

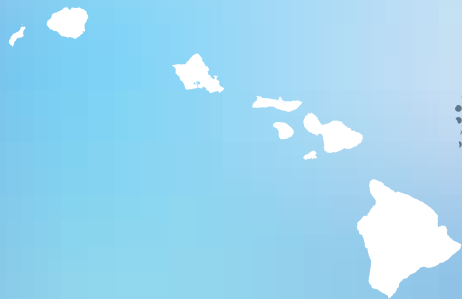
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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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HAWAII



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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

Hawaii

By

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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1. Background; Sentencing System

a. Sentencing Framework

Hawaii has an indeterminate sentencing system in which the sentencing court sets only the maximum, but not the minimum sentence to be served. The sentencing court chooses from only five possible maximum prison sentences when imposing a sentence (life without parole, life, 20 years, 10 years, or 5 years).¹ While some paroling discretion has been curbed by mandatory minimum sentencing laws, in many cases the parole board still plays a large role in incarceration length.² There is no sentencing commission or sentencing guidelines; and while there are no parole release guidelines, guidelines do play a role in setting the date of parole eligibility.³

b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Hawaii Paroling Authority has discretionary prison release authority.⁴

<http://dps.hawaii.gov/hpa/>

c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Paroling Authority is responsible for parole supervision.⁵

d. Which Agency Has Authority Over Parole Revocation?

The Paroling Authority is responsible for parole revocation.⁶

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

General rules of release eligibility. Hawaii has a largely indeterminate sentencing system in which the court sets only the maximum period of incarceration. Thus, when a person has been sentenced to an indeterminate or extended term of imprisonment, the Hawaii Paroling Authority must hold a hearing no later than six months after commitment to incarceration to determine the minimum term of imprisonment and issue a “tentative parole date” or “TPD.”⁷ This means that there is often a “minimum” hearing and a “parole release hearing” that are separate.⁸ The TPD can later be reduced at the discretion of the Authority with sixty days’ notice to the prosecuting attorney.⁹ Note that the Authority can only hear felony cases; misdemeanants are given determinate sentences fixed by the court.¹⁰

The parole guidelines determine the earliest potential release date.¹¹ Unless good cause is shown, offenders who have been assessed as low-risk must be granted parole at the earliest guideline release date, unless the person:

- Is found to have an extensive criminal history record that indicates a likelihood of criminal behavior, despite the risk assessment results;
- Committed misconduct while in prison equivalent to a misdemeanor or felony within thirty-six months of the expiration of the minimum imprisonment term;
- Has any pending felony charges in Hawaii;
- Is incarcerated for sex offenses or child abuse; or,
- Does not have an approved parole plan.¹²

However, there are also many crimes for which the mandatory minimum sentence is determined by statute. Individuals with many different types of prior felony convictions face minimum sentences that range from one year, eight months to thirty years depending on the new crime of conviction.¹³

Sex/violent offenders. Sex offenders, those convicted of child abuse, and those with extensive criminal records or bad prison conduct who are otherwise considered low-risk are not eligible for release at the earliest guideline release date as described above.¹⁴ Repeat violent and sexual offenders are also required to serve mandatory minimum sentences.¹⁵

Life sentences. If an offender is given a life sentence with the possibility of parole, the Authority sets a minimum parole eligibility date in the same manner as for other inmates.¹⁶ However, it is possible for the Authority to set the parole eligibility date at the maximum sentence (life); thereby essentially creating a life without parole sentence.¹⁷

Recurring eligibility after denial of release. If parole is not granted, the Authority must hold additional hearings at least every 12 months, until parole is granted or the maximum term of confinement expires.¹⁸ In such cases, the parole board can render an inmate effectively ineligible for parole by initially setting the minimum term of incarceration at a period equal to the maximum sentence.¹⁹

b. Good Time, Earned Time, and Other Discounts

Hawaii provides no opportunity for inmates to earn any form of good time or earned time credits. However, inmates can request a reduction in the minimum term of their sentence if they are not serving a mandatory minimum term. Factors considered in granting a reduction in the minimum term include:

- A reduction of the minimum term of imprisonment will not depreciate the seriousness of the offense or promote disrespect for the law; or,
- The inmate has demonstrated over a sustained period of time that s/he can lead a law abiding life; or,
- The individual has participated in and benefitted from all recommended programming likely to enhance reintegration as a law-abiding citizen; or,
- The Authority has received significant information about the offender and/or the offense which was not available at the time the minimum was established

and such information significantly mitigates the nature and circumstances of the offense or the history and characteristics of the inmate; or,

- The person desires to enter a residential treatment program which is not available while incarcerated; or,
- The court-imposed mandatory minimum has been reduced or removed; or,
- The individual has a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease when competent medical authorities indicate death is imminent.²⁰

In 2011, the Department of Public Safety issued a report on the feasibility of establishing an earned-time credit program for non-violent and low-level drug offenders.²¹ The report identified lack of resources as one of the main barriers to an earned-time program. At that time, legislation was introduced aimed solely at drug offenders, and not at other low-level offenders. Broader legislation that would have granted offenders an earned-time reduction was considered in 2015, but did not succeed.²²

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. The Authority is required to establish guidelines for the uniform distribution of minimum sentences which must take into account both the nature and degree of the offense, as well as the prisoner's criminal history and character.²³

Statutory factors the Board must consider. The Authority must consider a validated risk assessment instrument before issuing parole. Note again that low-risk parolees are eligible for parole at their minimum guideline release date.²⁴ In addition, parole must not be granted unless it appears to the Authority that there is a reasonable probability that the inmate concerned will live and remain at liberty without violating the law and that the inmate's release is not incompatible with the welfare and safety of society.²⁵

