



The Judiciary, State of Hawai'i
Kā 'Oihana Ho'okolokolo, Moku'āina 'o Hawai'i

Testimony to the Thirty-Third Legislature, 2026 Regular Session

House Committee on Finance
Representative Chris Todd, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, February 26, 2026, 2:00 p.m.
State Capitol, Conference Room 308

By

Jeanette Castagnetti
Chief Judge, First Circuit

Peter Cahill
Chief Judge, Second Circuit

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Chief Judge, Third Circuit

Bill No. and Title: House Bill No. 1247, H.D. 1, Relating to Criminal Proceedings.

Purpose: 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)

Judiciary's Position:

The Judiciary takes no position on the intent of the proposed legislation. The Judiciary does acknowledge that the House Committee on Judiciary & Hawaiian Affairs adopted the language suggested by the Judiciary to effectuate the purpose of the bill to provide a process, outside of Rule 40 of the Hawai'i Rules of Penal Procedure ("HRPP"), for judicial review of minimum term orders issued by the Hawai'i Paroling Authority ("HPA"). The Judiciary respectfully requests that this amendment to section 706-669 of the Hawai'i Revised Statutes not be effective until June 30, 2027, to permit the Judiciary time to promulgate rules to effectuate the provisions of this measure.

Thank you for the opportunity to testify on House Bill No. 1247, H.D. 1.

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February 25, 2026

HB 1247, HD1: RELATING TO CRIMINAL PROCEEDINGS

Chair Todd, Vice Chair Takenouchi, and Members of the Committee On Finance

The Office of the Public Defender (OPD) supports HB1839, HD1, which, gives prisoners the right to counsel to challenge their minimum terms set by the Hawai'i Paroling Authority (HPA).

As drafted, the bill penalizes prisoners who appear *pro se* before the HPA for their minimum hearings. Prisoners often forgo counsel in order to expedite the process, and they should have the same right to petition and appellate counsel as prisoners who were represented by counsel. The OPD respectfully suggests the following amendments to the bill:

~~“(9) In instances where the prisoner has been represented by counsel in the minimum term proceedings, the p~~Prisoners shall continue to have the right to representation by counsel in any petition challenging ~~those~~ the minimum term proceedings”

The OPD has practical concerns about the bill that parallel the ones raised by the Judiciary's February 7, 2025, testimony. The OPD expects a large number of prisoners will ask their counsel to file petitions challenging their minimum terms because there is no penalty for doing so. Unlike prisoners, attorneys have ethical obligations to the courts. Within the bill's 90-day timeframe, counsels will have to obtain transcripts of the HPA hearings, perform reasonable investigations, and draft and file petitions with supporting evidence in order to submit good faith declarations to the circuit courts. Every petition denied comes with the right to appeal, again,

with no penalty for the prisoner. In FY23-24 the HPA fixed minimum terms for 916 prisoners, the same number of prisoners with minimum terms fixed in FY22-23.¹

This bill will require additional resources for the OPD at the circuit court and appellate court levels. The OPD respectfully requests that appropriations be included for three (3) additional deputy public defender III positions and a paralegal and expenses necessary to fulfill the purposes of this bill. The OPD also requests that any appropriations that may be added to this bill not supplant the OPD's existing funding and current budget requests.

In addition, the bill does not remedy some of the concerns stated in the bill's preamble. Challenges to HPA fixed minimum terms will continue to proceed via Hawai'i Rules of Penal Procedure Rule 40 (Rule 40) petitions filed in the circuit courts. The circuit courts will continue to be the gatekeepers to meritorious claims. Rule 40 does not require the courts to conduct hearings, and there is no timeframe for rulings on Rule 40 petitions. Furthermore, it is unclear whether filing Rule 40 petitions contesting HPA minimum terms will have the knock-on effect of waiving other potential Rule 40 claims.²

Thank you for the opportunity to comment on this measure.

¹ https://dcr.hawaii.gov/wp-content/uploads/2025/06/2024-Annual-Report_Corey-Reincke.pdf.

² HRPP Rule 40(a)(3).

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 1247, HD1

A BILL FOR AN ACT
RELATING TO CRIMINAL PROCEEDINGS

COMMITTEE ON FINANCE
Representative Chris Todd, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, February 26, 2026 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 308
415 South Beretania Street

Honorable Chair Todd, Vice-Chair Takenouchi, and Members of the Committee on Finance: The County of Hawai'i, Office of the Prosecuting Attorney respectfully submits the following testimony **in opposition** to House Bill 1247, HD1.

