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**GUIDELINES**

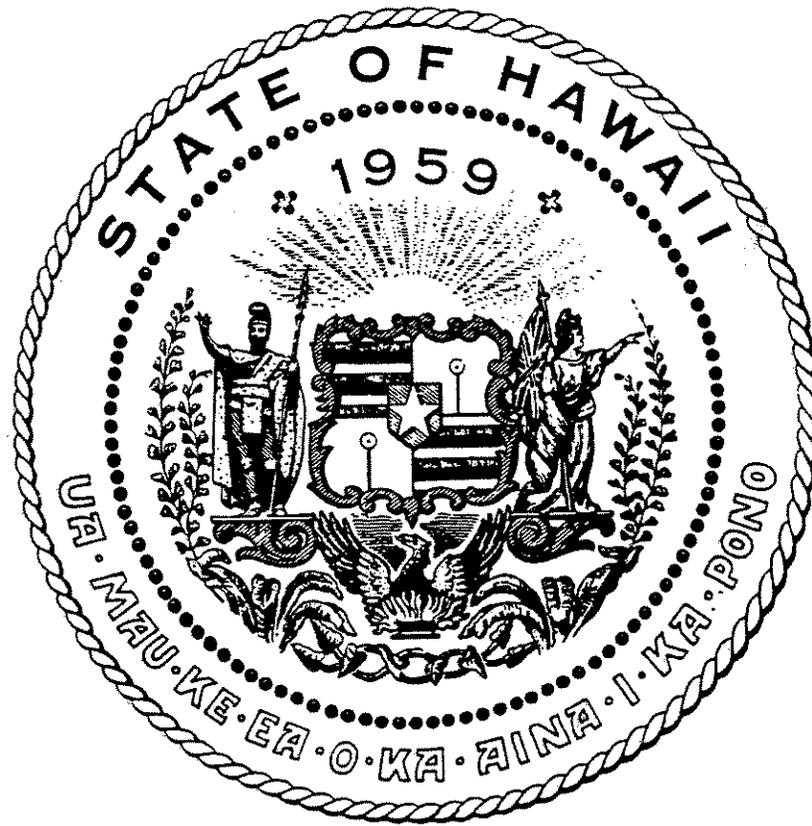
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**FOR**

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**ESTABLISHING MINIMUM TERMS OF IMPRISONMENT**

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**JULY 1989**

**HAWAII PAROLING AUTHORITY**

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**I. INTRODUCTION**

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The purpose of minimum sentencing guidelines is to provide a degree of uniformity and consistency in the setting of minimum terms while providing the community-at-large, public policy makers and planners, the criminal justice system, and victims and offenders with information as to the criteria used in establishing minimum terms of imprisonment.

The guidelines provide a range of time and criteria within each of three levels of punishment within which decisions on minimum terms are reached. Under our system of sanctions, there needs to be adequate flexibility in the minimum setting process to account for significant differences among offenses, offenders, and the circumstances surrounding each individual's offense and commitment to prison.

In reaching a decision on a minimum term, the criteria to be taken into consideration are discussed in Part IV. While the criteria outlined are not all inclusive, they do represent the primary considerations in most cases. It should be emphasized that specific weights have not been assigned to the various criteria but the three areas of focus are:

- (1) the nature of the offense;
- (2) the degree of injury/loss to person or property; and
- (3) the offender's criminal history,

The Hawaii Paroling Authority may deviate from the guidelines, either above or below, but all deviations shall be accompanied by written justification and be made a part of the Order Establishing Minimum Terms of Imprisonment (DOC # 10029).

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## II. LENGTH OF MINIMUM TERMS

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The Hawaii Paroling Authority has established guidelines within three levels of punishment. The minimum term generally will fall within one of the three levels, and the length of punishment will be based on two major variables:

- (1) **Level of punishment** (I, II, III) which is arrived at by using the criteria discussed in Part IV; and
- (2) Maximum term imposed by the court.

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.)