Special standard for sex offenders. There does not appear to be any special standard for sex offenders.

d. Parole Release Guidelines

Parole release guidelines used for most offenders (other than sex offenders). The Paroling Authority establishes guidelines for setting a *minimum parole release date*, but not for determining the date of actual release.²⁶ However, for eligible low-risk offenders the minimum parole

release date and the actual release date will be the same.²⁷ The Authority may deviate from the guidelines, but must provide a written justification that is included in the Order Establishing Minimum Terms of Imprisonment.²⁸ As the guidelines state, “the Hawaii Paroling Authority’s interpretations and perceptions of the subjective criteria remain the prerogative of the Authority.”²⁹

The guidelines for parole eligibility utilize a simple sentencing grid which takes into account the maximum term imposed by the court (5, 10, or 20 years, or life with parole) and the level of punishment (I, II, III) which is determined by the guidelines criteria. The Authority takes several factors into account in determining the level of punishment:

- The nature of the offense;
- The degree of injury/loss to victims or property;
- Criminal history;
- Character and attitude of the offender with respect to criminal activity or lifestyle;
- Efforts made to live a pro-social life prior to commitment to prison;
- Involvement of the offender in the instant offense;
- Probation revocation history in the instant offense; and
- Whether the person was sentenced as a young adult offender.³⁰

The guideline minimum sentence range is found where the maximum term imposed (on the vertical axis) and the level of punishment (on the horizontal axis) intersect. The recommendations range from 1-2 years (for a Level I offender sentenced to up to 5 years) to 20-50 years (for a Level III offender sentenced to life with parole).³¹

Parole release guidelines for sex offenders. Parole release guidelines do not appear to vary for sex offenders.

e. Risk and Needs Assessment Tools

Statutory mandate. A validated risk assessment must be used to determine an inmate’s risk of re-offense and suitability for community supervision. The risk assessment must be an actuarial tool to determine a person’s likelihood of engaging in criminal behavior.³²

Risk instruments utilized. It seems that as of 2007, the most common risk assessment used in the parole process was the LSI-R.³³ Inmates first receive a proxy score (a rudimentary assessment of recidivism potential). If they score above a 5, they are administered the LSI-R and the ASUS (Adult Substance Use Survey).³⁴

Sex offenders. Hawaii uses the Static-99 and Stable-2000 to assess sex offender risk.³⁵

Transparency. There is a small amount of information readily available to the public about risk assessment use (see above citations). However, the authors of this report were not able to elicit any additional information from the Hawaii Paroling Authority.

f. Medical or Compassionate Release

The Authority has the ability to reduce the minimum eligibility term when an inmate has a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent.³⁶

The Department of Public Safety may also grant compassionate release to inmates that are either terminally ill or have severely disabling chronic conditions upon recommendation by a physician. While this decision must be forwarded to the Authority, it is actually made by the Health Care Division and the Medical Director of the Department.³⁷

g. Executive Clemency Power

The governor may grant reprieves, commutations and pardons after conviction, for all offenses.³⁸ The governor may refer an application for pardon to the Director of Public Safety and to the Authority for consideration; they must provide all information possible concerning the prisoner and a recommendation on whether to grant or refuse the application.³⁹

h. Emergency Release for Prison Crowding

According to a 2014 Justice Reinvestment Initiative Report, in Hawaii, “prison and jail populations grew 18 percent between 2000 and 2011, and one-third of prisoners were housed out of state.”⁴⁰ Hawaii generally outsources correctional supervision of long-term inmates to private facilities located in the mainland of the U.S.⁴¹

In January 2016, the ACLU filed a complaint against the State of Hawaii based on the overcrowding of both Community Correctional Centers and prisons.⁴² Hawaii passed a law in mid-2016 that allows the Director of the Department of Public Safety to release inmates convicted of non-violent misdemeanors to ease overcrowding in Community Correctional Centers (but not in prisons). Misdemeanants released in this manner must adhere to conditions of release set by the Director.⁴³

3. Parole Release Hearing Process

a. Format of Release Hearings

Minimum term of imprisonment hearing. Within six months of incarceration, the Authority must hold a hearing to fix a minimum term of imprisonment to be served before an inmate is eligible for parole. The Authority must “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 parolee must be given reasonable notice and an opportunity to prepare for the hearing, including consulting with others and retaining counsel. The parolee must also be heard by the Authority. The state may be represented at this hearing by the prosecuting attorney. Victims may also participate in the hearing.⁴⁴ At the end of the hearing, a prisoner should receive a tentative parole date.⁴⁵

The minimum term of imprisonment is generally based around the eligibility guidelines. However, there are certain mitigating factors that may result in a lesser minimum sentence of imprisonment, including: (a) The inmate’s criminal conduct neither caused nor threatened serious harm; (b) The inmate acted under a strong provocation; (c) There were substantial grounds tending to excuse or justify the inmate’s criminal conduct, though failing to establish a defense; (d) The victim of the inmate’s criminal conduct induced or facilitated its commission; (e) The inmate has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime; (f) The inmate’s criminal conduct was the result of circumstances unlikely to recur; (g) The character and attitude of the inmate indicate that the inmate is unlikely to commit another crime; (h) The inmate is particularly likely to respond affirmatively to parole; (i) The inmate cooperated with law enforcement officials in such a manner as to assist in uncovering the offense, arresting and charging others responsible for the offense, or in the conviction of others for the offense or other offenses.⁴⁶

