates and the Distribution of Offenses*, 25 *Crime & Delinq.* 9 (1979).

⁵ Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2 (reporting a decrease of 15.8 percent in the state prison population overall in 2020 followed by a decrease of 1.8 percent in 2021).

⁶ For a survey of state releasing practices in response to COVID, see Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 2022) (finding that 24 states released 0 to 150 prisoners in response to the pandemic from March 2020 through December 2021, while only five states and the federal system released more than 3,000 prisoners). The effects on annual imprisonment rates were even less than the absolute numbers of releases would suggest. Mitchell et al. found that one of the most common criteria applied by states for COVID release decisions was “short time left on sentence.” Thus, some of the accelerated COVID releases in 2020 and 2021 were of prisoners who would have been released in the same year anyway, albeit somewhat later.

commitments, fewer revocations from community supervision, and some prisons' embargoes on receiving prisoners from local jails. The number of all state prison admissions in the U.S. dropped by an astonishing 40 percent in a single year from 2019 to 2020.⁷

The COVID period in Hawaii

Hawaii made no special uses of prison-release processes in the early COVID period. In a separate study, the Robina Institute found no (zero) COVID-influenced releases in Hawaii from March 2020 through December 2021. Hawaii was one of 14 states that made no special effort to expedite prison releases in response to COVID.⁸

In calendar year 2020, Hawaii's prison rate fell from 215 to 195 per 100,000—a one-year decline of -20 per 100,000. This was the 48th largest (third smallest) one-year drop reported among all 50 states for that year (tied with Nebraska).⁹ Measured in percentage terms, it was a 9.3 percent reduction in the state's prison rate. The state's total prison population fell by 297 people, from 3,037 to 2,740.¹⁰

⁷ See E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17, 17 table 8 (admissions fell from 530,905 to 319,346). There was no comparable upswing in prison releases. Total releases from state prisons actually fell in 2020, dropping 9.8 percent from the previous year. *Id.* at 19 table 9 (nationwide releases fell from 557,309 to 502,723). Only five states released five percent or more of prisoners in 2020 than they had released in 2019: Arizona (6.9 percent), Maine (30.9 percent), Nebraska (5.9 percent), New Jersey (19.7 percent), and Wyoming (8.0 percent). For a focus on patterns of parole release in 2020, see Tiana Herring, *Parole boards approved fewer releases in 2020 than in 2019, despite the raging pandemic* (Prison Policy Initiative, February 3, 2021), at <https://www.prisonpolicy.org/blog/2021/02/03/parolegrants/> (surveying data from 13 states; finding that total numbers of parole releases fell in nine states; among all 13 states, the average drop in numbers of parole releases from yearend 2019 to yearend 2020 was 11.3 percent). See also Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 2022) (concluding that “the greatest impact on prison population overall occurred on the admissions side of the equation.”). From March 2020 through December 2021, Mitchell et al. estimate a total of 47,967 “non-routine COVID releases” from state prisons nationwide. Over a similar period (January 2020 to December 2021), Vera Institute of Justice (Vera) reported a drop in the aggregate state prison population of 217,989 people, from 1,259,977 to 1,041,988. Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 3 table 2.

⁸ Kelly Lyn Mitchell, Julia Laskorunsky, Natalie Bielenberg, Lucy Chin, and Madison Wadsworth, *Examining Prison Releases in Response to COVID: Lessons Learned for Reducing Effects of Mass Incarceration* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 34 Appendix A.

⁹ The largest single-state drop from yearend 2019 to yearend 2020 was in Kentucky, from 515 to 414 per 100,000. E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 15 table 7.

¹⁰ *Id.*, at 11 table 4.

Falling admissions explain much of the 2020 population drop in Hawaii. The number of prison admissions in the state dropped by 12.5 percent in 2020 compared with the previous year (from 1,440 to 1,260). Total releases in 2020 fell by 30.6 percent over 2019 (from 1,623 to 1,126).¹¹

Hawaii's prison-rate drop slowed considerably after calendar year 2020. From yearend 2020 to December 2021, the Vera Institute reported that Hawaii saw a decrease in its prison population, from 4,171 to 4,102—or 1.7 percent.¹² As of August 22, 2022, the Hawaii Department of Corrections reported a total prison population of 4,201.¹³

I. General Rules of Prison-Release Discretion in Hawaii

A. Determination of parole-release eligibility

1.1. General rules of prison release

The felony grading structure in Hawaii includes penalties for first- and second-degree murder (see sections 2.1 and 2.2), plus three lower felony grades designated as Classes A, B, and C.¹⁴

For most felonies other than drug crimes, the sentencing court must impose a *mandatory maximum sentence* that is fixed in length according to the grade of the conviction offense. The judge also has no discretion in the determination of the minimum sentence. Minimum terms are to be set by the parole board (except when a mandatory minimum prison statute applies, see section 2.4).¹⁵ The general rules for most felonies are shown in Table 1.

¹¹ E. Ann Carson, *Prisoners in 2020 - Statistical Tables* (Bureau of Justice Statistics, 2021), at 17 table 8, 19 table 9.

