

**FIRST REPORT OF THE
LONG-TERM PRISON SENTENCES REVIEW BOARD
(June 1997 – June 2000)**

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Made from June 1997 to June 2000

President' s Remarks

The Long-term Prison Sentences Review Board was established pursuant to the Long-term Prison Sentences Review Ordinance, Cap. 524 which came into operation on 30 June 1997 to replace the previous advisory Board of Review, Long Term Prison Sentences with the aim to further enhance the transparency, efficiency and fairness of the prison sentence review and remission system in Hong Kong. With improved procedures, the Board continues to review the sentences of certain categories of prisoners and makes recommendations to the Chief Executive for sentence remission. Under the new Ordinance, the Board is empowered to order conditional release and post-release supervision for prisoners, and to conduct oral hearings in certain circumstances. During the past three years, 15 meetings were held and the Board has conducted reviews on a total of 1,768 cases of prisoners. I am pleased to present this report which gives an account of the Board' s activities covering the period from 30 June 1997 to 30 June 2000. I would like to take this opportunity to thank all members of the Board, the Security Bureau, the Correctional Services Department, the Social Welfare Department, the Hong Kong Police Force, the Judiciary and other relevant bodies for their support all along given to the Board. Without their assistance and active participation, the Board would not have been operated so effectively.

(Arthur Leong)
President,
Long-term Prison Sentences Review Board

A. BACKGROUND

Before the establishment of the Long-term Prison Sentences Review Board, advice on the review and remission of prisoners' sentences in Hong Kong was given by the Board of Review, Long Term Prison Sentences. Established in 1959, it was a non-statutory body which examined and determined whether any remission of the prisoner's sentence would be justified in the course of sentence review, and submitted its recommendations to the then Governor for sentence remission. Before November 1988 it was chaired by the then Attorney General and thereafter the chairman had been a Judge of the High Court. Representatives from the then Security Branch and the then Legal Department, the Correctional Services Department and the Social Welfare Department were ex-officio members, while the non-official members were drawn from various sectors of the society.

2. In order to further enhance the transparency, efficiency and fairness of the prison sentence review and remission system, the Long-term Prison Sentences Review Ordinance (the Ordinance) was enacted on 30 June 1997 to provide for a formal statutory framework with improved procedures to review and remit prisoners' sentences. The Ordinance also provides for the establishment of an independent statutory Long-term Prison Sentences Review Board (the Board) to replace the previous advisory board, and the powers that the Board may exercise when reviewing prisoners' sentences. Subsidiary legislation to the principal Ordinance specifying detailed procedures of the operation of the Board took effect on 24 December 1997.

B. ESTABLISHMENT OF THE STATUTORY BOARD

The independent statutory Board

3. Following the commencement of the Ordinance in June 1997, all the eight non-official members (including the chairman) of the previous advisory Board of Review, Long Term Prison Sentences were appointed by the Chief Executive to the statutory Long-term Prison Sentences Review Board. Three additional members were also appointed. Unlike the previous advisory board which comprised official members as well as non-official members, all members of the statutory Board are non-officials. Under the Ordinance, the President and Deputy President of the Board must be judges or former judges of the High Court. Other members should come from different professions or interests such as psychiatry, psychology, social work, legal profession, education, industry, commerce, rehabilitation of offenders etc. While government officials can attend the Board's meetings as required, they are no longer members of the Board.

Principal function of the Board

4. Like the previous advisory board, the principal function of the statutory Board is to conduct regular reviews on the cases of prisoners serving life sentences, prisoners with long-term sentences (i.e. 10 years or longer), prisoners detained at Executive discretion (formerly known as detention until Her Majesty's pleasure be known, i.e. young prisoners who were aged below 18 when committing the offence of murder) and prisoners serving determinate sentences who were under the age of 21 at the date of conviction. Under the new Ordinance, prisoners whose indeterminate or long-term sentences were

imposed outside Hong Kong but who were transferred back to Hong Kong to serve such sentences are also eligible for sentence review by the Board.

