
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. Section 96-1, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

4 "Out-of-state facility" means any private, out-of-state,
5 or federal correctional facility or institution with which the
6 department of public safety has contracted to house persons
7 committed to the custody of the director of public safety.

8 "Serious bodily injury" means bodily injury that creates a
9 substantial risk of death or causes serious, permanent
10 disfigurement, or protracted loss or impairment of the function
11 of any bodily member or organ."

12 SECTION 2. Section 96-5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§96-5 Jurisdiction.** The ombudsman has jurisdiction to
15 investigate the administrative acts of agencies, and the
16 ombudsman may exercise the ombudsman's powers without regard to
17 the finality of any administrative act. The ombudsman has
18 jurisdiction to investigate the acts of any out-of-state



1 facility and may exercise the ombudsman's power without regard
2 to the finality of any act in question."

3 SECTION 3. Section 96-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§96-6 Investigation of complaints.** (a) The ombudsman
6 may investigate any complaint [~~which~~] that the ombudsman
7 determines to be an appropriate subject for investigation under
8 section 96-8.

9 (b) The ombudsman may investigate on the ombudsman's own
10 motion if the ombudsman reasonably believes that an appropriate
11 subject for investigation under section 96-8 exists.

12 (c) The ombudsman may investigate any complaint submitted
13 by a person held in the custody of the department of public
14 safety, including persons held at an out-of-state facility, or
15 by the person's family member."

16 SECTION 4. Section 96-7, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§96-7 Notice to complainant and agency.** If the ombudsman
19 decides not to investigate, [~~he~~] the ombudsman shall inform the
20 complainant of that decision and shall state [~~his~~] the reasons.

21 If the ombudsman decides to investigate, [~~he~~] the ombudsman
22 shall notify the complainant of [~~his~~] the decision and [~~he~~]



1 shall also notify the agency of [~~his~~] the intention to
2 investigate.

3 If the ombudsman decides to investigate a complaint against
4 an out-of-state-facility, the ombudsman shall notify the
5 complainant of the decision and shall also notify the department
6 of public safety. The department of public safety shall be
7 responsible for giving notice of the decision to the out-of-
8 state facility."

9 SECTION 5. Section 96-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§96-8 Appropriate subjects for investigation.** (a) An
12 appropriate subject for investigation is an administrative act
13 of an agency [~~which~~] or out-of-state facility that might be:

- 14 (1) Contrary to law;
15 (2) Unreasonable, unfair, oppressive, or unnecessarily
16 discriminatory, even though in accordance with law;
17 (3) Based on a mistake of fact;
18 (4) Based on improper or irrelevant grounds;
19 (5) Unaccompanied by an adequate statement of reasons;
20 (6) Performed in an inefficient manner; or
21 (7) Otherwise erroneous.



1 (b) The ombudsman shall investigate any incident where
 2 death or riot occurred or a person committed to the custody of
 3 the director of public safety, including a person held at an
 4 out-of-state facility, sustained serious bodily injury as a
 5 result of actions taken by an employee of the department of
 6 public safety, an employee of an out-of-state facility, or
 7 another person held in custody.

8 (c) The ombudsman may investigate to find an appropriate
 9 remedy."

10 SECTION 6. Section 96-9, Hawaii Revised Statutes, is
 11 amended by amending subsection (a) to read as follows:

12 "(a) In an investigation, the ombudsman may make inquiries
 13 and obtain information as the ombudsman thinks fit, enter
 14 without notice to inspect the premises of an agency, and hold
 15 private hearings[~~-~~] and may do the same with an out-of-state
 16 facility to the extent authorized by agreement between the State
 17 and the out-of-state facility."

18 SECTION 7. Section 96-11, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "**§96-11 Consultation with agency; notice to the department**
 21 **of public safety.** (a) Before giving any opinion or

1 recommendation that is critical of an agency or person, the
2 ombudsman shall consult with that agency or person.

