



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

March 23, 2023, 9:30 a.m.

Conference Room 016 & Via Videoconference

WRITTEN TESTIMONY ONLY

by

Thomas J. Berger

Staff Attorney, Hawai'i Supreme Court

Bill No. and Title: SCR 205 / SR 104, Requesting the Judiciary convene a task force to examine and make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting the minimum terms of imprisonment.

Judiciary's Position:

The Judiciary supports the intent of this resolution but is not in a position to lead the Task Force. The Judiciary requests the resolution be amended to designate another member as the chairperson of the Task Force.

The resolution's request for "recommendations ... *on removing* the responsibility of setting minimum sentences from the Hawai'i Paroling Authority" may be inconsistent with the role of the judicial branch. See SCR 205, p. 2 (emphasis added). The Hawai'i Paroling Authority or the Oversight Coordinator of the Hawai'i Correctional System Oversight Commission (provided that sufficient staffing support is available) may be better suited to lead this proposed Task Force. The Judiciary is prepared to participate in the Task Force, including gathering and providing data, information, and input as available and appropriate.

Thank you for the opportunity to testify on this measure.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
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Written Comments

SCR205/SR104

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING EXISTING PROCEDURES OF THE HAWAII PAROLING AUTHORITY SETTING THE MINIMUM TERMS OF IMPRISONMENT

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Judiciary

Thursday, March 23, 2023, 9:30 a.m.
Room 016 & Videoconference

Chair Rhoads and Members of the Committee:

Good morning Chair Rhoads and members of the Committee. My name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau (Bureau). Thank you for providing the opportunity to submit written **comments** on S.C.R. No. 205/S.R. No. 104, Requesting the Judiciary to Convene a Task Force to Examine and Make Recommendations Regarding Existing Procedures of the Hawaii Paroling Authority Setting the Minimum Terms of Imprisonment.

The purpose of this measure is to request that the Judiciary convene a task force to examine and make recommendations regarding existing procedures of the Hawaii Paroling Authority setting the minimum terms of imprisonment to increase efficiency of the procedures.

The measure also requests that the task force:

- (1) Study whether parole system models utilized by other states might be suited for Hawaii;

- (2) Examine and compare the minimum sentences issued by the Hawaii Paroling Authority and the courts to determine whether there are significant differences; and
- (3) Recommend whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the Hawaii Paroling Authority, thereby enabling it to focus on determining and assisting prisoners' fitness for parole and supervision of parolees.

The measure further requests that the Judiciary and the Department of Public Safety provide administrative support to the task force, and that the task force, with the assistance of the Bureau, submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2025.

The Bureau takes no position on this measure but submits the following comments for your consideration.

With respect to the Bureau's assistance to task force, the Bureau notes that the measure already requests that the Judiciary and the Department of Public Safety provide administrative support to the task force. Since the task force is to be convened by the Judiciary and not by the Legislature and administrative support will already be provided by both the Judiciary and the Department of Public Safety, the Bureau respectfully requests that the measure be amended to limit the Bureau's involvement to only drafting any legislation that may be proposed by the task force. The Bureau also requests that the task force be instructed to submit to the Bureau not later than October 1, 2024, any request for proposed legislation, supporting documents, information, and materials deemed necessary by the Bureau, so that work on the proposed legislation would not adversely impact our ability to provide our core services to the Legislature for the Regular Session of 2025.

If these requested amendments are made, then the Bureau believes that the services requested under the measure would be manageable, provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
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COREY J. REINCKE
ACTING ADMINISTRATOR

No. _____

TESTIMONY ON SENATE BILL SCR 205 SR 104
REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND
MAKE RECOMMENDATIONS REGARDING EXISTING PROCEDURES OF THE HAWAII
PAROLING AUTHORITY SETTING THE MINIMUM TERMS OF IMPRISONMENT

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, March 23, 2023 – 9:30 a.m.
Conference Room 016

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Paroling Authority (HPA) SUPPORTS the request for the Judiciary to convene a Task Force to examine and make recommendations regarding the existing procedures of the HPA setting the minimum terms of imprisonment and offers the following comments and recommendations.