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## III. ISSUANCE OF DECISION

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The Order Establishing Minimum Terms of Imprisonment (DOC # 10029) will include the specific minimum terms(s) established in years and/or months, the level of punishment (Level I, II, or III) under which the inmate falls, and the significant criteria upon which the decision was based.

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## IV. CRITERIA

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The criteria outlined below are, in some instances, a matter of individual interpretation and perception and cannot be completely objective; however, given the complexity of each person's case, certain amounts of subjectivity remain necessary and appropriate.

The criteria are presented by level of punishment, and each case will normally include criteria from one or more levels. The Hawaii Paroling Authority will decide which criteria will determine level of punishment in any given case, but the areas that will generally receive the greatest weight are the first three listed at each level: Nature of Offense, the Degree of Injury/Loss to Person or Property, and the Offender's Criminal History.

It should be emphasized that two of the primary criteria discussed under the three levels of punishment, **Nature of Offense** and **Degree of Injury/Loss to Person or Property**, are comparative and require an awareness and knowledge by the Authority members of offense circumstances and past Authority decisions. In Hawaii, the Authority hold formal minimum term hearings for each person sentenced to prison for an indeterminate term; therefore, there is a foundation for making comparative judgments. We believe this to be a strength of the Authority's sentencing responsibility.

THE HAWAII PAROLING AUTHORITY'S INTERPRETATIONS AND PERCEPTIONS OF THE SUBJECTIVE CRITERIA REMAIN THE PREROGATIVE OF THE AUTHORITY.

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### A. LEVEL I

1. **Nature of Offense:** The offense was against the person and/or property, and the offender displayed a disregard for the safety and welfare of others.
2. **Degree of Injury/Loss to Person or Property:** The injury or loss suffered by the victim(s) was less than those experienced by similarly situated victims.
3. **Criminal History:** The person has no more than 1 prior felony conviction since he or she was 18 years old. (If the offender is under 18 years of age at conviction, the above two criteria will receive added weight.)

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4. **Character and Attitude of Offender With Respect to Criminal Activity or Lifestyle:** Based on the person's character, attitude, and/or criminal history (both juvenile and adult), continued criminal activity after release from prison seems unlikely.
  5. **Efforts Made to Live Pro-Social Life Prior to Commitment to Prison:** Based on the person's life in the community prior to commitment to prison (employment, military service, ability to make and meet commitments, willingness to deal responsibly with personal problems, etc.), it is likely that the person will respond positively to a program of parole supervision and lead a pro-social life upon release.
  6. **Probation Revocation:** The offender was placed on probation for the instant offense(s) but due to a technical violation of probation or a new conviction for a misdemeanor or less serious offense the offender's probation was revoked.
  7. **Youth Adult Offender:** The person was sentenced as a young adult offender under Section 706-667, HRS.

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## **B. LEVEL II**

1. **Nature of Offense:** The offense was against the person and/or property, and the offender displayed a substantial (multiple counts, etc.) disregard for the safety and welfare of others.
2. **Degree of Injury/Loss to Person or Property:** The injury or loss suffered by the victim(s) was comparable to those experienced by similarly situated victims.
3. **Criminal History:**
  - a. The person has been previously convicted of two felonies committed at different times when s/he was 18 years of age or older; or
  - b. The person has served a prior prison term (one year or longer) for a felony-level conviction, and the instant offense is **not** for murder, manslaughter, sexual assault, assault, robbery, or possession of firearm(s).

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4. **Character and Attitude of Offender With Respect to Criminal Activity or Lifestyle:** Based on the person's character, attitude, and/or criminal history (both juvenile and adult), future criminal activity remains possible; however, given current willingness and commitment to deal with past problems, there is a reasonable probability that the person can remain free from further serious criminal behavior.
  5. **Efforts Made to Live a Pro-Social Life Prior to Commitment to Prison:** Based on the person's life in the community prior to commitment to prison (employment, military service, ability to meet commitments, willingness to deal responsibly with personal problems, etc.), it is possible with proper support, supervision, and the individual's commitment that the offender could respond positively to a program of parole supervision and lead a pro-social life upon release.
  6. **Involvement of Offender in Instant Offense(s):** Based on available evidence, the offender's actions prior to or during the instant offense seem to indicate that he or she played a **substantial role** in the planning or commission of the offense.
  7. **Probation Revocation:** The offender was initially placed on probation for the instant offense(s) but due to a new felony conviction committed after the person was placed on probation, his probation was revoked.

