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# A BILL FOR AN ACT

RELATING TO CORRECTIONAL TREATMENT FACILITIES.

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

1           SECTION 1. The legislature finds that correctional  
2 treatment facilities present an opportunity to attempt a bold,  
3 new approach to corrections in the State. This new approach  
4 will attempt to exploit the strengths of correctional treatment  
5 facilities and to minimize issues that have emerged as  
6 widespread concerns throughout the rapidly growing corrections  
7 industry.

8           This new approach will feature a shift in focus such that  
9 corrections will not be seen as the end in and of itself, but  
10 rather as the means to the new focus; a new focus on positive  
11 outcomes for public safety and for those incarcerated.

12           In other jurisdictions, privately operated correctional  
13 facilities provide a service often analogized to a hotel  
14 operator. This analogy is not without flaws, however it is  
15 accurate insofar as the private operator is paid by the state a  
16 certain rate per inmate per day. Under this type of contractual  
17 arrangement, the state and the private operator have conflicting  
18 desires. The state is interested in having as few people as



1 possible incarcerated beyond their initial eligibility for  
2 parole. Not only is this fiscally prudent for the State, as  
3 incarceration is costly, but moreover it is in the larger  
4 interest of the state to ensure the timely return of inmates to  
5 free society where they may assume a productive role. The  
6 private operator, in contrast to the State's interest, enjoys  
7 profits directly proportional to the length of stay for each  
8 inmate.

9       The legislature finds that a contract should be designed  
10 between the state and those that operate private correctional  
11 facilities to better align these motivations. For too long,  
12 private correctional facilities have been stagnant in the  
13 "hotel" format. A new, outcome-oriented privatized prison has  
14 the potential to not only improve public safety, but also to  
15 reign in the exploding need for prison space.

16       Under this regime, the financial incentive, i.e., the  
17 profit motive, facing the private operator will be the effort to  
18 make inmates ready to earn parole as soon as possible. The  
19 profit margin returned to the private operator for each inmate  
20 paroled under this plan is much higher, thus it would no longer  
21 be in the interest of the private operator to house inmates for  
22 as long as possible. Once the inmate earns parole, the private



1 operator will have another profit motive to help the parolee  
2 fulfill the terms of the parole, and the private operator will  
3 have a financial penalty to face if the inmate's parole is  
4 revoked. In short, the State will be able to better direct its  
5 moneys to support the private operator's efforts to make inmates  
6 ready to re-enter society in a productive capacity and, once  
7 there, to help them remain productive. The legislature finds  
8 that an outcome-oriented private correctional facility is in the  
9 best interests of public safety, fiscal responsibility, and the  
10 inmates. The legislature believes this type of contractual  
11 agreement is a much better idea than the more typical private  
12 prisons that have a reputation for warehousing people and for  
13 rewarding private correctional facility operators for what are  
14 socially less-desirable outcomes.

15 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
16 amended by adding ten new sections to be appropriately  
17 designated and to read as follows:

18 "§353- Contracts for the operation of correctional  
19 facilities by private entities. The governor may enter into and  
20 execute contracts in the name of the State with any private  
21 entity to operate minimum security correctional facilities at



1 sites selected by the governor within the state for the benefit  
2 of the State; provided that:

3 (1) Contracts shall ensure around-the-clock contract  
4 compliance monitoring by a state employee;

5 (2) An individual, corporation, partnership, association,  
6 or other private organization or entity may not  
7 construct or operate a private correctional facility  
8 unless licensed by the department. A license shall  
9 not be transferable;

10 (3) A person convicted in another state may not be  
11 confined in a private correctional facility in this  
12 state;

13 (4) Contracts shall follow the requirements established in  
14 section 353- regarding outcome-oriented  
15 correctional facilities;

16 (5) The correctional facility shall be designed for and  
17 operated as an intensive treatment facility. The  
18 facility shall specialize in treating those inmates in  
19 need of substance abuse treatment in a therapeutic  
20 community. According to each inmate's needs, the  
21 facility shall also provide a wide array of culturally  
22 and gender appropriate programs, mental health



1           services, group counseling, anger management programs,  
 2           transitional programs, cognitive restructuring,  
 3           remedial education, and vocational training; and  
 4       (6) Contracts shall comply with the requirements  
 5           established in section 353-           regarding a citizens  
 6           oversight committee.