- How the Courts and HPA set Minimums for all felony offenders?
- MINIMUM sentences set a baseline population for the prisons.
- The need for Presentence Diagnosis and Reports (PSI) in determining Minimums.
 - HRS 706-669 (2) *The 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.*
- HPA reviews PSIs, Initial Prescriptive Plans and Reception, Assessment, Diagnostic (RAD) programing by PSD as well as pre-trial misconduct history.

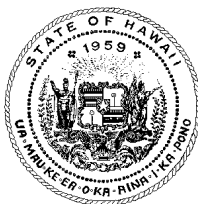
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- Hawaii's indeterminate sentencing leaves little to no discretion by the judge as well as NO discretion for repeat offenders (HRS 706-606.5).
- HPA's three levels of punishment (LOP) allows for discretion in assigning the number of years within each LOP.
- REDUCTION OF MINIMUMS based on institutional behavior and accomplishments but cannot go below Court imposed minimums.
- ELIMINATE minimum terms of imprisonment.

The task force recommendations should remove any perception of redundancy and promote a fair and just process acceptable to all parties to include inmates, victims (and/or family) and the criminal justice system.

Thank you for the opportunity to testify in support of this important measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

Ke Komikina Uku Luaahi Kalaima

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TESTIMONY ON SCR 205/SR 104

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND
MAKE RECOMMENDATIONS REGARDING EXISTING PROCEDURES OF THE
HAWAII PAROLING AUTHORITY SETTING THE MINIMUM TERMS OF
IMPRISONMENT

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, March 23, 2023; 9:30 AM
State Capitol, Conference Room 016 & Videoconference

Good morning Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (Commission) with the opportunity to testify before you today regarding Senate Concurrent Resolution 205/Senate Resolution 104. The Commission supports SCR 205/SR104, with an amendment to include a representative from a victim advocacy group as a member of the working group.

The Commission provides compensation for violent crime victims to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. The Commission has represented the needs of victims and survivors on the Justice Reinvestment Working Group and the Penal Code Review Committee convened in 2015.

SCR205/SR104 creates a task force to make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting the minimum terms of imprisonment. If victim advocates do not have a seat at the table, the legislature will not have confidence that the final recommendations of the task force address the needs and concerns of crime victims and survivors, or that the recommendations of the task force adequately address public safety.

Ensuring the safety of the community and crime victims must be a governing factor as the task force develops recommendations.

Thank you for providing the Commission with the opportunity to testify in support of Senate Concurrent Resolution 205/Senate Resolution 104, with an amendment to include a representative from a victim advocacy group as a member of the working group.



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
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MARTHA TORNEY

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: Senate Concurrent Resolution 205/Senate Resolution 104, Requesting the
Judiciary Convene a Task Force to Examine and Make Recommendations
Regarding Existing Procedures of the Hawaii Paroling Authority Setting the
Minimum Terms of Imprisonment
Hearing: Thursday, March 23, 2023; 9:30 a.m.
State Capitol, Room 016

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (the Commission) **supports** Senate Concurrent Resolution 205 addressing the matter of the Hawaii Paroling Authority's statutory responsibility to set minimum terms of imprisonment.

Hawaii is the only state in which the minimum terms of imprisonment are set by the parole authority. In other states with indeterminate sentences the custodial time usually consists of a range of years (such as five to ten years) set by statute or the sentencing judge rather than a fixed time. Parole boards determine when a person is eligible for parole within that range.

By statute Hawaii judges will impose mandatory minimum terms of confinement if the law requires them to do so (see Section 706-606.5, HRS), otherwise, judges are not involved with setting minimum terms. The Commission agrees it is time to review Hawaii's current laws and practices to determine if the system of setting minimum terms can be improved.

We respectfully request one amendment to this measure. "The Chair of the Hawaii Correctional System Oversight Commission or designee" should replace the reference to the Commission's Oversight Coordinator as a member of the Task Force (see Page 3, Item 7, lines 4-5). This would align with the structure of other members of the task force. Our commissioners are experienced criminal justice experts with deep knowledge of Hawaii's sentencing structure and the role of the Hawaii Paroling Authority.