Powers of the Board

5. Like the previous advisory board, the statutory Board may, when conducting a sentence review, recommend to the Chief Executive that a prisoner's indeterminate sentence be substituted by a determinate one or that a prisoner's determinate sentence be remitted.

6. The Ordinance also provides the Board with additional tools to discharge its functions more efficiently. Apart from making recommendations on sentence remission, the Board may order a prisoner serving an indeterminate sentence to be released conditionally under supervision when it considers it appropriate to defer making a recommendation for a determinate sentence. Upon successful completion of the conditional release period, the Board may recommend a determinate sentence. However, the Board is not authorized to order the early release of a prisoner before the minimum term of imprisonment, if any as determined by the Chief Executive or as specified by the trial judge where appropriate under the Criminal Procedure Ordinance, has been served. The Board may also order post-release supervision for a prisoner whose indeterminate sentence has been converted to a determinate one. The powers conferred to the Board to order conditional release and post-release supervision have ensured that discharged prisoners, where required, are provided with guidance and assistance to help them reintegrate into society as law-abiding citizens, after being incarcerated for a long period of time.

Improved procedures for the Board

7. For cases involving the revocation or amendment of a conditional release order or the suspension or amendment of a supervision order, the Board would conduct an oral hearing before making its decisions. In this connection, the prisoner is given the opportunity to appear before the Board to make oral representations and to raise questions with officers giving evidence at the hearing. Not less than 14 days before the hearing, the prisoner concerned is provided, in his preferred official language, with a copy of all relevant documents to be considered by the Board in connection with the hearing. The prisoner may be assisted by a person of his choice who may address the Board on his behalf. These improved procedures have assured a fair hearing for the prisoner concerned.

8. To further improve the procedures of sentence reviews, all prisoners eligible for review by the Board are provided with an information booklet on the process of sentence review. Prior to sentence review, the Board Secretary writes to notify prisoners of the date and place of the review, the powers of the Board as well as their right to make written representations to the Board. They are also informed of the results of sentence review afterwards. As a practice of good administration, the Board may, upon request, also give reasons of the decision made in a review. Prisoners will therefore be able to identify, and work on, areas for improvement. These improved procedures have enhanced the transparency of the operation of the Board.

C. MEMBERSHIP OF THE BOARD

President

9. The President of the Board is the Hon. Mr. Justice Arthur Leong, a Justice of Appeal of the Court of Appeal of the High Court. He was appointed for a term of three years starting from 1 October 1997. Prior to the establishment of the statutory Board, he had served as the Chairman of the previous Board of Review, Long Term Prison Sentences since 27 November 1993.

Deputy President

10. The Deputy President of the Board is the Hon. Mrs. Justice Verina Bokhary, a Judge of the Court of First Instance of the High Court. She was appointed for a term of three years starting from 17 November 1997.

Members

11. The following members have served on the Board for varying periods:

Past Members (Tenure expired on 31.3.1999)

Mrs. CHAU MA Pui-kin, Katherine, J.P.
(Education)

Mrs. YIP HO Tsang-yue, Kathleen, J.P.
(Commerce)

Current Serving Members (all on 3-year terms)

Mr. LAW Shiu-ming, Dennis, J.P. (first appointed on 1.10.1997)
(Legal)

Mrs. LEUNG NGAI Mou-yin, Justina, J.P. (first appointed on 1.10.1997)
(Social Work)

Mrs. LAU YU Po-kwan, J.P. (first appointed on 1.10.1997)
(Psychology)

Mr. NG Sze-fuk, George, B.B.S., J.P. (first appointed on 1.10.1997)
(Industry)

Dr. SHUM Ping-shiu, J.P. (first appointed on 1.10.1997)
(Psychiatry)

Mr. HO King-man, Kenneth, J.P. (first appointed on 1.10.1997)
(Rehabilitation of Offenders)

Ms. YUK Tak-fun, Alice, J.P. (first appointed on 1.10.1997)
(Youth Matters)

Mr. PANG Yiu-kai (first appointed on 1.4.1999)
(Commerce)

Mrs. LAM LEUNG Yin-ting, Teresa (first appointed on 1.4.1999)
(Education)