There are also factors that may result in a longer minimum sentence of imprisonment: (a) The inmate’s criminal conduct caused or threatened serious harm; (b) The inmate has a history of prior criminal activity and had not led a law-abiding life for a substantial period of time before the commission of the present crime; (c) The inmate’s criminal conduct was the result of circumstances likely to recur; (d) The character and attitude of the inmate indicate that the inmate is likely to commit another crime; (e) The inmate is unlikely to respond affirmatively to

parole; (f) The inmate is a persistent offender, professional criminal, dangerous person, multiple offender, or offender against the elderly, handicapped or minors, and sentenced to an extended period of imprisonment.⁴⁷

Administrative review. In advance of the expiration of the minimum term, the Authority may conduct an administrative review of an inmate’s file. This is especially likely if the minimum term is lengthy. They may also conduct a board interview designed to discuss problem areas, parole plans, or to reevaluate the minimum sentence. If the results of administrative review or interview are favorable, the inmate may be scheduled for an early parole hearing; if not, the inmate will wait for a standard initial parole hearing.⁴⁸

Initial parole release hearing. An initial parole release hearing must be held at least one month before the expiration of the minimum term of imprisonment determined at the hearing described above.⁴⁹ However, at any time, the Authority can impose a condition that an inmate will not be considered for parole unless they have an exemplary institutional conduct record.⁵⁰

b. Information Before the Board; Factors the Board May Consider

At the initial parole hearing, the Authority “looks at everything in the case record to get to know the offender.” In particular, the Authority seeks information that will help discern whether the inmate no longer poses a risk to the community and is “able, willing, and prepared to live up to the terms and conditions of parole” for the remaining term. This includes the offender’s misconduct record while incarcerated.⁵¹

The Authority considers a number of factors that may cause parole to be denied, including: (a) the inmate does not have a viable parole plan; (b) the inmate has been a management or security problem in prison as evidenced by the inmate’s misconduct record; (c) the inmate has refused to participate in recommended prison programs; (d) the inmate’s behavior in prison is a continuation of the behavior that led to the inmate’s imprisonment; (e) the inmate has a pending prison misconduct case; (f) the inmate does not have the ability or commitment to comply with conditions of parole; (g) the inmate has pending criminal charges which arose from inmate’s current incarceration or last parole; (h) the inmate has a parole plan for a state that has not accepted the inmate for supervision; and/or (i) the inmate has expressed little or no interest in parole.⁵²

c. Prisoners' Procedural Rights

The inmate has a right to consult with any person the inmate reasonably desires in preparation for the hearing, to have representation and assistance by counsel (including appointed counsel if indigent), and to be heard and present any relevant information. In addition, the inmate has the right to assistance from a parole officer in preparing a parole plan and in securing information for presentation to the Authority.⁵³

d. Victims and Other Participants

Victims have the right to be informed by the Department of Public Safety of changes in custodial status that may result in the release of the offender into the community. Victims must make a written request to receive notice of parole or final unconditional release.⁵⁴ Victim Witness Assistance Programs located at the county level use a SAVIN (Statewide Automated Victim Information and Notification) service to notify victims about release.⁵⁵ While victims have a statutory right to participate in a minimum imprisonment term hearing, that right does not appear to extend to all parole hearings.⁵⁶

The State has the right to be represented at the initial parole hearing and all subsequent parole hearings by the prosecuting attorney, who may present written testimony and make oral comments. The authority shall consider the testimony and comments in reaching its decision.⁵⁷

e. Burden of Proof or Standards of Persuasion for Release

Parole must not be granted unless it appears to the Authority that there is a reasonable probability that the inmate concerned will live and remain at liberty without violating the law and that the inmate's release is not incompatible with the welfare and safety of society. Parole is not a right of an inmate or parolee.⁵⁸

f. Possible Outcomes at Parole Release Hearings; Form of Decisions

The Authority's decision is forwarded by mail no later than sixty days following the date it was made. Parole may be granted, deferred, or denied.⁵⁹

A decision can be deferred to a later date for several reasons including incomplete parole plans, the accumulation of additional information required by the Authority, or awaiting inmate acceptance by outside reentry programming.

A decision can only be deferred to the inmate's minimum sentence date (tentative parole date). Parole may also be deferred, even if tentatively approved, before the actual release date due to any significant and/or previously unknown information. The inmate will be notified in writing the reason for deferral and be given another hearing within thirty days, if possible.⁶⁰

g. Administrative or Judicial Review of Parole Denial

There is no statutory means to appeal parole release decisions; however, the decisions are subject to limited judicial review through a post-conviction petition. Judicial intervention is deemed appropriate where the paroling authority 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 prisoners' constitutional rights."⁶¹

h. Rescission of Parole Release Dates

When parole is granted, it may be rescinded prior to the release of the inmate if the Authority receives new information on the inmate that would form the basis to deny parole.⁶² After the Authority receives such information, a rescission hearing will be held.⁶³

4. Supervision Practices

Parole supervision rate. Hawaii had 139 parolees per 100,000 adult residents in 2014. This was significantly less than the 50-state average rate of 305 parolees per 100,000 adults. Hawaii also had 528 prisoners per 100,000 adult residents in the same year, which was close to the 50-state average rate of 551 prisoners per 100,000 adults.⁶⁴

a. Purposes of Supervision

In the opinion of the Authority, "a person who has been in prison often encounters difficulties when s/he is released. In addition to a surveillance role, the parole officer is available to help a parolee with family, job, and adjustment problems. The parole officer is also familiar with treatment and social service resources in the community."⁶⁵

In the Authority's view, "the terms and conditions of parole are designed to enhance the dual mission of the Hawaii Paroling Authority – rehabilitation and community protection [...] Ideally, these conditions serve as guidelines

to positive community reintegration. Most are common sense guidelines to staying out of trouble, i.e. no law violations, no weapons, no violence or threat of violence, no illegal drugs, curfew, etc. Other conditions provide opportunities which allow parolees to stop and think before making major decisions and also serve as supervision aides for the parole officer, such as reporting procedures, residence conditions, curfew, and travel restrictions.”⁶⁶

b. Are All or Only Some Releasees Placed on Supervision?