Thank you for the opportunity to testify on this important matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice Chair

Thursday March 23, 2023

Room 016 & Videoconference

9:30 AM

SUPPORT FOR SCR 205/SR 104 - TASK FORCE TO EXAMINE HPA'S SETTING MINIMUM TERMS OF IMPRISONMENT

Aloha Chair Rhoads, Vice Chair Gabbard and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 4,009 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 916 - 26.4% of the male imprisoned population² - of Hawai'i's imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates the opportunity to testify in support for SCR 205/SR 104 requesting the Judiciary to convene a task force to examine and make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting minimum terms of imprisonment.

Hawai'i is the only state using indeterminate sentencing that requires a parole board to determine the minimum sentence of imprisonment.

Community Alliance on Prisons often wondered why Hawai'i has a process that appears to be redundant, therefore, we support a task force to examine and make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting the minimum terms of imprisonment.

*Parole systems should give every incarcerated person ample opportunity to earn release and have a fair, transparent process for deciding whether to grant it. A growing number of **organizations and academics** have called for states to adopt policies that would ensure consistency and fairness in how*

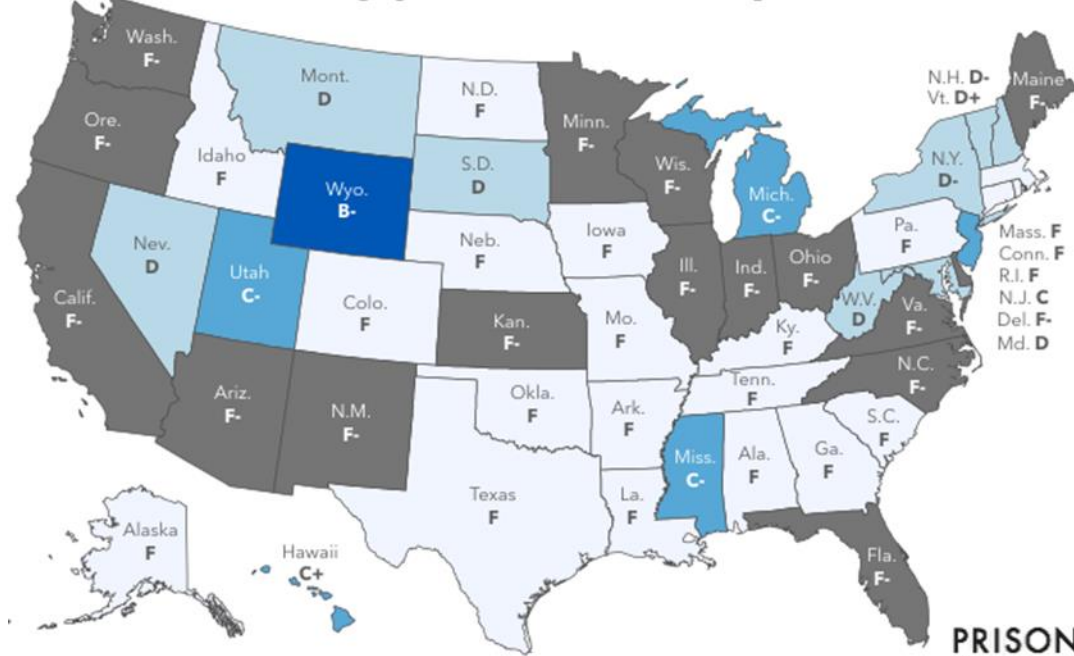
¹ Department of Public Safety, Weekly Population Report, March 13, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-Weekly-2023-03-14_George-King.pdf

² Why are 26.4% of Hawai'i's male prison population sent thousands of miles from home when the following prisons in Hawai'i have room here: Halawa is at 77%; Halawa Special Needs Facility is at 59%; Kulani is at 44%; Waiawa is at 52% of operational capacity.

they identify who should receive parole, when those individuals should be reviewed and released, and what parole conditions should be attached to those individuals. In this report³, I take the best of those suggestions, assign them point values, and grade the parole systems of each state.