¹² See Jacob Kang-Brown, *People in Prison in Winter 2021-22* (Vera Institute of Justice, 2022), at 4 table 2. As a general matter, Vera's *People in Prison* reports should not be treated uncritically as "updates" of BJS's annual *Prisoners* series. Vera does not always gather prisoner counts from the same dates as BJS, nor does it calculate state prison rates in the same way. For example, BJS calculates yearend prison rates using yearend population estimates for each state from the Census Bureau, while Vera uses the Census Bureau's July 1 estimates (six months earlier). Occasionally, the absolute numbers of state prisoners reported by Vera are dramatically different from those in BJS reports, suggesting basic differences in counting rules. Because of such incompatibilities, we do not attempt to integrate data from the two sources in any of our state reports for this project.

¹³ Hawaii Department of Public Safety, Corrections Division, *Department of Public Safety Weekly Population Report* (August 22, 2022), <https://dps.hawaii.gov/wp-content/uploads/2022/08/Pop-Reports-Weekly-2022-08-22.pdf>. This count includes people held in Hawaii's prisons (3,115) and an additional 1,086 held in facilities on the mainland.

¹⁴ Haw. Rev. Stat. §§ 706-656, 706-659, 706-660.

¹⁵ See Haw. Rev. Stat. §§ 706-659 ("[A] person who has been convicted of a class A felony [with some exceptions] shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority."), 706-660(1) ("[T]he court shall impose the maximum length of imprisonment which shall be as follows: ... (a) For a class B felony-ten years; and ... (b) For a class C felony-five years."), 706-669(1) ("When person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling

Table 1. General Rules for Mandatory Maximum Prison Sentences and Determination of Minimum Sentences

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	Fixed at 20 years
Class B	Set by parole board	Fixed at 10 years
Class C	Set by parole board	Fixed at 5 years

Sources: Haw. Rev. Stat. §§ 706-656 706-659, 706-660.

The board must hold hearings to set prisoners' minimum terms within six months of their admission.¹⁶ The hearing process to establish release eligibility dates is elaborate, resembling full release proceedings in many other states. The relevant statute provides:

The [paroling] 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. The guidelines shall be public records and shall be made available to the prisoner and to the prosecuting attorney and other interested government agencies.¹⁷

Before holding the hearing, the [paroling] authority shall 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 report shall be a complete personality evaluation for the purpose of determining the prisoner's degree of propensity toward criminal activity.¹⁸

According to Hawaii's *Parole Handbook*, "The parole board considers many factors in setting minimum terms of imprisonment including, but not limited to the nature of the offense, the degree of injury or loss to personal property, criminal history, character or attitude of offender with respect to criminal activity or lifestyle, efforts made to life pro-social life prior to

authority shall ... holding a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.").

¹⁶ Haw. Rev. Stat. § 706-669(1); Haw. Admin. Rules § 23-700-21.

¹⁷ Haw. Rev. Stat. § 706-669(8).

¹⁸ Haw. Rev. Stat. § 706-669(2).

commitment to prison, and the level of involvement of the offender in the instant offense(s) just to name a few.”¹⁹

Uniquely among all states, prisoners have the right to be represented by appointed counsel at the release-eligibility hearings if they cannot afford a lawyer.²⁰ The right to appointed counsel also extends to parole-release hearings.²¹

Hawaii’s minimum-term guidelines do not place tight limits on the parole board’s discretion. For one thing, they are advisory and not legally enforceable. In addition, the guidelines give very wide ranges of options for minimum terms for each felony class. Recommended terms vary with prisoners’ maximum sentences and the sorting of their cases into one of three “levels” according to “subjective criteria” set forth in the guidelines, plus any other factors the board might wish to consider.²² For offenses with maximum terms of years (as opposed to life sentences), the guidelines envision that minimum terms could be relatively short, could extend the full length of the maximum sentence, or anywhere in between, see Figure 3 below.

¹⁹ Hawaii Paroling Authority, *The Parole Handbook* (revised 2020), at 9, https://dps.hawaii.gov/hpa/files/2020/11/HPA-Parole-Handbook_Revised_09_2020-1.pdf. For greater detail, see Haw. Admin. Rules §§ 23-700-23 (factors to be considered when fixing minimum sentences include “[t]he nature and circumstances of the offense and the history and characteristics of the inmate” and “[t]he need for the sentence imposed: ... [t]o reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense; ... [t]o afford adequate deterrence to criminal conduct; ... [t]o protect the public from further crimes of the inmate; and ... [t]o provide the inmate with educational or vocational training, medical care, or other correctional treatment in the most effective manner.”); 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).

²⁰ Haw. Rev. Stat. § 706-669(3)(c). Other persons who have the right to attend release-eligibility hearings are prosecuting attorneys and victims, their designees, or surviving immediate family members. Haw. Rev. Stat. § 706-669(7).

²¹ Haw. Rev. Stat. § 706-670(3)(c); Haw. Admin. Rules § 23-700-32(b)(3).