All parolees must report to a parole officer as a mandatory condition of release; this includes providing residential and employment information and allowing home visits.⁶⁷

c. Length of Supervision Term

Maximum supervision terms. In general, when released from prison, the parolee’s term of supervision is the remaining unserved portion of the sentence.⁶⁸ When a parolee has been on parole status for five consecutive years, and has not received a final discharge from sentence, the Authority must consider the parolee for discharge on the completion of the fifth year, and annually thereafter, until the parolee is discharged or serves the parolee’s full maximum term.⁶⁹

Early termination. Whenever, in its opinion, any paroled prisoner has given such evidence as is deemed reliable and trustworthy that the paroled prisoner will remain at liberty without violating the law and that the paroled prisoner’s final release is not incompatible with the welfare of society, the Authority may grant the prisoner a written discharge from further liability under the prisoner’s sentence.⁷⁰ The criteria for early discharge are as follows: (a) the parolee has demonstrated for a sustained period of time that the parolee is unlikely to commit another crime and the parolee’s discharge is compatible with public safety; (b) the parolee is employed and has maintained gainful employment; (c) the parolee no longer needs correctional treatment or programs or is receiving appropriate treatment or participating in appropriate programs; and (d) there are no criminal charges pending against parolee. Lastly, (e) any restitution ordered by the court has been paid in full.⁷¹

Extension of supervision term. A parole term cannot extend beyond the maximum term of imprisonment.⁷²

Incentives: “goal parole.” As noted above, good behavior may result in early termination of parole; however, there is no specific incentive program.

d. Conditions of Supervision

Mandatory parole conditions include that a parolee shall:

- Not engage in criminal conduct;
- Not have in possession any firearm, weapon, or other object which “is known to be capable of producing death or bodily harm;”
- Not threaten to or inflict bodily harm on other persons;
- Not possess any drug which would be contrary to law;
- Notify a parole officer of any contacts with any law enforcement officer pursuant to an authorized investigation;
- Not return to or be near any correctional institution without permission;
- Not intentionally/knowingly be away from reported home between 11:00 p.m. and 6:00 a.m. without permission barring an extreme emergency;
- Not associate with convicted criminals, including other parolees;
- Report and maintain contact with parole officer;
- Actively seek and retain employment;
- Retain permission before accepting/changing employment;
- Keep the parole officer informed of whereabouts and notify the parole officer before changing residence;
- Not leave Hawaii or the island of residence without permission; and
- Support legal dependents.⁷³

The Authority, as a condition of parole, may impose other reasonable conditions on the prisoner, including any condition that would normally be a condition of probation.⁷⁴ These include, for example: meeting family responsibilities, paying fines or restitution, refraining from the use of alcohol or drugs, or undergoing medical or mental health treatment.⁷⁵ The Authority may also require that a parolee take specific occupational or educational courses if they are deemed “capable of making a substantial contribution to the rehabilitation of the parolee.”⁷⁶

Sex offenders. Apart from sex offender registration and potential residency restrictions,⁷⁷ Hawaii sex offenders may be required to adhere to special parole conditions that are related to the offense; for example, participation in the Hawaii Sex Offender Treatment Program or submission to polygraph testing.⁷⁸

Modification of conditions. While the Parole Handbook notes that “to respond to individual differences in levels of risk, the conditions of parole may need to be increased to protect society and to assist in the reintegration of the offender,” there does not appear to be any specific statutory mechanism by which conditions are modified.⁷⁹

Incentives; lighter conditions. There do not appear to be incentives for parolees related to lighter parole conditions.

e. Fees and Other Financial Sanctions

Parole supervision fees. There are no parole supervision fees imposed in this jurisdiction.

Payments for drug and alcohol testing and treatment. Under the Criminal Offender Treatment Act, parolees convicted of certain drug crimes must pay reasonable fees to cover the cost of any drug test or assessment imposed.⁸⁰

Restitution. Payment of restitution is not a condition of parole, and failure to pay cannot be the basis of revocation.⁸¹ When a defendant is ordered to pay restitution, the sentencing court must enter into the record findings of fact and conclusions that the manner of payment is reasonable and one which the defendant can afford.⁸²

Defendants may also be ordered to pay a crime victim compensation fee of between \$105 to \$505 for a felony, unless the fee is waived due to an inability to pay.⁸³

Child support. Payment of child support is a standard condition of parole, and failure to do so may result in revocation.⁸⁴

Other financial obligations. Payment of fines is another potential discretionary condition of parole.⁸⁵

5. Parole Revocation

Parole revocation proceedings. There were 421 parole violation proceedings in the 2014-2015 fiscal year, resulting in 333 parole revocations.⁸⁶ In 2014, 39% of prison admissions in Hawaii were based on conditional release violations, which is higher than the 50-state average of 28%.⁸⁷

Absconders. The Paroling Authority suspended the parole term of 147 parolees in the 2014-2015 fiscal year because their whereabouts were unknown.⁸⁸

a. Principles and Criteria of “When to Revoke”

Policy considerations. According to the Paroling Authority, the board members have a number of options in sanctioning a violation of parole. In deciding whether an intermediate sanction (as opposed to parole revocation) is appropriate, the Authority states that it considers such factors as: “1) Did the parolee turn himself in when he knew there was a warrant for his arrest? 2) Was the whereabouts of the parolee known to the parole officer prior to the parolee revocation hearing? 3) What police contacts did the parolee have while on parole? 4) What efforts did the parolee make to abide by the terms and conditions of parole?” The Authority also mentions that it “looks at a parolee’s overall adjustment” when considering parole violation sanctions.⁸⁹