7           §353-           Department duties and responsibilities;  
 8 rulemaking authority. (a)           The department shall adopt rules  
 9 pursuant to chapter 91 that include the minimum applicable  
 10 standards for the siting, construction, operation, and physical  
 11 condition of a private correctional facility and for the  
 12 security, safety, health, treatment, and discipline of persons  
 13 confined in a private correctional facility.

14           (b)           The rules shall require that a private correctional  
 15 facility conform to applicable American Correctional Association  
 16 and National Commission on Correctional Health Care standards  
 17 for the facility and achieve accreditation from the American  
 18 Correctional Association and National Commission on Correctional  
 19 Health Care within three years from the date the facility begins  
 20 operation.

21           §353-           Requirements of request for proposals. (a)  
 22           Prior to contracting for services with a private

1 correctional facility, the department shall publish a request  
2 for proposals. The request for proposals shall include a  
3 description of the long-range correctional needs, objectives,  
4 and goals of the department and of the state.

5 (b) The request for proposals shall include and identify  
6 the services requested and required and other information,  
7 including but not limited to:

8 (1) The physical plant, facility, and perimeter including:

9 (A) The facility capacity and inmate  
10 population, including classification  
11 levels accepted;

12 (B) Inmate housing; and

13 (C) Security, safety, and emergency  
14 procedures;

15 (2) Who is responsible for transportation of inmates:

16 (A) Among facilities;

17 (B) Upon an inmate's release, including  
18 discharge or parole;

19 (C) For court and administrative  
20 proceedings such as parole hearings and  
21 inmate participation as a witness;

22 (D) For medical transportation; and



# H.B. NO. 2010

- 1                            (E) For security;
- 2       (3) Administration of the facility, including but not
- 3           limited to:
- 4                            (A) The organizational structure and
- 5   staffing; and
- 6                            (B) A policy and procedures manual
- 7   addressing:
- 8   (i) Inmate discipline;
- 9   (ii) Incident reporting;
- 10    (iii) Grievance procedures;
- 11    (iv) Searches;
- 12    (v) Drug testing;
- 13    (vi) Monitoring of facility standards;
- 14   and
- 15    (vii) The retention and maintenance of
- 16   inmate and facility records by the
- 17   private correctional facility;
- 18       (4) Staffing issues regarding:
- 19                            (A) Management;
- 20                            (B) Security;
- 21                            (C) Administrative personnel;
- 22                            (D) Qualifications and requirements;

- 1                           (E) Training; and
- 2                           (F) Staff-to-inmate ratios;
- 3       (5) Inmate needs such as food, clothing, sanitation,
- 4                           hygiene, and laundry;
- 5       (6) Programs and services to be required such as
- 6                           vocational and educational training, religious
- 7                           services or customs, counseling, recreation, and
- 8                           canteen;
- 9       (7) Medical, dental, optical, pharmaceutical,
- 10                          psychological, and other medical-related care;
- 11       (8) Insurance requirements;
- 12       (9) Indemnification;
- 13       (10) A performance bond that is sufficient to protect the
- 14                          state from damages upon default or nonperformance and
- 15                          that may not exceed the biennial amount of the
- 16                          compensation to be paid the contractor;
- 17       (11) A requirement that proposers:
- 18                          (A) Provide evidence or documentation demonstrating
- 19                          an ability to provide the services;
- 20                          (B) Comply with acceptable services; and
- 21                          (C) Comply with the rules, regulations, and contract
- 22                          requirements;





1        (12) A requirement that proposers provide documentation of  
2                    financial stability or security; and

3        (13) Monitoring of facility operations.