²² When deciding to which of the three levels a case should be assigned, the guidelines state that, “THE HAWAII PAROLING AUTHORITY’S INTERPRETATIONS AND PERCEPTIONS OF THE SUBJECTIVE CRITERIA REMAIN THE PREROGATIVE OF THE AUTHORITY” (capitalization in original). Hawaii Paroling Authority, *Guidelines for Establishing Minimum Terms of Imprisonment* (1989), at 3 <http://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>. The guidelines provide that their stated criteria are “not all inclusive” and “emphasiz[e]” that “specific weights have not been assigned to the various criteria.” *Id.* at 1. The guidelines also “emphasiz[e]” that the parole board should make comparative judgments of offense seriousness in light of board members’ experiences and decisions in past cases. *Id.* at 3. The criteria for choice of “level” include: the nature of the offense; the degree of injury/loss to person or property; prisoners’ criminal history; the “character or attitude of offender with respect to criminal activity or lifestyle”; prisoners’ “efforts to live pro-social life prior to commitment to prison”; whether the prisoner is incarcerated on a probation violation; and whether the prisoner was sentenced as a youth adult offender. *Id.* at 3-7. The guidelines also invite the parole board to consider “additional criteria” in mitigation, under the headings of: “involvement of offender in instant offense(s)”; “diminished responsibility”; and “degree of [victim] provocation, involvement, or complicity.” *Id.* at 7-8.

Figure 3. Guidelines Matrix for Minimum Terms of Imprisonment

Maximum Term in Years/Months Imposed by the Court	Level of Punishment Range in Years/Months		
	LEVEL I	LEVEL II	LEVEL III
5 years (60 months)	1 - 2 yrs. (12 - 24 mos.)	2 - 3 yrs. (24 - 36 mos.)	3 - 5 yrs. (30 - 60 mos.)
10 years (120 months)	1½ - 3 yrs. (18 - 36 mos.)	3 - 5 yrs. (36 - 60 mos.)	5 - 10 yrs. (60 - 120 mos.)
20 years (240 months)	2 - 5 yrs. (24 - 60 mos.)	5 - 10 yrs. (60 - 120 mos.)	10 - 20 yrs. (120 - 240 mos.)
Life with Parole	5 - 10 yrs. (60 - 120 mos.)	10 - 20 yrs. (120 - 240 mos.)	20 - 50 yrs. (240 - 600 mos.)

Source: Hawaii Paroling Authority, *Guidelines for Establishing Minimum Terms of Imprisonment* (1989), at 2.

For prisoners with 20-year maximum sentences, for example, the guidelines recommend minimum terms as low as two years (at Level I) or as high as 20 years (at Level III). The range of variation is a minimum term set at 10 percent of the maximum sentence up to 100 percent of the maximum, which would extinguish parole-release eligibility altogether. Minimum terms even shorter than recommended in the guidelines are statutorily permissible, but the board must give written reasons for decisions outside the guidelines.²³

The parole board's discretion to govern minimum terms is not confined by its own prior decisions. Through most prisoners' terms, the board may reconsider and change minimum terms they had previously set.²⁴

²³ See Hawaii Paroling Authority, *Guidelines for Establishing Minimum Terms of Imprisonment* (1989), at 1 ("The Hawaii Paroling Authority may deviate from the guidelines, either above or below, but all deviations shall be accompanied by written justification").

²⁴ See Haw. Admin. Rules § 23-700-26 (setting forth various time limitations for prisoner requests for a lower minimum term; for example, the board may not reconsider a minimum term within six months of having previously set a minimum term or within one year of having considered an earlier request to reduce the minimum term). For additional rules, procedures, and guidelines for decisions, see Haw Admin Rules § 23-700-27 to -29. The process and decision criteria are outlined in Hawaii Paroling Authority, *The Parole Handbook* (revised 2020), at 26-29. In fiscal year 2020, the parole board granted only 19 of 167 applications for reduction of minimum terms. Hawaii Paroling Authority, *20202 Annual Statistical Report: Fiscal Year 2020*, at 2, <https://dps.hawaii.gov/hpa/files/2020/10/2020-Annual-Report.pdf>.

1.2. Other common forms of sentences

a. Drug offenses

For most drug offenses graded as Class B and C felonies, sentencing courts have discretion to choose maximum terms within statutory ranges, as shown in Table 2. Minimum terms are to be determined by the parole board.

Table 2. Discretionary Maximum Prison Sentences and Determination of Minimum Sentences for Class B and C Drug Offenses

Felony grade	Minimum term	Discretionary judicial maximum term
Class B	Set by parole board	5 to 10 years
Class C	Set by parole board	1 to 5 years

Source: Haw. Rev. Stat. § 706-660(2).

b. Extended terms of imprisonment

When certain statutory criteria are proven beyond a reasonable doubt, sentencing courts may impose “extended terms of imprisonment” that carry mandatory maximum sentences for Class A through C felonies that are much longer than those for ordinary offenders.²⁵ Grounds for an extended prison term include findings that the defendant is a “persistent offender,” a “professional criminal,” or a “dangerous offender” as defined in statute.²⁶ Once the criteria for an extended term are found to exist, the court has no discretion as to the length of the judicial maximum sentence that must be imposed, while minimum terms are to be determined by the parole board.²⁷

²⁵ Haw. Rev. Stat. §§ 706-661, 706-662.