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### **C. LEVEL III**

#### **1. Nature of Offense:**

- a. The offense was against a person(s) and the offender displayed a callous and/or cruel disregard for the safety and welfare of others; or
- b. The offense involved the manufacture, importation, distribution, or cultivation of substantial quantities of drugs. Paragraph 4, subparagraph (a) or (b) of this section may be used to substantiate the level of involvement of the person in the offense(s);
- c. The offense was committed against the elderly, a handicapped person, or a minor, and the conviction was for murder, attempted murder, sexual assault, robbery, assault, or kidnapping; and

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1. The offender, in the course of committing or attempting to commit one of the above offenses, inflicted bodily injury on a person who was:

- a. 60 years of age or older; or
- b. blind, paraplegic, or quadriplegic; or
- c. 12 years of age or younger; and

2. Such factors as age and physical disabilities are known or reasonably should have been known by the convicted person.

2. **Degree of Injury/Loss to Person or Property:** The injury or loss suffered by the victim(s) was **more** than those experienced by similarly situated victims.

3. **Criminal History:**

a. The person has been convicted previously of three or more felonies committed at different times when s/he was 18 years of age or older; or

b. The person has served a prior prison term (one year or longer) for a felony level conviction, and the instant offense is for murder, attempted murder, sexual assault, assault, robbery, or possession of firearm(s).

4. **Character and Attitude of Offender With Respect to Criminal Activity or Lifestyle:** Based on the person's character, attitude, and/or criminal history (both juvenile and adult), future criminal activity remains probable ; or

a. The circumstances of the crime show that the convicted person has knowingly devoted himself or herself to criminal activity as a major or primary source of livelihood; or

b. The convicted person has substantial income or resources not explained to be derived from a source other than criminal activity; or

c. The person has been subjected to a psychiatric examination resulting in the conclusion that his or her criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such a condition makes him or her a serious danger to others.

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5. **Efforts Made to Live Pro-Social Life Prior to Commitment to Prison:** Based on the person's life in the community prior to commitment to prison (employment, military service; ability to meet commitments, willingness to deal responsibility with personal problems, etc.), it is unlikely that the offender would respond positively to a program of parole supervision and lead a pro-social life upon release.
  
  6. **Involvement of Offender in the Instant Offense(s):** Based on available evidence, the offender's actions prior to or during the instant offense seem to indicate that he or she played a substantial role or was the instigator or leader in the planning or commission of the offense.

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#### **D. ADDITIONAL CRITERIA**

The criteria discussed below are additional factors which may be considered in the setting of minimum terms. Consideration of these criteria may, at the Authority's discretion, cause a lower than normal level of punishment to be established.

##### **1. Involvement of Offender in Instant Offense(s):**

- a. The offender's intentional or knowing actions prior to or during the offense resulted in reduced injury or loss to the victim(s). (Information to substantiate this fact must be offered by the victim(s), law enforcement authorities, or the Office of the Prosecuting Attorney.)
  
- b. The person played a relatively minor role in the commission of the offense in comparison with other participants.
  
- c. The person cooperated with the state (police, prosecutor, or attorney general) 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 this or other offenses. (Information as to the quantity or quality of a person's cooperation must be represented to the Authority through communications from a county police department, county prosecuting attorney, attorney general, or other recognized law enforcement entity.)

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2. **Diminished Responsibility:** At the time of the offense, the offender was suffering mental illness or severe emotional stress, which contributed to the occurrence of the offense, but was not of a degree to remove penal responsibility.

3. **Degree of Provocation, Involvement, or Complicity on the Part of the Victim(s) in the Offense(s):** The victim(s) of the offense by their acts or omissions caused or contributed to the commission or aggravation of the offense.