4        (c) The department shall release separate requests for  
5 proposals or contracts for specific services such as  
6 transportation of inmates, substance abuse treatment programs,  
7 vocational and educational programs, medical, dental, vision,  
8 and sick call services. Each contract shall include a detailed  
9 explanation of the services to be provided.

10       (d) The department shall maintain a list of qualified  
11 applicants and all proposal responses. The department shall  
12 retain all records related to the evaluation process and the  
13 awarding of the contract.

14       §353- License; inspection. (a) The department  
15 shall grant a license to a private correctional facility  
16 determined by the department to conform to this part and rules  
17 adopted by the department pursuant to chapter 91.

18       (b) The department may not grant a license unless the  
19 contractor conforms to all state and federal statutes,  
20 applicable American Correctional Association and National  
21 Commission on Correctional Health Care standards, rules, and  
22 other requirements as defined by rule. During the initial



1 three-year period of a contract, a private correctional facility  
2 shall not be required to be accredited by the American  
3 Correctional Association or the National Commission on  
4 Correctional Health Care to be granted a license by the  
5 department.

6       (c) The department may not grant a license to a private  
7 correctional facility until the owner or operator of the  
8 facility has provided the department with proof of indemnity  
9 insurance that appropriately indemnifies the State and that is  
10 acceptable to the department.

11       (d) The department may not grant a license to a private  
12 correctional facility unless the facility has promulgated and  
13 implemented a policy to provide access to the facility by  
14 representatives of the public media.

15       (e) The department may not grant a license to a private  
16 correctional facility unless the facility has entered into an  
17 agreement with local and state law enforcement authorities. The  
18 private correctional facility shall demonstrate an adequate  
19 response for the mutual aid, assistance, and notification in the  
20 event of an escape, riot or disturbance, natural, or human-  
21 caused event, or other act that may potentially affect public  
22 safety.



1        (f) The department may not grant a license to a private  
2 correctional facility unless the legislature has appropriated  
3 funds for the housing of state inmates in private correctional  
4 facilities.

5        (g) The department shall at least annually inspect each  
6 private correctional facility to determine compliance with  
7 licensure requirements and rules. Members of the public media  
8 shall be:

9            (1) Given notification of these inspections;

10          (2) Allowed to accompany the inspectors; and

11          (3) Allowed to report on the inspection.

12        §353- \_\_\_\_\_ Contracts with owners or operators of private  
13 correctional facilities. (a) Upon request of the legislature,  
14 the legislative auditor shall review the procedures by which a  
15 contract was awarded and shall review each contract prior to  
16 execution to determine if the contract includes the requirements  
17 provided in this chapter.

18            (b) A contract shall specify the type and level of  
19 services to be provided by the contractor. The contract shall  
20 provide that a private contractor shall not:

21            (1) Choose the correctional facility to which an inmate is  
22            initially or subsequently assigned. A contractor may



- 1           request the department to transfer an inmate to  
2           another correctional facility;
- 3           (2) Develop or adopt disciplinary rules that differ from  
4           the disciplinary rules, penalties, and policies of the  
5           department;
- 6           (3) Make a decision that affects the sentence imposed on  
7           an inmate or the time served by an inmate;
- 8           (4) Make recommendations to the Hawaii paroling authority  
9           with respect to the denial or granting of parole or  
10           release, except to submit reports to the Hawaii  
11           paroling authority and to respond to requests by the  
12           department or the Hawaii paroling authority;
- 13           (5) Develop or implement requirements that inmates engage  
14           in any type of work, except to the extent that the  
15           department accepts those requirements;
- 16           (6) Determine inmate eligibility for any form of release  
17           from a correctional facility; or
- 18           (7) Use an inmate classification system unless the  
19           department approves it.
- 20           (c) Contracts may not exceed a term of thirty years and  
21           shall contain provisions for renegotiations after five years.



1        (d) The contract shall specify that the private  
2 correctional facility shall grant access to the auditor or a  
3 person contracting with the auditor for compliance auditing.  
4 The contractor shall provide access to all areas of the facility  
5 and to all records maintained onsite or offsite that pertain to  
6 all aspects of the facility, including but not limited to  
7 operation, financial, and inmate records.