12. The Secretary to Board is Mr. H.N. Ng, Senior Executive Officer of the Security Bureau, Government Secretariat.

D. CATEGORIES OF PRISONERS TO BE REVIEWED AND SCHEDULES OF REVIEW

13. Section 11 of the Ordinance provides that the Commissioner of Correctional Services must refer to the Board for review the cases of certain categories of prisoners in specified schedules. In practice, a list of all such cases is compiled by the Correctional Services Department and then sent to the Secretary of the Board, usually about four months prior to the next meeting of the Board. The Board Secretary arranges with the relevant authorities for reports to be prepared on each prisoner concerned. (Please see paragraph 16.)

14. The categories of prisoners to be referred for review and the schedules for review as required under the Ordinance are as follows:-

<u>Categories of Prisoners</u>	<u>Schedules for Review</u>
(1) Prisoners with determinate sentences of 10 years or longer.	} They are first reviewed on completion of 5 years in prison, then every 2 years thereafter.
(2) Prisoners with mandatory life sentences.	

- | | | |
|--|---|--|
| <p>(3) Prisoners with discretionary life sentences or are detained at Executive discretion.</p> | } | <p>They are reviewed on completion of 5 years in prison, then every 2 years thereafter; they are also</p> |
| <p>(4) Prisoners with mandatory life sentences and are under 18 years of age at the time of the offence.</p> | } | <p>reviewed when the minimum term is determined, then every 2 years thereafter; and are reviewed 6 months before the expiry of the minimum term.</p> |
| <p>(5) Prisoners with determinate sentences under the age of 21 at the time of conviction for the offence.</p> | } | <p>They are first reviewed annually until they reach the age of 21, then every 2 years thereafter.</p> |
| <p>(6) Transferred prisoners with indeterminate sentences or determinate sentences of 10 years or longer</p> | | |
| <p>(i) who have served at least 3 years of the sentence outside Hong Kong;</p> | } | <p>They are first reviewed 2 years after return to Hong Kong, then every 2 years thereafter.</p> |
| <p>(ii) who have served less than 3 years of the sentence outside Hong Kong.</p> | } | <p>They are first reviewed on completion of 5 years in prison (including those period served outside Hong Kong), then every 2 years thereafter.</p> |

15. Prisoners serving indeterminate or long-term sentences are specified for review because such prisoners are serving in prison for relatively long periods and assessment is required to find out whether they have been genuinely rehabilitated in the course of their sentences. As for young offenders, they may have been particularly unstable during their post adolescent period, but may have matured while in prison.

E. REPORTS ON EACH PRISONER REVIEWED

16. As required by the Ordinance, the relevant authorities produce detailed reports or relevant records on each prisoner listed for review. These reports and records are sent to the Board Secretary, usually ten weeks prior to the relevant Board meeting. The Secretary compiles these reports into a case file on each prisoner and all the case files are then further compiled into two volumes of “Discussion Papers”. These Discussion Papers are circulated to members three to four weeks prior to the meeting to allow sufficient time for members’ perusal. The contents of the case files are as follows:

(1) All Prisoners Reviewed

- | | |
|---|--|
| Part I - Report by
Correctional
Services Department | This describes all aspects of the
prisoner’s conduct while in
prison and includes a medical
report. |
| Part II - Criminal Record | This sets out the prisoner’s
criminal history. |

Part III - Social Welfare
Report

This gives details of the prisoner's family circumstances, his employment prospects on release, his rehabilitation prospects and any compassionate grounds for consideration.

Part IV - Records from the
Court

These include the Trial Judge's Report, comments made by the Judge at the sentencing and the summing up of the case etc. reflecting the nature of the offence.

Additional enclosures : (i) a proforma advising whether the prisoner has given assistance to law enforcement bodies after conviction.

(ii) any submissions or representations addressed to the Board by the prisoner or others on the prisoner's behalf.

(iii) copies of petitions to the Chief Executive.

(2) Additional Reports for Certain Prisoners

(i) Prisoners claimed to have provided useful assistance to the law enforcement agencies:

A report from the Government Department concerned.

