

STAND. COM. REP. NO. 473

Honolulu, Hawaii

**FEB 17 2023**

RE: S.B. No. 977  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-Second State Legislature  
Regular Session of 2023  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 977 entitled:

"A BILL FOR AN ACT RELATING TO THE JUDICIARY,"

begs leave to report as follows:

The purpose and intent of this measure is to allow for judicial review of orders fixing minimum terms of imprisonment.

Prior to decision-making on this measure, your Committee made available for public review a proposed S.D. 1 of this measure. The proposed S.D. 1 retained the contents of the measure and inserted provisions that:

- (1) Specify 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; and
- (2) Repeal section 661B-7, Hawaii Revised Statutes, relating to exclusive remedies.

Your Committee received testimony in support of this measure from Office of the Public Defender, Hawai'i Innocence Project,



Hawai'i Association of Criminal Defense Lawyers, and three individuals. Your Committee received testimony in opposition to this measure from the Judiciary and Hawaii Paroling Authority.

Your Committee finds that the current procedure for judicial review of orders fixing minimum terms of imprisonment issued by the Hawaii Paroling Authority is unduly burdensome on inmates and creates a blind spot in indigent representation. Inmates seeking judicial review are required to initiate a new cause of action by filing a petition in the circuit court that sentenced them to prison, create their own record by attaching relevant documents, request transcription of the proceedings before the Hawaii Paroling Authority, and raise legal issues. The circuit court then determines if the petition has merit before setting a hearing and appointing counsel for indigent petitioners. Your Committee further finds that this procedure screens out meritorious issues and is daunting for indigent inmates who must file their petition without the assistance of an attorney. Judicial review of the Hawaii Paroling Authority's order fixing the minimum term of imprisonment through a motion filed in the original criminal case allows public defenders to continue their representation of clients on appeal and identifies errors that may have arisen at minimum term hearings. Judicial review will provide greater uniformity in due process and statutory compliance by the Hawaii Paroling Authority.

Your Committee has amended this measure by adopting the proposed S.D. 1 and making a further amendment to insert an effective date of March 22, 2075, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 977, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 977, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

*Karl Rhoads*

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KARL RHOADS, Chair



The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary**  
**JDC**

Bill / Resolution No.:* <i>SB 977 PROP. SDT</i>	Committee Referral: <i>JDC, WAM</i>	Date: <i>2/14/23</i>
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The Committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			
GABBARD, Mike (VC)	✓			
ELEFANTE, Brandon J.C.	✓			
SAN BUENAVENTURA, Joy A.	✓			
AWA, Brenton	✓			
<b>TOTAL</b>	<i>5</i>	<i>—</i>	<i>—</i>	<i>—</i>

Recommendation:  Adopted                       Not Adopted

Chair's or Designee's Signature:  


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**\*Only one measure per Record of Votes**