Grading parole release systems



State	Grade	State	Grade	State	Grade
Alabama	F	Louisiana	F	Ohio	F-
Alaska	F	Maine	F-	Oklahoma	F
Arizona	F-	Maryland	D	Oregon	F-
Arkansas	F	Massachusetts	F	Pennsylvania	F
California	F-	Michigan	C-	Rhode Island	F
Colorado	F	Minnesota	F-	South Carolina	F
Connecticut	F	Mississippi	C-	South Dakota	D
Delaware	F-	Missouri	F	Tennessee	F
Florida	F-	Montana	D	Texas	F
Georgia	F	Nebraska	F	Utah	C-
Hawaii	C+	Nevada	D	Vermont	D+
Idaho	F	New Hampshire	D-	Virginia	F-
Illinois	F-	New Jersey	C	Washington	F-
Indiana	F-	New Mexico	F-	West Virginia	D
Iowa	F	New York	D-	Wisconsin	F-
Kansas	F-	North Carolina	F-	Wyoming	B-
Kentucky	F	North Dakota	F		

³ Grading the parole release systems of all 50 states, By [Jorge Renaud](#), February 26, 2019. https://www.prisonpolicy.org/reports/grading_parole.html

To assess the fairness and equity of each state's parole system, we looked at five general factors:

1. Whether a state's legislature allows the parole board to offer discretionary parole to most people sentenced today; (20 pts.) ↗
2. The opportunity for the person seeking parole to meet face-to-face with the board members and other factors about witnesses and testimony; (30 pts.) ↗
3. The principles by which the parole board makes its decisions; (30 pts.) ↗
4. The degree to which staff help every incarcerated person prepare for their parole hearing; (20 pts.) ↗
5. The degree to which the parole board is transparent in the way it incorporates evidence-based tools. (20 pts.) ↗

In addition, we recognize that some states have unique policies and practices that help or hinder the success of people who have been released on parole. We gave and deducted up to 20 points for these policies and practices. For example, we gave or deducted some points for:

Helpful factors

Does not prohibit individuals on parole from associating with each other or with anyone with a criminal history (5 pts.);

Capping how long someone can be on parole (5 pts.) or allowing individuals to earn "good time" credits that they can apply toward shortening their time on supervision (5 pts.)

Does not require supervision or drug-testing fees. (5 pts.)

Harmful factors

Explicitly prohibiting individuals on parole from associating with others under supervision, or with anyone who has a criminal record (5 pts.)

Allowing the board to extend the period of supervision past the actual end of the imposed sentence (5 pts.)

Requiring individuals on parole to pay supervision or drug-testing fees (5 pts.)

How did Wyoming earn our highest score?

Of all of the states, Wyoming received the highest grade, an 83, or a B-. Wyoming had the highest score in the Parole Preparation section, and it received generally good scores in the other three sections, particularly in the Parole Hearing section. To be specific, Wyoming:

- Does not force individuals convicted of violent or sexual offenses to serve extra time in order to become parole eligible;
- Does not use the "seriousness of the offense" as an excuse to deny parole, although the Board, by statute, must consider the "facts of the current offense";
- Mandates in-person, face-to-face parole hearings;
- Provides caseworkers to every incarcerated individual to help prepare for the hearing;
- Allows incarcerated people access to the information the Board will use to determine whether to grant or deny parole, and allows incarcerated individuals to question the accuracy of that information;
- Also allows staff from the prison — who have true day-to-day perspective on an individual's character and growth — to provide in-person testimony;

- *Allows individuals on parole to reduce their length of supervision by up to 40 percent through accruing good time.*

The parole system of Wyoming is far from perfect. The state mandates that survivors of crime, along with prosecutors, must be notified of an impending parole hearing or of parole approval and allowed to testify at a hearing. Only 34% — or 790 — of the total prison population of 2,353 in 2016 were eligible for parole at that time. However, the grant rate in 2015 — or the percentage of individuals given a hearing who were actually released — was a very respectable 65%.

