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# A BILL FOR AN ACT

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RELATING TO CRIMINAL PROCEEDINGS.

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

1       SECTION 1. The legislature finds that in light of ongoing  
2 issues, and a recent Hawaii supreme court holding, the current  
3 process of appealing criminal court sentences needs review and  
4 revision by the legislature.

5       In a criminal case in a Hawaii circuit court, after a  
6 defendant has been sentenced to incarceration, the Hawaii  
7 paroling authority (HPA) determines the minimum term of  
8 incarceration. This minimum term defines the length of time a  
9 person must spend in incarceration before they become eligible  
10 for parole. HPA is guided by rules and statutes, but getting a  
11 court to review HPA's decision has proven difficult for inmates.

12       Currently, the inmate must petition the court for judicial  
13 review pursuant to Hawaii rules of penal procedure (HRPP) rule  
14 40; however HRPP rule 40 was not created for this purpose. The  
15 petition is reserved for serious constitutional issues that have  
16 arisen in the criminal case: an allegation of ineffective  
17 assistance of counsel in violation of the sixth amendment of the



1 United States Constitution, the discovery of evidence withheld  
2 by the prosecution in violation of the due process right to a  
3 fair trial, or other issues that implicate the state  
4 constitution or human rights. Inmates often challenge the  
5 decisions of HPA and file HRPP rule 40 petitions which are  
6 denied.

7 Under HRPP rule 40, without the assistance of counsel,  
8 individuals who have been convicted, sentenced, and incarcerated  
9 and are seeking judicial review must initiate a new cause of  
10 action by filing a petition in the circuit court that sentenced  
11 them, create their own record by attaching relevant documents  
12 and requesting transcription of the proceedings before the HPA,  
13 and raise complex legal issues. As HRPP rule 40 is considered a  
14 civil matter, indigent petitioners are not entitled to  
15 representation by the office of the public defender. Upon  
16 proper filing under HRPP rule 40, the circuit court then  
17 determines if the petition has merit before setting a hearing  
18 and appointing counsel for indigent petitioners. This procedure  
19 screens out meritorious issues and is daunting for indigent  
20 inmates who must file their petition without the assistance of  
21 an attorney.



1 In 2024, the Hawaii supreme court noted how a HRPP rule 40  
2 petition is burdensome and time consuming:

3 It takes significant time after affirmance of a  
4 conviction on final appeal for a HRPP Rule 40 petition  
5 to be filed and resolved. In addition, allowing a  
6 Rule 40 petition instead of addressing an issue on  
7 direct appeal can also be detrimental to a defendant  
8 because defendants are not automatically entitled to  
9 counsel when they bring Rule 40 petitions. Only if a  
10 court finds a "colorable claim" will counsel be  
11 appointed. In contrast, our case law recognizes a  
12 criminal defendant's right to counsel on appeal and on  
13 certiorari. See *State v. Uchima*, 147 Haw. 64, 464  
14 P.3d 852 (2020).

15 *State v. Yuen*, 154 Haw. 434, 447 n. 17, 555 P.3d 121, 134 n. 17  
16 (2024).

17 The legislature finds that the current procedure for  
18 judicial review of orders fixing minimum terms of imprisonment  
19 issued by HPA is unjust and unduly burdensome. Allowing the  
20 office of the public defender to continue its representation of  
21 its clients on appeal in order to raise legal errors that may



1 have arisen at minimum term hearings will reduce the number of  
2 HRPP rule 40 petitions, lead to more just outcomes for convicted  
3 individuals, and increase efficiency in the criminal justice  
4 system. The legislature further finds that judicial review will  
5 provide greater uniformity in due process and statutory  
6 compliance by HPA.

7 The purpose of this Act is to:

- 8 (1) Allow a party aggrieved by the judgment of a circuit  
9 court on a minimum term order to appeal to the  
10 intermediate appellate court;
- 11 (2) Require prisoners to continue to be represented by  
12 counsel in any petition challenging minimum term  
13 proceedings;
- 14 (3) Require the supreme court to establish rules regarding  
15 the form and content of the petition challenging  
16 minimum term proceedings, the parties, and hearings on  
17 the motion, and the referral to the public defender  
18 where necessary; and
- 19 (4) Establish grounds for challenging a minimum term  
20 order.



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

3 **"§641-11 From circuit courts.** Any party aggrieved by the  
4 judgment of a circuit court in a criminal matter or an order  
5 pursuant to section 706-669(9) may appeal to the intermediate  
6 appellate court, subject to chapter 602, in the manner and  
7 within the time provided by the rules of court. The sentence of  
8 the court in a criminal case shall be the judgment. All appeals  
9 shall be filed with the clerk of the supreme court and shall be  
10 subject to one filing fee."

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

13 **"§706-669 Procedure for determining minimum term of**  
14 **imprisonment.** (1) When a person has been sentenced to an  
15 indeterminate or an extended term of imprisonment, the Hawaii  
16 paroling authority shall, as soon as practicable but no later  
17 than six months after commitment to the custody of the director  
18 of the department of corrections and rehabilitation hold a  
19 hearing, and on the basis of the hearing make an order fixing  
20 the minimum term of imprisonment to be served before the  
21 prisoner shall become eligible for parole.



1           (2) Before holding the hearing, the authority shall obtain  
2 a complete report regarding the prisoner's life before entering  
3 the institution and a full report of the prisoner's progress in  
4 the institution. The report shall be a complete personality  
5 evaluation for the purpose of determining the prisoner's degree  
6 of propensity toward criminal activity.

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

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

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

17           (c) Have counsel appointed to represent and assist the  
18 prisoner if the prisoner so requests and cannot afford  
19 to retain counsel; and

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



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

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

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

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

20           (8) The authority shall establish guidelines for the  
21 uniform determination of minimum sentences which shall take into



1 account both the nature and degree of the offense of the  
2 prisoner and the prisoner's criminal history and character. The  
3 guidelines shall be public records and shall be made available  
4 to the prisoner and to the prosecuting attorney and other  
5 interested government agencies.

6 (9) In instances where the prisoner has been represented  
7 by counsel in the minimum term proceedings, the prisoner shall  
8 continue to have the right to representation by counsel in any  
9 petition challenging those proceedings that is filed under the  
10 rules of penal procedure within ninety days of the issuance and  
11 service of the order fixing the minimum term of imprisonment.  
12 The supreme court shall establish rules regarding the form and  
13 content of the petition, the parties, and hearings on the  
14 motion, and the referral to the public defender where necessary.  
15 The grounds set forth in the petition challenging the  
16 proceedings may allege that the minimum term order is:

17 (a) In violation of constitutional or statutory  
18 provisions;

19 (b) In excess of the statutory authority or jurisdiction  
20 of the Hawaii paroling authority;

21 (c) Made upon unlawful procedure;





1        (d) Affected by other error of law;

2        (e) Clearly erroneous in view of substantive evidence on  
3        the whole record; or

4        (f) Arbitrary, or capricious, or characterized by abuse of  
5        discretion or clearly unwarranted exercise of  
6        discretion."

7        SECTION 4. This Act does not affect rights and duties that  
8        matured, penalties that were incurred, and proceedings that were  
9        begun before its effective date.

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

12       SECTION 6. This Act shall take effect on July 1, 3000.



**Report Title:**

Minimum Terms; Judicial Review

**Description:**

Allows a party aggrieved by the judgment of a circuit court on a minimum term order to appeal to the Intermediate Appellate Court. Requires prisoners to continue to be represented by counsel in any petition challenging minimum term proceedings. Requires the Supreme Court to establish rules. Establishes grounds for challenging a minimum term order. Effective 7/1/3000. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

