
A BILL FOR AN ACT

RELATING TO APPEALS.

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

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



1 issues and is daunting for indigent inmates, who must file their
 2 petition without the assistance of an attorney. Allowing
 3 judicial review of the Hawaii paroling authority's order through
 4 a motion filed in the original criminal case would allow public
 5 defenders to continue their representation of clients on appeal
 6 and to raise errors that may have occurred at minimum term
 7 hearings. It would also reduce the number of petitions in the
 8 circuit court, provide greater uniformity in due process, and
 9 ensure statutory compliance by the Hawaii paroling authority.

10 Accordingly, the purpose of this Act is to allow parties
 11 aggrieved by an order of the Hawaii paroling authority to appeal
 12 to the intermediate appellate court.

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

15 "§641-11 From circuit courts[-] or the Hawaii paroling
 16 authority. Any party aggrieved by the judgment of a circuit
 17 court or an order of the Hawaii paroling authority in a criminal
 18 matter may appeal to the intermediate appellate court, subject
 19 to chapter 602, in the manner and within the time provided by
 20 the rules of court[-] or by statute. The sentence of the court
 21 or order of the Hawaii paroling authority in a criminal case



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

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

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

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



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1 (3) The prisoner shall be given reasonable notice of the
2 hearing under subsection (1) and shall be permitted to be heard
3 by the authority on the issue of the minimum term to be served
4 before the prisoner becomes eligible for parole. In addition,
5 the prisoner shall:

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

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

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

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

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



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

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

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

16 (8) The authority shall establish guidelines for the
17 uniform determination of minimum sentences which shall take into
18 account both the nature and degree of the offense of the
19 prisoner and the prisoner's criminal history and character. The
20 guidelines shall be public records and shall be made available



1 to the prisoner and to the prosecuting attorney and other
2 interested government agencies.

3 (9) Upon a motion filed by the defendant within ninety
4 days of issuance and service of the order fixing the minimum
5 term of imprisonment, the sentencing court may conduct judicial
6 review of the minimum term proceedings. The court, after
7 reviewing the record and proceedings, shall modify the order or
8 remand the case to the paroling authority with instructions for
9 further proceedings if the order is:

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



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1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Dan Rameo

JAN 20 2023



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Report Title:

Parole; Appeals; Office of the Public Defender

Description:

Allows parties aggrieved by an order of the Hawaii Paroling Authority to appeal to the intermediate appellate court within 90 days of issuance and service of the order fixing the minimum term of imprisonment. Establishes the standard of judicial review for an order of the Hawaii Paroling Authority.

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