²⁶ Haw. Rev. Stat. § 706-662(1)-(3). Other grounds for an extended prison sentence include findings that the defendant is a “multiple offender,” an “offender against the elderly, handicapped, or a minor eight years of age or younger,” a “hate crime offender,” or was convicted of negligent homicide and “did not remain at the scene of the crime and render reasonable assistance to an injured person.” Haw. Rev. Stat. § 706-662(4)-(7).

²⁷ See Haw. Rev. Stat. § 706-661 (“When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment ... shall be determined by the Hawaii paroling authority in accordance with section 706-669.”).

Table 3. Mandatory Maximum Prison Sentences and Determination of Minimum Sentences when “Extended Terms of Imprisonment” are Imposed

Felony grade	Minimum term	Mandatory judicial maximum term
Class A	Set by parole board	Life with parole
Class B	Set by parole board	Fixed at 20 years
Class C	Set by parole board	Fixed at 10 years

Source: Haw. Rev. Stat. § 706-661.

1.3. Presumptive parole for low-risk prisoners

Hawaii law requires that all prisoners “sentenced to an indeterminate term of imprisonment shall receive an initial parole release hearing at least one month before the expiration of the minimum term of imprisonment.”²⁸ For prisoners who are “assessed as low risk for re-offending,” parole release at first eligibility is mandatory “except for good cause shown to the paroling authority.”²⁹ For qualified prisoners, therefore, release is required unless the parole board makes affirmative findings sufficient to deny their release.³⁰

The risk assessment process for presumptive release is statutorily delineated as follows:

A validated risk assessment shall be used to determine the person's risk of re-offense and suitability for community supervision. For purposes of this subsection, “validated risk assessment” means an actuarial tool to determine a person's likelihood of engaging in future criminal behavior. The department of public safety shall select a research-based risk assessment tool and shall validate the accuracy of the risk assessment tool at least every five years in consultation with the paroling authority. Assessments shall be performed by department of public safety staff who are trained in the use of the risk assessment tool.³¹

²⁸ Haw. Rev. Stat. § 706-670(1).

²⁹ *Id.* This scheme does not fall within the project’s definition of *administrative parole release* because each case must go to a hearing, requiring parole board members to cast votes.

³⁰ The Hawaii Paroling Authority does not report statistics concerning the operation of § 706-670(1)’s release process for low-risk prisoners. For example, it is unknown how many prisoners are assessed as “low risk” each year and under what standard. It is also unknown how many of those assessed as low risk are released or denied release.

³¹ Haw. Rev. Stat. § 706-670(1).

For prisoners who are “assessed as low risk for re-offending,” the parole board may still deny parole if one of the following circumstances exist:

- Is found to have an extensive criminal history record that is indicative of a likelihood of future criminal behavior in spite of the finding by the risk assessment by the paroling authority;
- Is found to have committed misconduct while in prison that is equivalent to a misdemeanor or felony crime within thirty-six months of the expiration of the minimum term of imprisonment;
- Has any pending felony charges in the state;
- Is incarcerated for a sexual offense or child abuse;
- Or does not have a parole plan approved by the paroling authority.³²

1.4. Reconsideration after denials of release

If parole release is not granted when a prisoner first becomes eligible, the parole board must hold subsequent reviews at intervals of 12 months or less.³³

A. General rules on the effects of good-time, earned-time, and other discounts

1.5. Generally-available credits: types and amounts

There is no statutory good-time scheme available to prisoners in Hawaii to reduce either their maximum or minimum terms. Prisoners’ conduct and program participation while incarcerated are factors the parole board may consider when making discretionary release decisions.³⁴ Currently, Hawaii is one of only four states that operate without credit-based discounts against sentence based on a good-time model, earned time model, or both.³⁵

In addition, the parole board has authority to block prisoners’ consideration for release if they do not meet a high standard of good conduct:

³² Haw. Rev. Stat. § 706-670(1)(a)-(e).

³³ Haw. Rev. Stat. § 706-670(1); Haw. Admin. Rules § 23-700-31(b).

³⁴ Haw. Admin. Rules § 23-700-33(b)-(e).

³⁵ See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 75.

The authority may, at its discretion and in any particular case, 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.³⁶

This is a type of *bad-time* system, akin to those found in some other states. The emphasis is on the potential punishment of misconduct rather than the routinized reward of good behavior.

II. Prisoners Outside the General Rules in Hawaii

2.1. Life sentences without parole

Prisoners serving sentences of life without parole (LWOP) have no parole-release eligibility unless their sentences are commuted. After prisoners have served 20 years of LWOP sentences, the parole board must offer a recommendation to the governor on the advisability of commuting their sentences to life with the possibility of parole.³⁷

2.2. Life sentences with possibility of parole

The timing of parole-release eligibility for prisoners with life sentences with the possibility of parole is normally within the discretion of the parole board, just like the establishment of minimum terms for most other types of sentences.³⁸ Minimum terms must be set within six months of life prisoners' admission, but may be revised later (see section 1.1). The parole board's guidelines recommend the imposition of minimum terms from five to 50 years (see Figure 3), although the board has discretion to go above or below the guidelines.