Legal predicates. A parolee’s violation of the terms and conditions of parole is generally the predicate for parole revocation.⁹⁰ However, in Hawaii, parole revocation may also be triggered if any duly licensed psychiatrist or psychologist finds that continuance on parole is not in the best interest of a parolee or the community; in such cases the Authority may order detention and treatment until the individual is deemed psychiatrically or psychologically eligible for release.⁹¹ No parole may be revoked without cause; this cause must be stated in the revocation order.⁹²

b. Revocation Guidelines

While there is an intermediate sanctions system in place, there is no revocation guidelines system. Intermediate sanctions consist of “alternative programs that place, control, supervise, and treat selected parolees in lieu of incarceration” and will be discussed further below in § 5(h).⁹³

c. Risk and Needs Assessment Tools

Risk assessment is not mandated as part of the parole revocation process.⁹⁴

d. Preliminary and Final Revocation Procedures

Arrest or summons. The paroling authority may at any time order the arrest and temporary return to custody of any paroled prisoner for the purpose of ascertaining whether or not there is sufficient cause to warrant the paroled prisoner's reimprisonment, or the revocation of the paroled prisoner's parole, or taking other action in response to a parole violation.⁹⁵ However, a parole revocation hearing may also be held without arresting and re-imprisoning the parolee, in which case no preliminary hearing will be held.⁹⁶

Preliminary hearing. A hearing conducted by an impartial hearings officer must be held within five working days of the parolee's return to custody.⁹⁷ At the conclusion of the hearing, the officer must make a determination and render a decision as to whether there is probable cause to believe that the parolee violated the terms and conditions of parole. If probable cause is found at the initial hearing, the parolee must remain confined.⁹⁸

Final hearing. A final parole revocation hearing must be held within sixty calendar days of the date of arrest.⁹⁹ Seven days prior to the hearing, the parolee must receive notice of the purpose of the hearing, the alleged violation(s) of parole conditions, the parolee's hearing rights, and the consequences of parole revocation. Those who testify, including the parolee, may be required to do so under oath.¹⁰⁰

A hearing process is not required if a parolee has been convicted of a new crime in the state and is sentenced to imprisonment, or when it is shown by the investigation that the parolee has left the state without permission from the paroling authority and cannot be contacted by registered mail at the last known address.¹⁰¹

e. Offenders' Procedural Rights

During the preliminary hearing, the parolee may appear and present relevant evidence, including relevant witnesses and documents. The parolee may also challenge documents and question adverse witnesses, unless the safety of a witness would be jeopardized.¹⁰²

During a final revocation hearing, the parolee must be permitted to consult with any person he or she reasonably desires, including counsel, and be permitted representation by legal counsel at the hearing.¹⁰³ The parolee has a right to confront and cross-examine witnesses, unless there is good cause for not allowing such confrontation. The parolee has a right to be heard and to present a case, including witnesses and documentary evidence.¹⁰⁴

f. Victims and Other Participants

While victim notification may be required due to the change in custody status a parole violation triggers, there is no specific mechanism for victim input.¹⁰⁵ The Chair of the Authority may allow members of the press to attend Authority hearings on the revocation of parole when the Chair finds the public interest would be served by doing so.¹⁰⁶

g. Burden of Proof or Standards of Persuasion for Revocation

A violation of parole requires a finding by the Authority that there is a preponderance of evidence that the parolee has violated the terms and conditions of parole.¹⁰⁷

h. Revocation and Other Sanctions

When there has been a finding by the Authority of a parole violation, it may revoke parole, defer a revocation of parole, or continue the inmate on parole.¹⁰⁹

Deferral of parole revocation. The Authority may defer revocation for up to twelve months on the condition that there are no further violations of parole conditions. If there are no new violations during this time, the offender's parole shall not be revoked.

Limit to length of reincarceration after revocation. Paroled prisoners who have been re-imprisoned for violating a condition of parole must serve a maximum of six months or the remaining portion of the paroled prisoner's term, whichever is shorter, unless the parolee has:

- (1) Been charged with a new felony offense or a new misdemeanor offense;
- (2) Absconded or left the State without permission from the paroling authority;
- (3) Violated conditions applicable to sex offenders, such as registering as a sex offender or conditions related to proximity to specified locations or persons; or
- (4) Been previously re-imprisoned for violating the conditions of parole on the current offense.¹¹⁰

Intermediate sanctions. In place of revocation proceedings, the Authority may impose participation in alternative programs as an amended condition of parole. Such programs include:

- Home detention, curfew using electronic monitoring and surveillance, or both;
- Intensive supervision, residential supervision, work-furlough, and structured educational or vocational programs;
- Therapeutic residential and nonresidential programs; and
- Similar programs created and designated as alternative programs by the legislature, the chairperson of the Hawaii paroling authority, or the director of public safety for parolees who do not pose significant risks to the community.¹¹¹

i. Issuing Parole Revocation Decisions

If parole is revoked, the parolee and the parolee's attorney shall be orally informed at the time of the hearing and served with a written statement by the Authority which shall include the evidence relied upon and reasons for the revocation.¹¹²

j. Administrative or Judicial Review of Parole Revocation Decisions

As with parole release decisions, parolees can appeal their revocation through Hawaii's post-conviction petition process. Grounds for judicial appeal include that parole was unlawfully revoked or that there are other grounds making the custody, though not the judgment, illegal.¹¹³ For example, the revocation of parole with no final hearing has been successfully challenged.

k. Re-Release Following Revocation

As mentioned above, there is a limit of six months' incarceration for many types of technical parole violations.¹¹⁴