Wyoming can do better, as can all states. However, the consistency across the parole process is something the state should be recognized for.

We are happy to note that the Oversight Coordinator is part of the Task Force. The duties of the Hawai'i Correctional System Oversight Commission described in Chapter 353L.

(b) The commission **shall**:

(1) Oversee the State's correctional system and have jurisdiction over investigating complaints at correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model;

(2) Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;

(3) Work with the department of public safety in monitoring and reviewing the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees. The commission may make recommendations to the department of public safety, the Hawaii paroling authority, and the legislature regarding reentry and parole services; and

(4) **Ensure that the comprehensive offender reentry system under chapter 353H is working properly to provide programs and services that result in the timely release of inmates on parole when the minimum terms have been served instead of delaying the release for lack of programs and services.**

Community Alliance on Prisons **respectfully recommends that the Task Force include formerly incarcerated persons (1 male; 1 female).** These individuals can bring a reality to the discussion that would be missing without their participation. Everyone on the Task Force would benefit and learn from their experiences.

We urge the committee to pass this important resolution.

Mahalo

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

March 23, 2023

SCR 205/SR104: REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING EXISTING PROCEDURES OF THE HAWAII PAROLING SETTING THE MINIMUM TERMS OF IMPRISONMENT

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office of the Public Defender (OPD) supports SCR 205 and SR 104, which requests that the Judiciary convene a task force to examine and make recommendations on the viability and the efficiency of delegating the responsibility of setting minimum terms of imprisonment to the Hawai‘i Paroling Authority (HPA).¹

Hawai‘i is one of thirty-three states that have an indeterminate sentencing system. However, Hawai‘i is the only one of those thirty-three states that uses a parole board to set the minimum term of imprisonment that a defendant must serve before becoming eligible for parole.² A task force should be convened to examine whether Hawai‘i’s reliance on the HPA to set minimum terms is viable and efficient and to make recommendations on whether the administration of justice would be better served by having the sentencing court set the minimum term.

Current procedure for setting a minimum term

Currently, a defendant sentenced to an indeterminate (or open) term of imprisonment must appear before the HPA within six months to set the minimum term of

¹ The Parole Board of the HPA will be referred to as “the HPA” herein.

² Hereinafter, the minimum term of imprisonment that a defendant must serve before being eligible for parole will be referred to as their “minimum term.”

imprisonment they must serve before becoming eligible for parole.³ Minimum term hearings are generally held four to six months after sentencing.

At the minimum term hearing, the defendant has the right to be represented by an attorney and has the opportunity to inform the HPA about themselves and the offense(s) for which they are serving time. While the defendant may present documentary evidence on their behalf, only the victim of the offense(s) is allowed to testify in person at the hearing. *See* HPA Parole Handbook, pp. 3, 9.⁴ The HPA also reviews records which include a description of the offense(s) (often times, based on a one-sided police report), the defendant's criminal history, psychiatric reports, institutional reports, input from the prosecuting attorney, and letters from the victim(s) and other interested parties, including the defendant and the defendant's family, friends and employers. The HPA has the opportunity to ask the defendant and their attorney questions. Typically, a minimum term hearing lasts about fifteen to thirty minutes.

Responsibility for the setting of minimum term

A task force should be convened to examine whether the responsibility for setting the minimum term of imprisonment should be delegated to the judge who presides over the defendant's sentencing.

It would appear that a sentencing judge is in a much better position to determine the length of a minimum term before a defendant is eligible for parole. In addition to possessing the same records and files made available to the HPA, the sentencing judge has significant and intimate knowledge of the facts of the case and the defendant's circumstances. It is more likely than not that the judge had presided over the case immediately after the arraignment and plea through sentencing. And if the case had proceeded to trial, having seen and heard all of the evidence, the presiding judge would be fully apprised of the relevant facts of the case. Even if the case did not proceed to trial, the judge will have been made familiar with the defendant and the particular circumstances of the case during pretrial conferences, pretrial motions, and plea bargain negotiations.

³ The HPA's procedures for setting a minimum term of imprisonment are set forth in the Hawai'i Administrative Rules (HAR), Title 23, Subtitle 5, Chapter 700.