2.3. Juvenile life sentences

Hawaii is among the plurality of states that have abolished LWOP sentences for defendants who were under age 18 at the time of their crimes.³⁹ Juveniles convicted of first degree murder or first degree attempted murder must be sentenced to life imprisonment with the possibility of parole, while adults must be sentenced to LWOP.⁴⁰

³⁶ Haw. Rev. Stat. § 706-669(4).

³⁷ Haw. Admin. Rules § 23-700-62; Hawaii Paroling Authority, *The Parole Handbook* (revised 2020), at 5.

³⁸ See Hawaii Paroling Authority, *Guidelines for Establishing Minimum Terms of Imprisonment* (1989), at 2 (depending on the circumstances of individual cases, the guidelines recommend minimum terms for life sentences spanning five to 50 years).

³⁹ See Campaign For Sentencing Youth, *States that Ban Life without Parole for Children*, <https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/> (last updated January 27, 2022).

⁴⁰ Haw. Rev. Stat. § 706-656(1).

2.4. Mandatory minimum prison terms

a. Firearms-related offenses

Offenders convicted of a felony where the person had a firearm and threatened its use or used the firearm while engaged in the commission of the felony “may in addition to the indeterminate term of imprisonment ... be sentenced to a mandatory term of imprisonment without possibility of parole.” The length of the mandatory minimum term for a first-time firearms related offense varies from three to 15 years depending on the class of felony or controlling offense.⁴¹

Offenders convicted of a second firearm felony offense “shall in addition to the indeterminate term of imprisonment ... be sentenced to a mandatory minimum term of imprisonment without possibility of parole.” For offenses of murder in the second degree and attempted murder in the second degree, the mandatory minimum term is 20 years. Class A-C felonies carry mandatory minimum terms from three years and four months to 13 years and four months.⁴²

Offenders convicted of a felony where the person had a semiautomatic firearm or automatic firearm in their possession or used or threatened its use while engaged in the commission of the felony “shall in addition to the indeterminate term of imprisonment ... be sentenced to a mandatory minimum term of imprisonment without possibility of parole.” Offenders convicted of murder in the second degree or attempted murder in the second degree must serve mandatory minimum terms of 20 years. Offenders convicted of class A-C felonies must serve mandatory minimum terms ranging from five to 15 years.⁴³

b. Repeat felony offenders

Offenders sentenced for a second or subsequent felony offense who have prior convictions of murder in the second degree or any class A, any class B, or certain enumerated class C felony offenses “shall be sentenced” to a mandatory minimum period of imprisonment without possibility of parole.⁴⁴ Offenders with one prior felony conviction will be subject to mandatory minimum terms ranging from one year and eight months to ten years depending on the type and class of offense.⁴⁵ Offenders with two prior felony convictions will be subject to mandatory minimum terms ranging from three years and four months to 20 years depending on the type

⁴¹ Haw. Rev. Stat. § 706-660.1(1).

⁴² Haw. Rev. Stat. § 706-660.1(2).

⁴³ Haw. Rev. Stat. § 706-660.1(3).

⁴⁴ Haw. Rev. Stat. § 706-606.5(1).

⁴⁵ Haw. Rev. Stat. § 706-606.5(2)(a).

and class of offense.⁴⁶ Offenders with three or more prior felony convictions will be subject to mandatory minimum terms ranging from five to 30 years depending on the type and class of offense.⁴⁷

III. Other Forms of Prison-Release Discretion (not routinely used) in Hawaii

3.1. Medical or “compassionate” release

Hawaii’s parole board may reduce prisoners’ minimum terms if they have a “seriously debilitating medical condition for which treatment is not available in prison” or face imminent death from a terminal disease.⁴⁸

The department of corrections may also recommend for medical release inmates that have a terminal illness, a seriously debilitating and irreversible mental or physical condition, are too cognitively impaired to participate in rehabilitation and/or be aware of punishment, or have a disease or condition that requires a complex treatment or level of care. The inmate’s primary care physician must request a medical release recommendation from the Health Care Division Medical Director who must either approve or disapprove the recommendation request. The recommendation must ultimately be issued to the Hawaii parole board for a decision.⁴⁹

3.2. Executive clemency

Under Hawaii’s constitution, the governor may grant reprieves, commutations, and pardons for all offenses.⁵⁰ If requested by the governor, the department of corrections and parole board must furnish “all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon.”⁵¹

⁴⁶ Haw. Rev. Stat. § 706-606.5(2)(b).

⁴⁷ Haw. Rev. Stat. § 706-606.5(2)(c).

⁴⁸ Haw. Admin Rules §§ 23-700-26(c), 29(b).

⁴⁹ Haw. Dep’t of Pub. Safety, Policy No. COR.10.1G.11 (Dec. 29, 2014), at 2-3, <https://dps.hawaii.gov/wp-content/uploads/2015/10/COR.10.1G.11.pdf>.