- (ii) Prisoners convicted of sexual offences or believed to have sexual/psychological problems:

A report from the Clinical Psychologist.

- (iii) Prisoners believed to have mental problems:

Reports from the Psychiatrist and also Clinical Psychologist.

(3) Special Assessment Reports

In the case of a prisoner who has behaved exceptionally well (and is likely to merit a recommendation for sentence remission), or on whom the Board wishes to obtain more information (for any reason), the Board may request the Correctional Services Department to provide a Special Assessment Report (instead of the normal review report) consisting of a more detailed report from the Prison Superintendent, a Psychological Report and a Psychiatric Report.

(4) Synopsis to Discussion Papers – Volumes I and II

About three to four weeks prior to the date of each meeting, the Board Secretary forwards to members a synopsis for each Volume of the Discussion Papers.

F. FACTORS TO BE CONSIDERED BY THE BOARD IN ASSESSING CASES

17. Each prisoner is a unique individual with a unique history and his case for commutation of indeterminate sentence or remission of determinate sentence must be judged on its merits. In general, the Board would consider a number of factors as listed on Schedule 1 to the Long-term Prison Sentences Review Regulation. These factors are as follows:

(1) Nature of the Offence

It is very important that Board members have a clear picture of the facts of the prisoner's crime and, if possible, his motive which is indicative of the prisoner's character at the time of offence. This could be obtained from records from the court which describe the offence or offences of which the prisoner is convicted and also give an account of the circumstances. For example, in a case of violence, the degree of violence used is shown, whether it was premeditated, impulsive or committed under the influence of alcohol or drugs, etc. In the case of a gang crime, the part played by the prisoner is relevant and also whether or not he was armed with a weapon. Whether or not the crime was pre-planned is also very relevant.

(2) Criminal Record

A criminal record, listing all the prisoner's convictions, is provided by the Police. This information

provides a historical background to the prisoner's criminal behaviour and shows whether or not the offence was part of a previous pattern of his criminal behaviour.

(3) Views of Trial Judge

In all convictions for murder and other capital offences prior to 1993, the Trial Judge was required to write a report to the then Governor for consideration of commutation of the death sentence. Besides, the Trial Judge's comments made at the sentencing and the summing up of the case provide the facts of the crime. His views on any mitigating circumstances of the offence are also relevant.

(4) Mitigating Circumstances

Mitigating circumstances are of particular relevance in murders and other cases where prisoners have been sentenced to life imprisonment or to be detained at Executive discretion. For example, crimes of passion and mercy killings might be viewed with sympathy.

(5) Remorse

The Prison Superintendent's Report indicates whether or not a prisoner has shown remorse for his crime. Once a prisoner has started to show signs of remorse, his prospect of rehabilitation would improve. The Board often receives representations from prisoners and prisoners' relatives or church

personnel giving their views on this aspect. Such representations are always carefully considered.

(6) Response to Counselling and Rehabilitative Treatment

Correctional institutions provide various forms of treatment: medical, psychological, psychiatric and/or rehabilitative. Prisoners may require a mixture of all four at various stages of their sentences. It is important for the Board to know whether or not a prisoner's response to treatment has been positive.

(7) Age when Committing Crime

Clearly the prisoner's age when he committed the crime is an important factor, especially if he was a teenager or under the influence of an adult.

(8) Likelihood of Rehabilitation and Employment Prospects

A Social Welfare Report written by social work officers of the Social Welfare Department describes a prisoner's family background, his prospects for employment on release and rehabilitation prospects. Should a prisoner be able to be discharged from prison into favourable social conditions, this would be of considerable assistance towards his rehabilitation. The Board takes a careful note as to what stage a prisoner has reached in his rehabilitation, at the date of review.

(9) Sentences in other Similar Cases

Although each case must be considered on its own merits, useful comparison can often be drawn with other similar cases and with the sentences served in those cases. Such comparisons are particularly relevant when consideration is being given to recommending the substitution of a sentence of life imprisonment or detention at Executive discretion by a determinate sentence.