⁴ HPA Parole Handbook is available on the Department of Public Safety website at https://dps.hawaii.gov/hpa/files/2020/11/HPA-Parole-Handbook_Revised_09_2020-1.pdf

The judge will also have the opportunity to hear live testimony not only from the victims and victims' family members, but also from the defendant's family, friends, case workers or employers. The judge also has the opportunity to ask the prosecution and defense testifiers questions.

Current Delay in Rehabilitation

One significant advantage in having the sentencing judge set the minimum term of imprisonment is that this may expedite the defendant's access to programming while incarcerated, especially if the defendant received a low minimum term. Such in-facility programs include substance abuse treatment, anger management, cognitive skills, education (e.g., GED), sex offender treatment, and work furlough.

After sentencing, defendants are assessed by the Reception Assessment and Diagnostic (RAD) units at Halawa Correctional Facility (male defendants) or Women's Community Correctional Center (female defendants). The RAD unit evaluates each newly sentenced defendant to determine their initial custody classifications and appropriate facility placement.⁵ The RAD unit will also generate a report that identifies programs and activities for each defendant in preparation to satisfy parole eligibility requirements and that which is appropriate to their needs and custody classification.⁶

Even though the RAD unit assesses each person shortly after their arrival (within 60 days) to the facility, program participation cannot start until the HPA sets the minimum term(s).⁷ Because minimum term hearings are not held until four to six months after sentencing, there is a delay to begin programming. Completion of required programming is a standard requirement for parole eligibility.

If, however, the sentencing judge sets the minimum term, programming may begin immediately after the person is assessed by the RAD unit. By shortening the period

⁵ Department of Public Safety Corrections Administration, Policy No. COR 18.03, available at <https://dps.hawaii.gov/wp-content/uploads/2017/12/COR.18.03.pdf>

⁶ Department of Public Safety Corrections Administration, Policy No. COR 18.04, available at <http://dps.hawaii.gov/wp-content/uploads/2012/10/COR.18.04.pdf>

⁷ Note, the OPD is aware of a few female inmates who began their programming prior to meeting with the HPA.

between admission into a facility and the start of programming, the “dead time” would be eliminated and incarcerated persons would be able to start and complete their programs sooner, and thus be eligible for parole sooner. Therefore, delegating the responsibility of setting the minimum term to the sentencing judge would help to move defendants more quickly through the system and thereby reduce prison populations.

Review Process

Currently, under the two-step process, if a defendant wishes to challenge the HPA’s setting of the minimum term, the defendant must file an onerous and time-consuming petition pursuant to Rule 40 of the Hawai‘i Rules of Penal Procedure (HRPP). The petition is even more difficult, if not impossible, to prepare if the defendant is uneducated or is not proficient in English. Because these petitions are considered a new cause of action and a quasi-civil matter, indigent defendants are not entitled to the services of the OPD or court-appointed counsel and therefore must file their own petitions.

Under a system in which the sentencing judge is tasked with setting the minimum term of imprisonment (and the maximum term of imprisonment), a defendant can directly appeal the sentence (including the setting of the minimum term) to the Intermediate Court of Appeals, and the defendant will be represented by counsel. Moreover, if the defendant already intends to appeal the conviction (e.g., wrongly convicted, the admission or exclusion of evidence), the appeal can simply include any challenge to the court’s sentencing decision (maximum term and minimum term). So, rather than the possibility of two separate challenges (petition and appeal), there will only be one.

Conclusion

The OPD strongly supports a resolution which would request the Judiciary to convene a task force to examine and make recommendations on the viability and the efficiency of delegating the responsibility of setting minimum terms of imprisonment to the HPA. A task force will also assist in the determination as to whether the administration of justice may be better served by removing the responsibility of setting minimum sentences from the HPA, thereby enabling it to focus on determining and assisting prisoners’ fitness for parole and the supervision of parolees.

Thank you for the opportunity to testify on this resolution.