⁵⁰ Haw. Const. art. 5, § 5 (“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.”).

⁵¹ Haw. Rev. Stat. § 353-72. So far, we have no information on how many people Hawaii Governor David Ige has pardoned since he took office in late 2014. However, it appears that the number of pardon investigations considered has been decreasing under Governor Ige. During fiscal year 2015 (July 1, 2014 to June 30, 2015), the parole board reported considering 100 pardon investigations. The year prior (fiscal year 2014) there were 86 pardon investigations considered. From fiscal years 2016 to 2020, while Governor Ige has been in office, the average number of pardon investigations considered is approximately 42. See Hawaii Paroling Authority, *2020 Annual Statistical Report: Fiscal Year 2020*, at 2, <https://dps.hawaii.gov/hpa/files/2020/10/2020-Annual-Report.pdf>; Hawaii Paroling Authority, *2017 Annual Statistical Report: Fiscal Year 2017*, at 2, <https://dps.hawaii.gov/wp-content/uploads/2017/11/2017-Annual-Report.pdf>; Hawaii Paroling Authority, *2016 Annual Statistical Report: Fiscal Year 2016*, at 2, <https://dps.hawaii.gov/wp-content/uploads/2016/08/2016-Annual-Report.pdf>.

3.3. *Emergency release for prison overcrowding*

There is no permanent legal mechanism for the release of Hawaii prisoners to meet circumstances of overcrowding.

IV. Modeling the Relationship Between Prison-Release Discretion and Prison Population Size in Hawaii

4.1. *General-rules cases*

a. Timelines

For most prisoners in Hawaii, judicial prison sentences include only maximum terms. The parole board has plenary authority to set minimum terms, even for sentences of life with the possibility of parole.⁵² There is no statutory constraint on the lengths of minimum terms except that the parole board must create guidelines for its decisionmaking process. The content of the guidelines, and decisions of whether to follow the guidelines in individual cases, are within the parole board's discretion. As discussed earlier, Hawaii's current minimum-term guidelines impose no enforceable limitations on the board's release-eligibility discretion (see section 1.1).⁵³

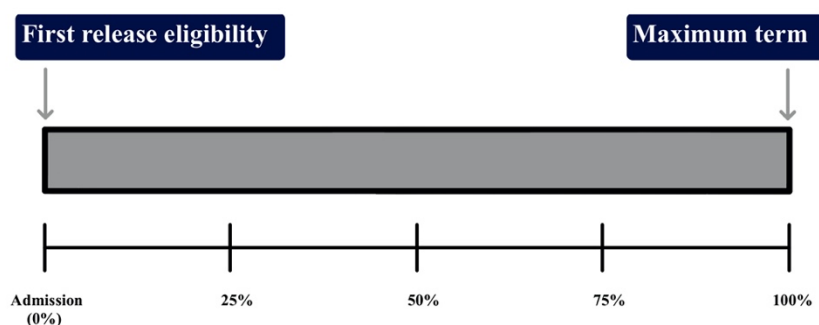
[Annual-Report-HPA.pdf](#). Looking to prior governors, Governor Neil Abercrombie pardoned over 80 people during his single term, Governor Linda Lingle pardoned 148 people in her two terms, and Governor Ben Cayetano pardoned 187 people in his two terms in office. Nick Grube, "A Forgiving Abercrombie Pardoned Dozens on His Way Out the Door," *Honolulu Civil Beat* (Dec. 16, 2014), <https://www.civilbeat.org/2014/12/a-forgiving-abcrombie-pardoned-dozens-on-his-way-out-the-door/>.

⁵² The main exceptions to this general rule are cases in which prisoners have received mandatory minimum sentences. By definition, these minimum terms may not be undercut by the parole board.

⁵³ See Hawaii Paroling Authority, *Guidelines for Establishing Minimum Terms of Imprisonment* (1989), at 1 ("The Hawaii Paroling Authority may deviate from the guidelines, either above or below, but all deviations shall be accompanied by written justification").

Taking the above structural features into account, we can offer conclusions about the degree of indeterminacy that exists in Hawaii's prison-sentencing system for general-rules cases. Within the time limits set by judicial maximum sentences, general-rules sentences are 100 percent indeterminate. In this state, actual time served is 100 percent within the discretion of the parole board, whose decisions are made after the judicial sentence is finalized. Figure 3 is a visualization of this extremely high degree of indeterminacy.