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Hawaii Paroling Authority is established by statute and is responsible for selecting individuals for parole, considering parole for all committed persons deemed eligible, and determining the time at which parole should be granted. It is also responsible for providing continuing custody, control, and supervision of paroled individuals and for revocation and/or discharge from parole. It must interpret the parole process as well to the public "in order to develop a broad base of public understanding and support," recommend parole laws to the legislature, and recommend sound parole administration to the governor.¹¹⁵

b. Location in Government

The Authority is an independent quasi-judicial body, which for administrative purposes only, is attached to the Department of Public Safety.¹¹⁶

c. Purpose (Vision/Principles/Rationale)

Per administrative rule, "the parole system is to protect the community. Protection of the community and reintegration of an inmate into the community is accomplished by fixing an appropriate minimum term of imprisonment, granting or denying parole, revoking parole, and supervising the inmate on parole."¹¹⁷

d. Appointment and Qualifications of Board Members

The Authority consists of four part-time members and one full-time member who is the chairperson.¹¹⁸ Members of the paroling authority are initially nominated by a panel composed of the chief justice of the Hawaii supreme court, the director of Public Safety, the President of the Hawaii State Bar Association, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the National Association of Social workers. The panel then submits the names of three individuals to the governor, who selects from among them to appoint a new member.¹¹⁹

Qualifications. Members must be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.¹²⁰

e. Tenure of Board Members, Ease of Removal

Members are appointed for terms of four years.¹²¹ Each term commences on July 1 and expires on June 30, and no person may be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission must not exceed eight consecutive years.¹²² The governor may remove or suspend for cause any member of any board or commission after due notice and public hearing.¹²³

f. Training and Continuing Education

There does not appear to be a statutory requirement for education or training of Authority members. There is no mention of this in Authority materials or online.

g. Workload

In the 2014-2015 fiscal year, the Hawaii Paroling Authority:

- Fixed 2197 minimum terms of imprisonment for 748 individuals;
- Heard 212 applications for a reduction of minimum sentences;
- Considered 2564 inmates for parole release;
- Conducted 421 parole violation hearings; and
- Discharged 306 people from parole.¹²⁴

h. Reporting and Accountability of Parole Board

The Hawaii Paroling Authority publishes an Annual Report each year that details some of its activities; mostly through numerical data.¹²⁵ There is very little information about the Paroling Authority, including its members, otherwise available.

The public can request information from the Authority; requests will be approved or denied by the Chair subject to the state's freedom of information laws.¹²⁶ Under these laws, agency rules of procedure, substantive rules of general applicability, policy statements, interpretations of general applicability, final agency opinions, and many other types of records must be disclosed, unless they fall under an exception to the rule.¹²⁷