TESTIMONY ON SCR 205/SR 104
REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO
EXAMINE AND MAKE RECOMMENDATIONS REGARDING
EXISTING PROCEDURES OF THE HAWAII PAROLING AUTHORITY
SETTING THE MINIMUM TERMS OF IMPRISONMENT

by
Theresa Paulette
MADD Victim Services Specialist

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, March 23, 2023; 9:30 AM
State Capitol, Conference Room 016 & Videoconference

Good Morning Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing MADD with the opportunity to testify before you today regarding Senate Concurrent Resolution 205/Senate Resolution 104. MADD supports SCR 205/SR104, with an amendment to include a representative from a victim advocacy group as a member of the working group.

SCR205/SR104 creates a task force to make recommendations regarding existing procedures of the Hawai'i Paroling Authority setting the minimum terms of imprisonment. If victim advocates do not have a seat at the table, the legislature will not have confidence that the final recommendations of the task force address the needs and concerns of crime victims and survivors, or that the recommendations of the task force adequately address public safety. Ensuring the safety of the community and crime victims must be a governing factor as the task force develops recommendations.

Thank you for providing MADD with the opportunity to testify in support of Senate Concurrent Resolution 205/Senate Resolution 104, with an amendment to include a representative from a victim advocacy group as a member of the working group.

Dennis M. Dunn

Kailua, Hawaii 96734

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RE: SCR 205/ SR 104

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING EXISTING PROCEDURES OF THE HAWAII PAROLING AUTHORITY SETTING THE MINIMUM TERMS OF IMPRISONMENT

HEARING: Senate Committee on Judiciary

Thursday, March 23, 2023, 9:30 a.m., Conference Room 016

Good afternoon, Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. My name is Dennis Dunn, and I recently retired as Director of the Victim Witness Kokua Services in the Honolulu Prosecuting Attorney's Office after 44 years of service. Prior to that I was a volunteer Victim Advocate for People Against Rape. I am testifying today **in regard to SCR 205/ SR 104 with proposed amendments.**

The Resolution proposed in SCR 205/ SR 105 is designed to request that the Judiciary establish a Task Force to examine and make recommendations regarding the existing procedures of the Hawaii Paroling Authority in setting the minimum terms of imprisonment for convicted felons. Having testified before the Legislature on this issue on a number of occasions in the past, my initial question is what the rationale is for having the Judiciary convene a Task Force to conduct an examination of an agency in another branch of the government. Would it seem appropriate to ask the Department of Public Safety convene a Task Force to examine the sentencing practices of the Judiciary? Now it could be that the Judiciary is perceived as best equipped or most experienced in establishing or running Task Forces. However, the optics of having one branch of government evaluate another branch may raise some concerns about the fairness or objectivity of the review. Although I will certainly admit that I do not always agree with the decisions of the Paroling on minimum terms, I do have great respect for their procedures and feel that they generally strike a fair balance in setting the minimum sentences. I also would point out that the Paroling Authority has clear guidelines that they follow in setting minimum terms whereas the Judiciary does not have any sentencing guidelines. I would hope that the Legislature in its charge to this Task Force and any resulting recommendations would highlight the need for consistency and fairness in the setting of minimum sentencing terms. This is something that I believe, whether you agree with their decisions or not, the Hawaii Paroling Authority has achieved.

However, my greatest concern regarding these Resolution is a serious flaw in the proposed makeup of the Task Force. As we have seen in similar proposals in the past, no victims or victim advocacy agencies are included in the makeup of the Task Force. Having served on a past Task Force examining the Penal Code and that made recommendations to the Legislature, I feel that

the input of crime victims and their advocates was invaluable. However, their inclusion on that Task Force only occurred after the fact, when the oversight was pointed out to the Chair, then Circuit Court Judge Steven Alm, who quickly made appointments to correct the problem. Again, optics are important to the public's confidence in how government operates and failing to include the viewpoints of victims and their advocates in a review of how minimum sentences for felons are determined certainly could raise questions about the legitimacy of any ultimate recommends from this Task Force.

Given my comments above I respectfully request that you consider amendments to SCR 205/ SR 104 that are consistent with the concerns that I have expressed. Thank you for your time and consideration.

Mahalo!