(10) Public Interest, including Public Safety and Likelihood of Reoffending

Public interest and the need to protect the public is important. Sometimes a case may seem deserving of a recommendation, due to the merits of the prisoner or for compassionate reasons, but the need to protect the public might preclude this. Examples of where Board members need to take particular care in exercising judgement are those of habitual criminals, violent criminals and sex offenders who may continue to present a threat to society if released.

(11) Psychological Condition

In recent years, the availability of comprehensive Psychological Reports has been of tremendous assistance to the Board. Such reports are always provided for sex offenders and in the cases of Special Assessment Reports. (Please see paragraph 18(3).) They are also sometimes given for mentally disturbed prisoners. The Psychologist also gives an assessment as far as

possible on the prognosis of recovery.

(12) Psychiatric Condition

A number of prisoners do arrive in prison already suffering from mental illness and others may become mentally sick during their stay in prison. The Prison Medical Officer will examine such cases in the first instance. Those prisoners found to be mentally sick and in need of specialised care and attention are sent to Siu Lam Psychiatric Centre. However, prisoners are not kept there any longer than is necessary and, whenever possible, they are returned to the normal prison population. When a prisoner with a record of mental illness is reviewed by the Board, a Psychiatric Report is always considered. The Report will state whether or not the prisoner is currently mentally sick and if so, a diagnosis of his illness. Wherever possible, his prognosis is assessed.

(13) Conduct in Prison

The Correctional Services Department Report contains statistical data on the prisoner, including his age, years served in prison, earliest date of discharge, etc. and the Prison Superintendent's Report on his behaviour. Over the years, these reports build up a picture of the prisoner's character and his institutional behaviour. They cover many aspects including the prisoner's relationship with prison staff and other prisoners, the prisoner's performance at work, efforts to improve his education, religious activity, and support received from families, relatives

and friends. The Prison Superintendent also includes an Overall Performance Grading for each prisoner in his report.

(14) State of Health

The Prison Medical Officer's Report forms part of the Correctional Services Department Report. The Board is advised of any significant physical or mental deterioration in the prisoner during incarceration and also of any serious diseases contracted.

(15) Age

In many cases, nothing worthwhile is achieved by continuing to incarcerate an elderly person who has served a substantial term of imprisonment. By the time they have reached an elderly age, many prisoners lack both the temperament and the physical strength to present any kind of threat to society, although there are some exceptions in the cases of prisoners who are mentally sick or violent or "white collar" criminals convicted at an old age.

(16) Length of Time Served in Prison

This factor is similar in nature to (15) above. There is a limit to how far a criminal could be expected to change his ideas and life-style through treatment, whilst incarcerated. In some cases, long-term incarceration could lead to such frustration and boredom that various forms of mental illness ensued, with adverse consequences for the prisoner. In other

cases, the prisoner becomes “institutionalised” to the extent that he can no longer fend for himself on discharge back into society and becomes a social liability. On the other hand, consideration must be given to whether the prisoner has been sufficiently punished for his crime. In any case, prisoners who have served more than 20 years would need detailed consideration.

(17) Minimum Term of Imprisonment where Applicable

Regarding cases before 1 July 1997, in which prisoners were serving discretionary life sentences and young prisoners were detained until Her Majesty’s pleasure be known, the Chief Executive has made a determination of the minimum term of imprisonment (i.e. the punitive tariff period of their sentences) for these prisoners on the Chief Justice’s recommendations. In respect of new cases, a trial judge is required by the Criminal Procedure Ordinance to specify, in open court, the minimum term when handing down discretionary life sentences to offenders committing offences other than murder, and to young offenders who committed murder when they were below the age of 18. The minimum terms so determined would assist the Board to consider when determinate sentences should be recommended for the prisoners. However, it does not necessarily follow from completion of minimum term that consideration would have to be given to commuting the indeterminate sentence by that time. The merits of each case and other relevant factors have also to be considered.

(18) Assistance Provided by Prisoners to Law Enforcement Agencies

Sometimes prisoners may have testified in court against other culprits. They may also provide useful information to the law enforcement agencies after conviction. The Board may take into account such assistance, together with other relevant factors, when reviewing prisoners' sentences.