END NOTES

- ¹ See Haw. Rev. Stat. §§ 706-656, 706-659 - 660.
- ² Gene Kassebaum *et al.*, Soc. Sci. Research Inst. Univ. of Haw. Manoa & Dep't of the Attorney Gen., *Parole Decision Making in Hawaii* at 3 (2001), <http://ag.hawaii.gov/cpja/files/2013/01/Parole-Decision-Making.pdf> (hereinafter Parole Decision Making).
- ³ Haw. Rev. Stat. § 706-669.
- ⁴ Haw. Rev. Stat. § 353-62.
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ Haw. Rev. Stat. § 706-669; Haw. Paroling Auth., *The Parole Handbook* at 5 (1991) <http://dps.hawaii.gov/wp-content/uploads/2012/09/Parole-Handbook.pdf> [hereinafter Parole Handbook].
- ⁸ Parole Handbook, *supra* note 7, at 5.
- ⁹ Haw. Rev. Stat. § 706-669. An inmate may request reduction of a minimum term of imprisonment if the minimum term has not been set within the last six months, the inmate has served more than 1/3 of the longest minimum term, the authority has not considered a reduction in the last 12 months, the inmate is not serving a mandatory minimum, the authority has not held a parole hearing within the last 12 months, and the inmate is not scheduled for a parole hearing, interview, or administrative review within the next 6 months. Haw. Code R. § 23-700-26. See also Haw. Code R. § 23-700-29 for factors considered in reducing a previously established minimum term.
- ¹⁰ Haw. Rev. Stat. § 706-663.
- ¹¹ Haw. Rev. Stat. § 706-669.
- ¹² Haw. Rev. Stat. § 706-670.
- ¹³ Haw. Rev. Stat. § 706-606.5.
- ¹⁴ *Id.* This rule includes anyone convicted under the Hawaii Penal Code's subchapter on sex offenses or child abuse, see *e.g.*, Haw. Rev. Stat. §§ 707.730 - 758.
- ¹⁵ Haw. Rev. Stat. § 706-606.6.
- ¹⁶ Haw. Rev. Stat. § 706-661.
- ¹⁷ *Williamson v. Haw. Paroling Auth.*, 35 P.3d 210, 218 (Haw. 2001).
- ¹⁸ Haw. Rev. Stat. § 706-670.
- ¹⁹ *Williamson*, 35 P.3d at 218.
- ²⁰ Parole Handbook, *supra* note 7 at 17 - 18.
- ²¹ Haw. Dep't of Pub. Safety, *Report to the 2012 Legislature In Response to House Concurrent Resolution 126* (Dec. 2011), <https://dps.hawaii.gov/wp-content/uploads/2012/11/Report-No.-15-HCR-126-Earned-Time-Credit-for-Specific-Offenders.pdf>.
- ²² See H.B. 367, 28th Leg., Reg. Sess. (Haw. 2015).
- ²³ Haw. Rev. Stat. § 706-669.
- ²⁴ Haw. Rev. Stat. § 706-670.
- ²⁵ Haw. Rev. Stat. § 706-669.
- ²⁶ *Id.*
- ²⁷ Haw. Rev. Stat. § 706-670.
- ²⁸ Haw. Paroling Auth., *Guidelines for Establishing Minimum Terms of Imprisonment* at 1 (1989), <http://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Guidelines-for-Establishing-Minimum-Terms-of-Imprisonment.pdf>.
- ²⁹ *Id.* at 2.
- ³⁰ *Id.* at 2-7.
- ³¹ *Id.* at 2.
- ³² Haw. Rev. Stat. § 706-670; But see Assoc. of State Corr. Adm'rs, *Use of Risk Assessment Tools for Parole Boards* (2014), <http://www.asca.net/system/assets/attachments/7803/Risk%20Assessment%20tools%20for%20Parole%20Boards%20Sheet1.pdf?1419372316>.
- ³³ See Hon. Steven Alm, *The Power of Collaboration: Interagency Council on Intermediate Sanctions*, Haw. Bus. J. at 24 (Dec. 2008).
- ³⁴ Haw. Dep't of Pub. Safety, Policy COR.14.26 (eff. Nov. 30, 2011), <https://dps.hawaii.gov/wp-content/uploads/2012/10/COR.14.26.pdf>; Haw. Dep't of the Attorney Gen., Crime Prevention & Justice Assistance Div., *Interagency Council on Intermediate Sanctions Assessment Data Brief. Screening for Risk of Re-Offending: Hawaii's Proxy Scale and Level of Service Inventory Revised* (Jan. 2005), http://icis.hawaii.gov/wp-content/uploads/2013/07/icis_assess_screening_2005.pdf; Correspondence with Professor Kenneth Lawson, William S. Richardson School of Law, University of Hawaii at Manoa (April 10, 2017).
- ³⁵ Correspondence with Prof. Lawson, *supra* note 34; See also Timothy Wong & Maria Sadaya, Haw. Interagency Council on Intermediate Sanctions, *Hawaii State Validation Report on the STATIC-99 and STABLE-2000 Sex Offender Risk Assessments* (Mar. 2013), <http://icis.hawaii.gov/wp-content/uploads/2013/07/STATIC-and-STABLE-Validation-Study.pdf>.
- ³⁶ Haw. Code R. §§ 23-700-26 (c), 29(b).
- ³⁷ Haw. Dep't of Pub. Safety, Policy No. COR.10.1g.11 (eff. Feb. 2, 2011).
- ³⁸ Haw. Const. art. 5, § 5.
- ³⁹ Haw. Rev. Stat. § 353-72.
- ⁴⁰ The Council of State Gov'ts, *Justice Reinvestment in Hawaii, Council of State Gov'ts Justice Ctr.* (2014), <http://csgjustice-center.org/wp-content/uploads/2014/08/JR-in-HI-Analyses-and-Policy-Options.pdf>.
- ⁴¹ Correspondence with Prof. Lawson, *supra* note 34.
- ⁴² Am. Civil Liberties Union of Haw., *Complaint Seeks Federal Investigation and Intervention Over Unconstitutional Conditions in Hawaii's Jails and Prisons* (Jan. 10, 2017), <https://acluhi.org/2017/01/10/complaint-seeks-federal-investigation-and-intervention-over-unconstitutional-conditions-in-hawaiis-jails-and-prisons/>.
- ⁴³ Haw. Rev. Stat. § 353-37.
- ⁴⁴ Haw. Rev. Stat. § 706-669.
- ⁴⁵ The Parole Handbook, *supra* note 7, at 5.
- ⁴⁶ Haw. Code R. § 23-700-24.
- ⁴⁷ Haw. Code R. § 23-700-25.
- ⁴⁸ The Parole Handbook, *supra* note 7, at 15. The Authority's decision after administrative review is forwarded to the inmate by mail within sixty days of the review; a copy is also sent to the prison administration. There is no right to counsel or other hearing rights during an administrative review or board interview.
- ⁴⁹ Haw. Rev. Stat. § 706-670. Notice of the hearing must be served on the parolee at least 7 days before the hearing.
- ⁵⁰ Haw. Rev. Stat. § 706-669.
- ⁵¹ The Parole Handbook, *supra* note 7, at 6-7.
- ⁵² Haw. Code R. § 23-700-33.
- ⁵³ Haw. Code R. § 23-700-32. The parole plan must include information on the life the inmate intends to lead, how the needs of the inmate will be addressed, where and with whom the inmate will reside, and occupation or employment. Responsibility for the development and validity of the parole plan rests with the inmate.
- ⁵⁴ Haw. Rev. Stat. §§ 706-670.5, 801D-4(a)(7). This includes notice of work release, placement on supervised release, parole release, and final discharge at the end of the prison term.
- ⁵⁵ Cnty. of Haw., *Hawai'i SAVIN Service*, <http://records.co.hawaii.hi.us/weblink/DocView.aspx?dbid=1&id=63051> (last visited May 25, 2017).
- ⁵⁶ See, *e.g.*, Haw. Rev. Stat. §§ 706-669 - 670.
- ⁵⁷ Haw. Rev. Stat. § 706-670.
- ⁵⁸ Haw. Code R. § 23-700-33.
- ⁵⁹ The Parole Handbook, *supra* note 7, at 15-16.
- ⁶⁰ *Id.*
- ⁶¹ *Williamson v. Haw. Paroling Authority*, 35 P.3d 210, 221-222 (Haw. 2001) *citing* *Turner v. Haw. Paroling Authority*, 1 P.3d 768, 778 (Haw. App. 2000); See also Haw. R. Penal P. Rule 40.