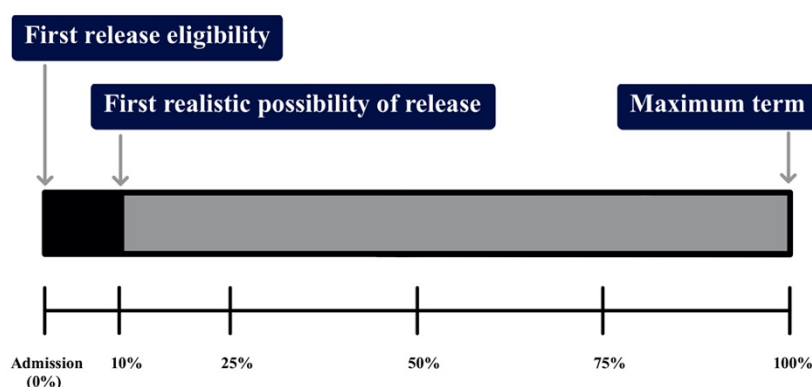
**Hawaii Figure 3. Prison-Release Timeline
for General-Rules Cases**



In theory, under the schematic of Figure 3, the parole board's discretionary decisions could drive the size of the general-rules subpopulation of Hawaii's prisons down to zero. In actual practice, we know that this theoretical decarceration extreme will not be reached, but the statutory structure of the prison-release system does not tell us what the true range of possibility is.

If there are reliable patterns of release decisions under Hawaii’s scheme, they result from the parole board’s voluntary decision patterns rather than externally-enforced legal standards. To demonstrate one possible scenario, let us suppose that—as a matter of actual decisions in recent years—no prisoners convicted of serious felonies have been released by the parole board until at least 10 percent of their maximum terms have elapsed, although there have been releases from the 10-percent mark forward. Figure 4 models this hypothetical scenario.

Hawaii Figure 4. Hypothetical Prison-Release Timeline if Parole Board’s Established Practice Were to Grant Release Only to Prisoners Who Have Served at Least 10 Percent of Their Maximum Terms



If we had sufficient data to conclude that Figure 4 is a good representation of actual release patterns in Hawaii, then we could calculate the *customary* degree of indeterminacy in prison sentences for serious felonies. As used here, the word “customary” is meant to signal that the measurement of indeterminacy is based on observable patterns of discretionary behavior by responsible officials, even though those behaviors are not regulated by law. Such patterns are the outgrowth of customs, policies, and practices that prevail within the agency at any point in time.

The customary model can only reflect a specific time frame: the period during which the data were collected. Actual release patterns can shift without changes in the legal superstructure. For example, consider a state in which release customs for the last several years have fit neatly into the model in Figure 4 above. The election of a new governor who ran on a “tough on crime” platform, and the appointment of like-minded parole-board members, could easily inaugurate new customs and practices. Under the new administration, we might observe in short order that prisoners convicted of serious felonies are never released until the 50-percent mark of their maximum sentences. The customary lower boundary on minimum sentences for the group as a whole would have increased fivefold.

Customary prison-release decision patterns are not always transparent. In Hawaii, however, there are publicly-accessible data on minimum-term determinations by the parole board, broken down by type of offense.⁵⁴ While the reported statistics do not permit nuanced analysis, they support certain gross descriptions of what has been happening:

Using fiscal year 2018 as an example, during that year there was only one reported minimum sentence of shorter than one year (promoting prison contraband in the first degree). Minimum terms that extend the full length of prisoners' maximum sentences appeared to be rare, although some were reported for offenses including manslaughter, assault, and terroristic threatening.

Within many offense categories, the lengths of minimum terms selected by the board in FY 2018 varied considerably. For example, among prisoners convicted of assault in the second degree (a crime normally carrying a five-year maximum), minimum terms ranged from one to 5.08 years.⁵⁵ For sexual assault in the first degree (20-year maximum), minimum terms ranged from three to 15 years. For robbery in the first degree (20-year maximum), minimum terms ranged from two to 17 years.

When setting minimum terms, FY 2018 data show a parole board with customary decision patterns that stretch across much of its discretion as granted by law. "Extreme" decisions (near-immediate release of admitted prisoners, minimum terms as long as maximum sentences) appear to be nonexistent or rare. The customary degree of indeterminacy, at least in FY 2018, resembles Figure 4, with the "first realistic possibility for release" falling in the ballpark of 10-to-20 percent.⁵⁶

It is important to remember that the "Figure 4 model" only reflects a parole board's customary self-regulation of its power to set *minimum* terms. The board always retains *release-denial discretion* across the remainder of the timeline, until expiration of the judicial maximum sentence.

⁵⁴ The data in support of this paragraph and the next are from Hawaii Paroling Authority, *2018 Annual Statistical Report: Fiscal Year 2018*, at 2-6 tables 1-2, <https://dps.hawaii.gov/wp-content/uploads/2018/11/2018-Annual-Report.pdf>.

⁵⁵ Judicial maximum sentences beyond the ordinary ceiling are possible for a number of reasons, including multiple counts of conviction or when extended terms of imprisonment are statutorily authorized.

⁵⁶ For greater specificity it would be necessary to carve up the data more finely, such as preparing separate figures for different classes of offenses.

b. The “population-multiplier potential” of indeterminate sentences in Hawaii

In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence on prison-population size that is ceded by law to back-end decision makers such as parole boards and departments of corrections (see p. vi).

We get a nonsensical value of infinity if we use the potential minimum term of zero in our PMP calculation. For Hawaii and other states that employ sentences with authorized minimum terms of zero, we substitute a PMP value of “Greater than 100:1.”⁵⁷ This signals an enormous amount of power held by back-end agencies over prison population size.