8        §353- Contractor costs responsibility. (a) The  
9 contractor shall be responsible for costs incurred by the State  
10 or any political subdivision of the State for legal costs  
11 relating to escapes, riots or disturbances, or other natural or  
12 other human-caused events that occur at the facility because of  
13 the contractor's negligence, errors, omissions, intentional  
14 acts, or failure to comply with the terms of the contract.

15        (b) The contractor shall be responsible for all reasonable  
16 costs and expenses incurred by the State or a political  
17 subdivision of the State for defense of causes of action brought  
18 by or on behalf of an inmate that accrue while an inmate is  
19 incarcerated at a private correctional facility.

20        (c) This chapter shall not be intended to create a private  
21 or public cause of action for any person, partnership,  
22 corporation, or other entity, including any inmate housed within



1 any private correctional facility or any inmate housed within  
2 the State of Hawaii.

3 §353- Restrictions on inmate movements. An inmate may  
4 not leave the secure premises of a private correctional facility  
5 except:

- 6 (1) To comply with a court order;  
7 (2) To receive medical care that is not available at the  
8 private correctional facility; or  
9 (3) As part of a work program,

10 without the express written approval of the department. Any  
11 movement of an inmate outside of the secure premises of the  
12 private correctional facility must be in compliance with  
13 approved policies and procedures established by the department.

14 §353- Failure to comply with law; action by department.

15 (a) A contractor shall remain in strict compliance with this  
16 part, established applicable American Correctional Association  
17 and National Commission on Correctional Health Care standards,  
18 and contract requirements.

19 (b) If the department determines at any time that a  
20 private correctional facility does not conform to this part,  
21 applicable American Correctional Association and National  
22 Commission on Correctional Health Care standards, rules, and



1 contract requirements, the department shall notify the chief  
2 executive officer and the owner or operator, or both the owner  
3 and the operator, of the private correctional facility. The  
4 notice shall state the deficiencies and order that they be  
5 remedied within a specified period of time not to exceed one  
6 year. If the deficiencies are not remedied within that time,  
7 the department may hold a contested case hearing under chapter  
8 91, and if the department finds that suspension or revocation is  
9 warranted by nonconformance with this part, applicable American  
10 Correctional Association and National Commission on Correctional  
11 Health Care standards, rules, and contract requirements, the  
12 department may suspend or revoke the facility's license.

13 (c) If a private correctional facility fails to comply  
14 with this part, applicable American Correctional Association and  
15 National Commission on Correctional Health Care standards,  
16 rules, or contract requirements within the specified time  
17 period, the state may assume control of the facility for the  
18 purpose of protecting the inmates, facility staff, or the  
19 public. If the state assumes control of the facility, the  
20 department shall suspend payment for any services, and the  
21 department assumes the costs of assuming control.



1        (d) The department may assume emergency control of a  
2 private correctional facility if substantial violations exist  
3 that affect the life, health, or safety of the inmates, facility  
4 employees, or the public, or that otherwise substantially impact  
5 the security of the private correctional facility.

6        (e) In the event that a contractor fails to comply with  
7 this chapter, applicable American Correctional Association and  
8 National Commission on Correctional Health Care standards,  
9 rules, or contract requirements, the state may retain the option  
10 of purchasing or leasing the facility.

11        (f) If either the state or the contractor fails to renew a  
12 contract, the state may retain the option of purchasing or  
13 leasing the facility.

