
A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

1
2 SECTION 1. The legislature finds that the current
3 procedure for judicial review of orders fixing minimum terms of
4 imprisonment issued by the Hawaii paroling authority is unduly
5 burdensome on inmates and creates a blind spot in indigent
6 representation. Inmates seeking judicial review are required to
7 initiate a new cause of action by filing a petition in the
8 circuit court that sentenced them to prison, create their own
9 record by attaching relevant documents, request transcription of
10 the proceedings before the Hawaii paroling authority, and raise
11 legal issues. Because it is a new cause of action and a civil
12 matter, indigent petitioners are not entitled to representation
13 by the office of the public defender even though they had the
14 right to counsel at the minimum term hearing. The circuit court
15 then determines if the petition has merit before setting a
16 hearing and appointing counsel for indigent petitioners.



1 The legislature further finds that this procedure screens
2 out meritorious issues and is daunting for indigent inmates who
3 must file their petition without the assistance of an attorney.
4 Judicial review of the Hawaii paroling authority's order fixing
5 the minimum term of imprisonment through a motion filed in the
6 original criminal case allows public defenders to continue their
7 representation of clients on appeal and raise errors that may
8 have arisen at minimum term hearings. It will also reduce the
9 number of petitions. The legislature also finds that judicial
10 review will provide greater uniformity in due process and
11 statutory compliance by the Hawaii paroling authority.

12 The purpose of this part is to allow for judicial review of
13 orders fixing minimum terms of imprisonment.

14 SECTION 2. Section 641-11, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§641-11 From circuit courts.** Any party aggrieved by the
17 judgment of a circuit court in a criminal matter or an order
18 pursuant to section 706-669(9) may appeal to the intermediate
19 appellate court, subject to chapter 602, in the manner and
20 within the time provided by the rules of court. The sentence of
21 the court in a criminal case shall be the judgment. All appeals



1 shall be filed with the clerk of the supreme court and shall be
2 subject to one filing fee."

3 SECTION 3. Section 706-669, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§706-669 Procedure for determining minimum term of
6 imprisonment. (1) When a person has been sentenced to an
7 indeterminate or an extended term of imprisonment, the Hawaii
8 paroling authority shall, as soon as practicable but no later
9 than six months after commitment to the custody of the director
10 of the department of public safety hold a hearing, and on the
11 basis of the hearing make an order fixing the minimum term of
12 imprisonment to be served before the prisoner shall become
13 eligible for parole.

14 (2) Before holding the hearing, the authority shall obtain
15 a complete report regarding the prisoner's life before entering
16 the institution and a full report of the prisoner's progress in
17 the institution. The report shall be a complete personality
18 evaluation for the purpose of determining the prisoner's degree
19 of propensity toward criminal activity.

20 (3) The prisoner shall be given reasonable notice of the
21 hearing under subsection (1) and shall be permitted to be heard



1 by the authority on the issue of the minimum term to be served
2 before the prisoner becomes eligible for parole. In addition,
3 the prisoner shall:

4 (a) Be permitted to consult with any persons the prisoner
5 reasonably desires, including the prisoner's own legal
6 counsel, in preparing for the hearing;

7 (b) Be permitted to be represented and assisted by counsel
8 at the hearing;

9 (c) Have counsel appointed to represent and assist the
10 prisoner if the prisoner so requests and cannot afford
11 to retain counsel; and

12 (d) Be informed of the prisoner's rights under
13 [†]paragraphs[†] (a); (b), and (c).

14 (4) The authority in its discretion may, in any particular
15 case and at any time, impose a special condition that the
16 prisoner will not be considered for parole unless and until the
17 prisoner has a record of continuous exemplary behavior.

18 (5) After sixty days notice to the prosecuting attorney,
19 the authority in its discretion may reduce the minimum term
20 fixed by its order pursuant to subsection (1).



1 (6) A verbatim stenographic or mechanical record of the
2 hearing shall be made and preserved in transcribed or
3 untranscribed form.

4 (7) The State shall have the right to be represented at
5 the hearing by the prosecuting attorney who may present written
6 testimony and make oral comments and the authority shall
7 consider such testimony and comments in reaching its decision.
8 The authority shall notify the prosecuting attorney of the
9 hearing at the time the prisoner is given notice of the hearing.
10 The hearing shall be opened to victims or their designees or
11 surviving immediate family members who may present a written
12 statement or make oral comments.

13 (8) The authority shall establish guidelines for the
14 uniform determination of minimum sentences which shall take into
15 account both the nature and degree of the offense of the
16 prisoner and the prisoner's criminal history and character. The
17 guidelines shall be public records and shall be made available
18 to the prisoner and to the prosecuting attorney and other
19 interested government agencies.

20 (9) Upon a motion filed by the defendant within ninety
21 days of issuance and service of the order fixing the minimum



1 term of imprisonment, the sentencing court may conduct judicial
2 review of the minimum term proceedings. The court, after
3 reviewing the record and proceedings, shall modify the order or
4 remand the case to the Hawaii paroling authority with
5 instructions for further proceedings if the order is:

- 6 (a) In violation of constitutional or statutory
- 7 provisions;
- 8 (b) In excess of the statutory authority or jurisdiction
- 9 of the Hawaii paroling authority;
- 10 (c) Made upon unlawful procedure;
- 11 (d) Affected by other error of law;
- 12 (e) Clearly erroneous in view of substantive evidence on
- 13 the whole record; or
- 14 (f) Arbitrary, or capricious, or characterized by abuse of
- 15 discretion or clearly unwarranted exercise of
- 16 discretion."

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 PART II



1 SECTION 5. Chapter 661B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§661B- Offset. In any civil action brought by the
5 petitioner other than an action under this chapter seeking
6 compensation of any kind or nature whatsoever as a result of,
7 related to, or arising from a conviction and imprisonment for
8 crimes for which the person was actually innocent, any recovery
9 under this chapter shall offset, dollar for dollar, the total
10 award made in the civil action against whom claims are
11 asserted."

12 SECTION 6. Section 661B-7, Hawaii Revised Statutes, is
13 repealed.

14 [~~§661B-7 Exclusive remedy. (a) Notwithstanding any~~
15 ~~other law, including the common law, to the contrary, this~~
16 ~~chapter sets forth the exclusive remedy for any person seeking~~
17 ~~compensation of any kind or nature whatsoever, as a result of,~~
18 ~~related to, or arising from a conviction and imprisonment for~~
19 ~~crimes for which the person was actually innocent. This section~~
20 ~~shall be strictly construed in favor of any person against whom~~
21 ~~a claim is asserted, and against the person asserting the claim.~~



1 ~~(b) Notwithstanding any law to the contrary, should the~~
2 ~~petitioner die before a final judgment in the circuit court is~~
3 ~~entered, the petitioner's claim shall abate in its entirety."]~~

4 PART III

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Judicial Review; Minimum Terms; Imprisonment; Wrongful Conviction and Imprisonment

Description:

Allows for judicial review of orders fixing minimum terms of imprisonment. Specifies that in any civil action brought by the petitioner seeking compensation of any kind or nature whatsoever as a result of, related to, or arising from a conviction and imprisonment for crimes for which the person was actually innocent, any recovery will offset, dollar for dollar, the total award made in the civil action against whom claims are asserted. Repeals section 661B-7, Hawaii Revised Statutes. (Proposed SD1)

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