4.2. Distribution of time-served discretion

The bulk of time-served discretion at the back end of Hawaii’s prison-sentencing system is held by the parole board. This concentration of power is especially notable because of the enormous share of time-served discretion that is pooled at the back end of the system. Metaphorically, the Hawaii parole board is a big fish in a big discretionary pond.

Unlike some other states with powerful parole boards, there is no good-time credit system in Hawaii that cuts into the parole board’s authority to *deny release* until expiration of the full maximum term.⁵⁸ Indeed, corrections officials hold little formal influence of any kind over actual lengths of prison stays through the administration of good-time credits or other discounts. Prisoners’ conduct while in prison is no more than a factor the parole board may take into account when making discretionary decisions.⁵⁹

In addition, the practical clout of the department of corrections is reduced by the fact that more than half of all of Hawaii’s prisoners, which also tend to be those with the longest

⁵⁷ See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 81. Other states with similar sentence configurations for large classes of sentences include Alabama, Iowa, North Dakota, and Utah. Several states allowing sentencing courts to pronounce prison terms with no minimum terms, but we are skeptical that this is a regular practice. See *id.* at 136-42 Appendix Table A-2.

⁵⁸ Compared to other states in which the parole board holds vast discretion, Hawaii is unique in having no system for earning credits to reduce sentences. For example, Iowa allows prisoners to earn credits to that can severely shorten the time to mandatory release. See Kevin R. Reitz, Edward E. Rhine, Allegra Lukac, & Melanie Griffith, *American Prison-Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size, Final Report* (Robina Institute of Criminal Law and Criminal Justice, 2022), at 67 table 8.

⁵⁹ That does not mean that institutional conduct is unimportant to time-served outcomes in Hawaii. It simply means that the discretion to interpret the importance of prisoners’ conduct rests ultimately with the parole board rather than the department of corrections.

sentences, are housed in private prisons on the mainland.⁶⁰ The governance of prisoners, the opportunities provided to them, the disciplinary processes to which they are subject, and the evaluation of their behavior for consideration by the parole board, are all duties that are delegated to private parties for a large segment of Hawaii's prison population. Even though prison authorities (public or private) play a limited role in Hawaii's back-end system of prison-release discretion, Hawaii highlights the fact that private-prison providers must be counted among the responsible actors who hold prison-release discretion in some states. In Hawaii, this is only a soft power to influence time-served decisions. In a state with a more formalized system of conduct-based credits, private-prison providers would possess a harder, more tangible form of prison-release discretion.

When we expand our perspective to look at time-served discretion across both the front end and back end of the prison-sentencing system, it is clear that Hawaii concentrates time-served discretion to an extraordinary degree at the post-judicial back end of the prison-sentence chronology. Judges make in-out decisions for most felony cases, but rarely have input into actual lengths of prison stays. "Judicial" maximum sentences in most cases are mandated by the legislature. That is, judges must pronounce *mandatory maximum terms* that are preset according to the grades of defendants' felony convictions. Judges are given a measure of discretion to choose maximum terms in felony drug cases. Even here, however, Hawaii statutes present courts with a narrower range of authorized maximum terms than the comparable laws in most other states.⁶¹

4.3. Overall assessment

We assess the Hawaii prison-sentencing system as one with an *extremely high degree of indeterminacy*. Indeed, Hawaii is a candidate may have the most indeterminate system in the country. Its parole board may also be the most powerful in all American jurisdictions on matters of release.

For most prisoners in Hawaii, minimum terms to parole-release eligibility are not determined by the judicial sentence, but are set by the parole board. There are few statutory limits on the board's choices. If there is predictability in the length of minimum terms across classes of cases, it is the product of the parole board's customary practices, not the law.

⁶⁰ David T. Johnson, Janet T. Davidson, & Paul Perrone, *Hawaii's Imprisonment Policy and the Performance of Parolees Who Were Incarcerated In-State and on the Mainland* (2011), University of Hawaii and Hawaii Department of the Attorney General, at 7.

⁶¹ For a survey of authorized maximum prison sentences in state laws, see American Law Institute, *Model Penal Code: Sentencing* (forthcoming 2022), Section 6.11. For most offenses in most states, judges may impose any maximum term they choose so long as it does not exceed the most severe term authorized by statute. The terminology of this project draws a distinction between a *statutory maximum prison sentence* (the maximum allowed by statute for a given offense or class of offense) and a *judicial maximum sentence* (the maximum sentence imposed by a sentencing court on an individual defendant).

Hawaii is among a small minority of states that do not award good-time credits or similar discounts to advance one or more milestones in prisoners' sentences (for example, to shorten prisoners' minimum or maximum terms). Thus, at the back end of Hawaii's prison-sentencing system, only the parole board has authority to influence the amount of time actually served by most prisoners. There is no dynamic of shared discretion, or "checks and balances," in the state's prison-release framework.

This analysis suggests that changes in the parole board's customary decision patterns could be a critical engine of prison-rate change in Hawaii across years and decades. Given the limits of our present knowledge, this can be stated only as a hypothesis—but one that deserves further exploration.