18. These are probably the most important factors, but the Board may also consider any other matters which it considers relevant while perusing a prisoner's case file.

G. MEETINGS AND THE CASE LOAD OF THE BOARD

19. The Board convenes quarterly, usually on the last Friday of the months of March, June, September and December. Ad-hoc meetings or hearings are also convened from time to time to deal with urgent matters, such as consideration of suspending or revoking an order made by the Board. For the period from 30 June 1997 to 30 June 2000, the Board has met on 15 occasions, including a hearing to consider whether a release on licence order should be revoked. Over the past three year period, the Board has conducted a total of 1,768 reviews. A breakdown of the cases reviewed during the period, as shown in the chart at Appendix I, is as follows:-

	<u>Cases of Prisoners</u>	<u>No. of Reviews</u>
(1)	Prisoners with life sentences	250
(2)	Prisoners with discretionary life sentences	38
(3)	Prisoners detained at Executive discretion	50
(4)	Prisoners with determinate sentences of	740

10 years or longer	
(5) Prisoners with determinate sentences and aged under 21 at the date of conviction	639
(6) Prisoners transferred from Thailand serving determinate sentences of more than 10 years	51
Total	1,768

20. During this period from June 1997 to June 2000, the Board has made recommendations to the Chief Executive for substituting determinate sentences for indeterminate sentences on 16 cases. Among these, 14 were made for prisoners serving life sentences, 1 for a prisoner serving discretionary life sentence and 1 for a prisoner detained at Executive discretion. These 16 cases represent 7.7% of a total number of 207 prisoners whose indeterminate sentences have been reviewed. The Board has also ordered conditional release for a prisoner serving discretionary life sentence and suspended the release on licence order for another prisoner, which was reinstated after the conduct of a hearing. Besides, the Board has ordered post-release supervision for 10 prisoners whose indeterminate sentences have been converted to determinate ones. A breakdown of the number of reviews carried out, and the number of recommendations and orders made by the Board from June 1997 to June 2000 are shown at the chart at Appendix II.

21. The number of reviews conducted by the Board since June 1997 is as follows: -

1997 (since June)	:	300 reviews
1998	:	567 reviews

1999	:	571 reviews
2000 (up to June)	:	<u>330 reviews</u>
Total	:	<u><u>1,768 reviews</u></u>

The average number of reviews conducted each year is 589, or 147 per quarter. The cycle of review for most cases is two years. Therefore, the number of prisoners reviewed over each cycle is about 1,178.

H. VISITS TO CORRECTIONAL INSTITUTIONS

22. The Board conducts visits to correctional institutions at intervals in order to acquire a better understanding of prison environments and the life of prisoners. During the past three years, the Board has visited Stanley Prison, Shek Pik Prison, Tung Tau Correctional Institution and Sha Tsui Detention Centre. The Board has also visited the Museum and the Staff Training Institute of the Correctional Services Department to familiarize itself with the history and the staff training programme and facilities of the Department.

I. SECRETARIAT OF THE BOARD

23. The Secretariat of the Board is headed by Mr. H.N. Ng, Senior Executive Officer and is located at Rooms 906-7, 9th floor, Tower Two, Lippo Centre, 89 Queensway, Hong Kong. Its supporting staff are held on the establishment of the Security Bureau, Government Secretariat.

J. ASSISTANCE FROM GOVERNMENT DEPARTMENTS

24. The Board relies on a number of Government Departments in providing administrative support, reports and other documents to perform its functions effectively. Without their active and enthusiastic participation, the Board could not have fulfilled its duties. The Board would like to thank, in particular, the following departments for their help and co-operation throughout these years:-