3 (b) Before giving any opinion or recommendation from an
4 investigation arising out of section 96-6(b) that is critical of
5 the department of public safety or an out-of-state facility, the
6 ombudsman shall give notice to the department of public safety
7 of the opinion or recommendation prior to making the opinion or
8 recommendation available under section 96-13."

9 SECTION 8. Section 96-12, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§96-12 Procedure after investigation.** If, after
12 investigation, the ombudsman finds that:

- 13 (1) A matter should be further considered by the agency;
14 (2) An administrative act should be modified or cancelled;
15 (3) A statute or regulation on which an administrative act
16 is based should be altered;
17 (4) Reasons should be given for an administrative act; or
18 (5) Any other action should be taken by the agency[+] or
19 out-of-state facility,

20 the ombudsman shall report the ombudsman's opinion and
21 recommendations to the agency. If the investigation involved an
22 out-of-state facility or employee of an out-of-state facility,



1 the ombudsman shall submit the opinion and recommendations to
2 the department of public safety. The department of public
3 safety shall submit a copy of the opinion and recommendations to
4 the out-of-state facility. The ombudsman may request the agency
5 to notify the ombudsman, within a specified time, of any action
6 taken on the ombudsman's recommendations. For investigations
7 involving an out-of-state facility or employee of any out-of-
8 state facility, the department of public safety shall be
9 responsible for notifying the ombudsman, within a specified
10 time, of any action taken by the department of public safety or
11 the out-of-state facility on the ombudsman's recommendations."

12 SECTION 9. Section 96-13, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§96-13 Publication of recommendations.** After a
15 reasonable time has elapsed, the ombudsman may present the
16 ombudsman's opinion and recommendations to the governor, the
17 legislature, the public, or any of these. The ombudsman shall
18 include with this opinion any reply made by the agency[+] or
19 out-of-state facility."

20 SECTION 10. Section 96-14, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§96-14 Notice to the complainant.** After a reasonable
2 time has elapsed, the ombudsman shall notify the complainant of
3 the actions taken by the ombudsman and by the agency[-] or out-
4 of-state facility."

5 SECTION 11. Section 96-15, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§96-15 Misconduct by agency or out-of-state facility**
8 **personnel.** If the ombudsman has a reasonable basis to believe
9 that there may be a breach of duty or misconduct by any officer
10 or employee of an agency[7] or out-of-state facility, the
11 ombudsman may refer the matter to the appropriate authorities
12 without notice to that person."

13 SECTION 12. Section 96-18, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§96-18 Agencies may not open letters to ombudsman[-];**
16 **out-of-state facilities.** A letter to the ombudsman from a
17 person held in custody by an agency shall be forwarded
18 immediately, unopened, to the ombudsman. The contract between
19 the State and an out-of-state facility shall similarly provide
20 that a letter to the ombudsman from an inmate in the out-of-
21 state facility shall be forwarded immediately, unopened, to the
22 ombudsman."



1 SECTION 13. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2006-2007 to
4 the office of the ombudsman for any expenses or staffing needs
5 resulting from the expansion of jurisdiction to administrative
6 acts relating to the department of public safety and out-of-
7 state facilities.

8 The sum appropriated shall be expended by the office of the
9 ombudsman for the purposes of this Act.

10 SECTION 14. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 15. This Act shall take effect on July 1, 2006,
13 and shall apply to investigations of out-of-state, private, or
14 federal correctional facilities with which the department of
15 public safety has entered into a contract, or with which the
16 department has renewed a contract, after its effective date.



SB 2949
SD2 HD1

Report Title:

Public Safety; Ombudsman

Description:

Gives the Office of the Ombudsman authority to investigate acts of private, out-of-state, or federal correctional facilities with which the Department of Public Safety has contracted to house persons committed to the custody of the Director of Public Safety. (SB2949 HD1)

SB2949 HD1 HMS 2006-2982