14        **§353- Outcome-oriented private correctional facilities.**  
15 The private operator of a correctional facility shall be paid a  
16 per diem rate for each sentenced offender; provided that:

17        (1) The regular per diem rate charged is equal to the  
18 operator's portion of daily operating expenses, plus a  
19 mutually agreed profit margin;

20        (2) When that inmate meets inmate's requirements for  
21 parole and is paroled, the per diem rate paid to the  
22 private operator shall continue at that regular rate





1           until such time as the inmate is discharged from  
2           parole or the inmate's parole is revoked;

3           (3) If an inmate's parole is revoked and the inmate is  
4           directed to return to the private facility, then the  
5           private operator shall resume custody of that inmate  
6           and shall be paid a per diem rate equal to the  
7           inmate's portion of operating expenses, minus a  
8           mutually agreed daily penalty. This penalty rate will  
9           remain in force throughout any subsequent release to  
10           parole;

11           (4) If an inmate's parole is revoked and the inmate is  
12           directed to return to another state-operated or state-  
13           contracted facility not operated by the private  
14           operator, then the private operator shall pay that  
15           inmate's portion of daily operating expenses at the  
16           directed facility; and

17           (5) When an inmate earns discharge from parole or is  
18           pardoned, a bonus may be paid to the private operator  
19           if discharge is earned before the end of the inmate's  
20           maximum term. The amount of the bonus paid to the  
21           private operator shall be determined according to a  
22           mutually agreed formula that allows for proportionally

1           larger bonus payments according to how much time  
2           remains before the maximum term expires.

3           §353-       Citizens oversight committee. (a) For each

4 proposed new correctional facility within the state of Hawaii,  
5 regardless of whether public or private in nature, there shall  
6 be a committee known as the citizens oversight committee. This  
7 oversight committee shall be consulted during site selection and  
8 facility design. If the proposed facility is not built, the  
9 committee shall be dissolved. If the new correctional facility  
10 begins operation, the committee shall meet at least quarterly to  
11 be informed of (or report on) progress or problems at the  
12 facility. The committee shall be allowed full access to the  
13 facility for inspections as deemed necessary by the committee.

14           (b) The oversight committee shall consist of eight  
15 members. Two members shall be appointed by the governor, two  
16 members shall be appointed by the county council of the county  
17 hosting the facility, one member shall be appointed by the  
18 governor selected from a list of social service professionals  
19 nominated by the public, and the house speaker and the senate  
20 president shall each appoint one member selected from a list of  
21 concerned community residents nominated by the public. Each  
22 member shall serve two years. The co-chairs of the committee



1 shall be the community residents. The members shall serve  
2 without compensation but shall be reimbursed for expenses,  
3 including travel expenses that are necessary for the performance  
4 of their duties.

5 (c) The department or, if applicable, the contractor shall  
6 respond to the written comments and suggestions of the committee  
7 within thirty days. These communications shall be available for  
8 public inspection upon request to the department."

9 SECTION 3. Chapter 103, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§103- \_\_\_\_\_ Contract with private provider for correctional  
13 facility operation. Nothing in chapters 76 and 77, and section  
14 46-33, including the merit principles, the classification  
15 system, or historical past practices, shall be deemed to  
16 prevent, restrict, diminish, condition, limit, or otherwise  
17 qualify the authority of a department or agency of the State or  
18 a county to enter into a contract with a private provider in  
19 accordance with chapter 353 to operate a correctional facility  
20 including contracts:

21 (1) To disburse appropriations for grants, subsidies, or  
22 purchases of service as those terms are defined in



1 chapters 42D, 42F, and 103F, pursuant to chapters 42D,  
 2 42F, and 103F or any other law, charter, or ordinance  
 3 authorizing grants, subsidies, or purchases of  
 4 service, as those terms are defined in chapters 42D,  
 5 42F, and 103F;

6 (2) For goods and real property or for construction  
 7 entered into pursuant to this chapter or chapter 103D  
 8 or 107, or any other law, charter, or ordinance where  
 9 services are provided incidentally to the acquisition  
 10 of the goods or real property, or for construction;  
 11 and

12 (3) For services which the department or agency is  
 13 otherwise authorized by statute, charter, or ordinance  
 14 to obtain or provide without regard to the provisions  
 15 of chapter 76 or 77, or section 46-33."

16 SECTION 4. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18 INTRODUCED BY: Mark Moses

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JAN 20 2006



HB 2010

**Report Title:**

Correctional Treatment Facilities

**Description:**

Allows governor to contract for operation of a correctional treatment facility. Establishes criteria for acceptable contracts for operation of a correctional treatment facility.