END NOTES

- ⁶² Haw. Code R. § 23-700-31.
- ⁶³ Correspondence with Prof. Lawson, *supra* note 34.
- ⁶⁴ Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States* at 203 (2016).
- ⁶⁵ The Parole Handbook, *supra* note 7, at 5.
- ⁶⁶ *Id.* at 19.
- ⁶⁷ Haw. Rev. Stat. §§ 706-624, 670.
- ⁶⁸ Haw. Rev. Stat. § 353-70.
- ⁶⁹ Haw. Code R. § 23-700-53.
- ⁷⁰ Haw. Rev. Stat. § 353-70.
- ⁷¹ Haw. Code R. § 23-700-52.
- ⁷² Haw. Rev. Stat. § 706-670.
- ⁷³ Haw. Code R. § 23-700-82.
- ⁷⁴ Haw. Rev. Stat. §§ 706-624, 670. The parole release statute (§ 706-670) refers directly to the probation conditions statute (§ 706-624).
- ⁷⁵ *Id.*
- ⁷⁶ Haw. Rev. Stat. § 353-67.
- ⁷⁷ See, e.g., Haw. Rev. Stat. § 864E-4.
- ⁷⁸ See, e.g., *State v. Reyes*, 2 P.3d 725 (Haw. Ct. App. 2000) (note that this case upheld some sex-offense related conditions but did not uphold other additional supervision conditions that were not contained in release agreement).
- ⁷⁹ The Parole Handbook, *supra* note 7, at 20.
- ⁸⁰ Haw. Rev. Stat. § 353G-7.
- ⁸¹ *Id.*; Correspondence with Prof. Lawson, *supra* note 34.
- ⁸² *State v. Gaylord*, 890 P.2d 1167 (Haw. 1995).
- ⁸³ Haw. Rev. Stat. § 351-62.6.
- ⁸⁴ Haw. Code R. § 23-700-82(7); Correspondence with Prof. Kenneth Lawson, *supra* note 34.
- ⁸⁵ *Id.*
- ⁸⁶ Haw. Paroling Auth., *Annual Report for Fiscal Year 2015* at 2, <http://dps.hawaii.gov/wp-content/uploads/2016/02/HPA-Annual-Report-for-FY-2015.pdf>.
- ⁸⁷ Mariel E. Alper, Robina Institute, *By the Numbers: Parole Release and Revocation Across 50 States* at 203 (2016).
- ⁸⁸ Haw. Paroling Auth., *Annual Report for Fiscal Year 2015* at 2 (2015), <http://dps.hawaii.gov/wp-content/uploads/2016/02/HPA-Annual-Report-for-FY-2015.pdf>.
- ⁸⁹ The Parole Handbook, *supra* note 7, at 11.
- ⁹⁰ See Haw. Code R. § 23-700-41 *et seq.*
- ⁹¹ Haw. Rev. Stat. § 353-66.
- ⁹² *Id.*
- ⁹³ Haw. Rev. Stat. § 353-63.5.
- ⁹⁴ Correspondence with Prof. Kenneth Lawson, *supra* note 34.
- ⁹⁵ Haw. Rev. Stat. § 353-66(d).
- ⁹⁶ Haw. Code R. § 23-700-41.
- ⁹⁷ *Id.*; Haw. Code R. § 23-700-42. An impartial hearing officer must be either a parole officer or an Authority employee who is not an Authority member and did not issue the warrant and is not directly assigned to the case.
- ⁹⁸ Haw. Code R. § 23-700-43.
- ⁹⁹ *Id.*
- ¹⁰⁰ Haw. Code R. § 23-700-44.
- ¹⁰¹ Haw. Rev. Stat. § 353-66.
- ¹⁰² Haw. Code R. § 23-700-43.
- ¹⁰³ Haw. Code R. § 23-700-44. The right to counsel includes appointed counsel if requested and if the defendant is indigent.
- ¹⁰⁴ *Id.*
- ¹⁰⁵ *Id.*
- ¹⁰⁶ Haw. Code R. § 23-700-72.
- ¹⁰⁷ Haw. Code R. § 23-700-44.
- ¹⁰⁸ *Id.*
- ¹⁰⁹ *Id.* at (k).
- ¹¹⁰ Haw. Rev. Stat. § 353-66.
- ¹¹¹ Haw. Rev. Stat. § 353-63.5.
- ¹¹² Haw. Rev. Stat. § 23-700-44.
- ¹¹³ Haw. Rules of Penal Procedure Rule 40.
- ¹¹⁴ Haw. Code R. § 353-66.
- ¹¹⁵ Haw. Rev. Stat. § 353-62.
- ¹¹⁶ Haw. Rev. Stat. § 26-14.6(c).
- ¹¹⁷ Haw. Code R. § 23-700-2(a).
- ¹¹⁸ Haw. Rev. Stat. § 353-63.
- ¹¹⁹ Haw. Rev. Stat. § 353-61. The ex-officio members of the nomination panel may appoint a designee to act in their place.
- ¹²⁰ *Id.*
- ¹²¹ *Id.*
- ¹²² Haw. Rev. Stat. § 26-34(a).
- ¹²³ *Id.* at (d).
- ¹²⁴ Haw. Paroling Auth., *Annual Report for Fiscal Year 2015* at 2, <http://dps.hawaii.gov/wp-content/uploads/2016/02/HPA-Annual-Report-for-FY-2015.pdf>.
- ¹²⁵ *Id.*
- ¹²⁶ Haw. Code R. § 23-700-71.
- ¹²⁷ Haw. Rev. Stat. § 92F-12. Exceptions include government records which, if disclosed, would constitute unwarranted invasion of privacy; government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable; government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function; and government records that are protected from disclosure by state or federal law. Haw. Rev. Stat. § 92F-13.