Security Bureau

Correctional Services Department

Social Welfare Department

Hong Kong Police Force

Judiciary

Department of Justice

Independent Commission Against Corruption

Customs and Excise Department

Immigration Department

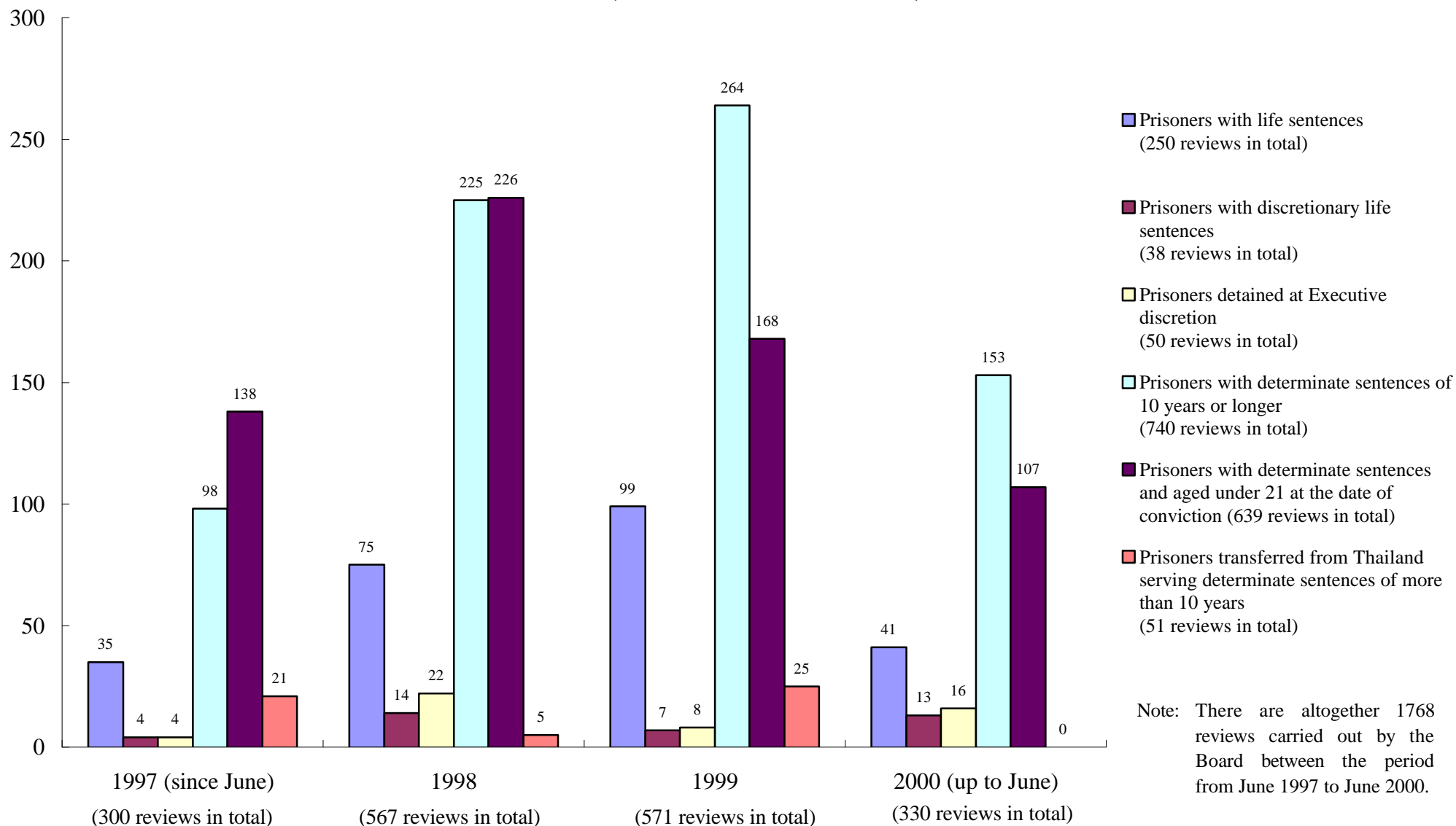
Note : Wherever reference is made to male prisoners, the reference applies equally to female prisoners.

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Number of Reviews carried out by the Long-term Prison Sentences Review Board

(June 1997 - June 2000)



Number of Reviews on Indeterminate Sentences carried out and Number of Recommendations for Determinate Sentences/ Conditional Release/ Post-release Supervision made by the Long-term Prison Sentences Review Board