While we respect the intent of this measure to ensure that decisions of the Hawai'i Paroling Authority ("HPA") setting minimum terms of imprisonment are fair, equitable, and consistent with law, we believe that current procedure already provides an adequate process for judicial review of a minimum term decision under Rule 40 of the Hawai'i Rules of Penal Procedure ("HRPP").

Minimum term hearings before the HPA are held pursuant to HRS § 706-669 when an offender has been convicted of a serious felony crime, where the offender has been denied probation by a judge or the offense is not eligible for probation, and where the offender has been sentenced instead to an indeterminate or extended term of imprisonment. The HPA must hold a hearing within six months of the mittimus to fix the minimum term that a felon must serve before becoming eligible for parole. The prosecuting attorney, the crime victims or surviving immediate family members, and defense counsel representing the imprisoned felon, all have a right to attend and to be heard. Hawai'i law gives the HPA broad discretion to make this decision and to set its own guidelines for doing so.

Since February 2025, when HB 1247, HD1, was reported from the Committee on Judiciary and Hawaiian Affairs, the Hawai'i Supreme Court issued a decision in *Eason v. State* which emphatically reaffirmed that Rule 40, HRPP, established the sole, unitary procedure for all judicial review of claims for post-conviction relief, including those relating to custody:

Rule 40 is within this court's rulemaking authority under article IV, section 7 and HRS § 602-11, and establishes a unitary post-

conviction procedure for challenging a judgment of conviction, or custody based on a judgment of conviction, under common law and statutory remedies including habeas corpus or coram nobis.¹

Rule 40 already allows prisoners to obtain review of minimum term decisions by the HPA,² and allows the courts to evaluate claims that “the HPA has failed to exercise any discretion at all, acted arbitrarily and capriciously so as to give rise to a due process violation, or otherwise violated the prisoner’s constitutional rights.”³

It is unclear whether HB 1247, HD1, is intended to create a new right to judicial review separate from the Rule 40 process. Considering the Hawai‘i Supreme Court’s ruling in *Eason*, however, which confirmed that Rule 40 supersedes all statutory procedures for post-conviction remedies pursuant to its rulemaking authority under the Hawai‘i Constitution, it seems highly likely that the new § 706-669(9) would be administered within the existing unified procedure of Rule 40. If that is the case, there is no need for Section 2 of the bill, creating a new right to appeal, since Rule 40 provides its own.

We are concerned that too little consideration has been given to the timelines involved or the court congestion that this legislation may incentivize. If petitions under the new § 706-669(9) are administered within existing Rule 40 procedure, then petitioners must also submit all their other possible grounds for relief within the same petition. Indeed, any Rule 40 claims not filed alongside their petition for review of the minimum term decision may be subject to waiver under Rule 40(a)(3). At the same time, the new § 706-669(9) would grant each prisoner a brand new right to counsel for their Rule 40 claims—if and only if such claims are filed within ninety days of a minimum term order. Thus, the expected result will be for prisoners and their defense counsel to rush to file petitions containing all conceivable Rule 40 claims within approximately 270 days of each conviction. These claims would be reviewed by the Circuit Courts at the same time as the appellate courts may be reviewing the underlying conviction, creating inefficiency.

We are also concerned about the provision of the new § 706-669(9) that directs the Supreme Court to make rules concerning the parties to a petition. The enlargement or restriction of the substantive rights of a party is not properly within the scope of procedural rulemaking. Rather, it is the Legislature that may determine who is a proper party to a cause of action. HPA minimum term hearings provide the prosecuting attorney and crime victims or their surviving immediate relatives with a right to notice and to be heard. The prosecuting attorney and the crime victims or relatives are interested parties that should have the right to participate in judicial review of a minimum term order. Moreover, the Legislature should grant the prosecuting attorney a reciprocal right to seek judicial review where appropriate. Postconviction procedures should not function as a one-way ratchet towards release for convicted felons.

¹ *Eason v. State*, 157 Haw. 252, 264, 576 P.3d 765, 777 (2025).

² See, e.g., *De La Garza v. State*, 129 Hawai‘i 429, 438, 302 P.3d 697, 706 (2013); *Coulter v. State*, 116 Hawai‘i 181, 184, 172 P.3d 493, 496 (2007).

³ *Williamson v. Hawai‘i Paroling Authority*, 97 Hawai‘i 183, 195, 35 P.3d 210, 222 (2001).

For the foregoing reasons, the County of Hawai‘i, Office of the Prosecuting Attorney respectfully **opposes** the passage of House Bill 1247, HD1. Thank you for the opportunity to testify on this matter.