

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO CORRECTIONS.

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

1 SECTION 1. Section 353-16.32, Hawaii Revised Statutes,  
2 provides that the director of public safety may effect the  
3 transfer of committed felons to any correctional facility  
4 located in another state, upon terms and conditions agreed upon  
5 between the department and the out-of-state correctional  
6 facility. However, there are no statutory criteria for  
7 contracts to effect inmate transfers.

8 The purpose of this Act is to establish criteria for  
9 contracts with respect to the transfer of inmates to  
10 out-of-state correctional facilities.

11 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
12 amended by adding three new sections to part I to be  
13 appropriately designated and to read as follows:

14 **"§353-A Transfer of inmates; terms and conditions.** Any  
15 contract between the State of Hawaii and an out-of-state  
16 correctional facility for the housing, care, and control of  
17 inmates shall contain terms and conditions, including but not  
18 limited to:



- 1        (1) A requirement that the out-of-state correctional  
2        facility provide the services in a facility that meets  
3        correctional standards satisfying constitutional  
4        minimums, state and federal laws, rules and  
5        regulations, and applicable court orders, including,  
6        but not limited to, all sanitation, food service,  
7        safety, and health regulations;
- 8        (2) A requirement that the out-of-state correctional  
9        facility send copies of reports of inspections  
10       completed by appropriate authorities on compliance  
11       with laws, rules, and regulations of the type  
12       described in paragraph (1) to the department of public  
13       safety;
- 14       (3) A requirement that the out-of-state correctional  
15       facility provide training to its personnel on a level  
16       acceptable to the department of public safety. The  
17       provisions of this section shall not be construed to  
18       confer peace officer status upon any employee of the  
19       out-of-state correctional facility or to authorize the  
20       use of firearms. An out-of-state correctional officer  
21       or other designated employee of an out-of-state  
22       correctional facility may carry and use firearms in

1 the course of the officer's or employee's employment  
2 only if the officer or employee is certified as having  
3 satisfactorily completed a training program approved  
4 by the contractor in compliance with normal standards  
5 for employees of correctional facilities. This  
6 section shall not be construed to confer state  
7 employee status upon any employee of the out-of-state  
8 correctional facility;

9 (4) A requirement that the out-of-state correctional  
10 facility shall not employ any person at the  
11 correctional facility until the contractor has  
12 submitted to the Hawaii criminal justice data center  
13 of the department of the attorney general, on a form  
14 prescribed by the center, a request that the center  
15 conduct a criminal records check of the person, and a  
16 requirement that the out-of-state correctional  
17 facility shall not employ any person at the facility  
18 if the records check or other information possessed by  
19 the contractor indicates that the person has a  
20 criminal history or record, regardless of the form of  
21 judgment;

- 1        (5) A requirement that the out-of-state correctional  
2        facility be staffed at all times to ensure supervision  
3        of inmates and maintenance of security within the  
4        facility and to provide for appropriate programs,  
5        transportation, security, and other operational needs.  
6        In determining security needs for the out-of-state  
7        correctional facility, the contractor and the contract  
8        requirements shall take into account all relevant  
9        factors including, but not limited to, the proximity  
10       of the facility to neighborhoods and schools;
- 11       (6) A requirement that the out-of-state correctional  
12       facility, its officers, guards, employees, and agents  
13       immediately notify the department of public safety and  
14       any other law enforcement or other governmental  
15       entities, agencies, or personnel named in the contract  
16       or required to be informed as provided in this chapter  
17       of any riot, rebellion, escape, crime, or other  
18       emergency occurring inside or outside the facility,  
19       and hold the State free from any liability.  
20       Notification shall be made by telephone and in  
21       writing. The written notice may be made by facsimile  
22       transmission or mail;

1        (7) A requirement that the contractor adopt and use in the  
2        out-of-state correctional facility a drug testing and  
3        treatment program that meets the standards of any drug  
4        testing and treatment program the department of public  
5        safety uses for its inmates in state correctional  
6        facilities;

7        (8) A requirement that the out-of-state correctional  
8        facility provide advance written notice to the  
9        department of public safety and any other law  
10       enforcement or other governmental entities, agencies,  
11       or personnel named in the contract, of its intent to  
12       provide for transport of any inmates to or from the  
13       out-of-state correctional facility, and of the  
14       intended destination;

15       (9) A requirement that the out-of-state correctional  
16       facility shall be solely responsible for any damage  
17       caused by a inmate in its custody and shall be solely  
18       responsible for security and all costs associated with  
19       transporting and housing inmates to and from locations  
20       outside the out-of-state correctional facility  
21       including court, medical, and sending facility  
22       locations. The out-of-state correctional facility's



1       (12) A requirement that the out-of-state correctional  
2       facility conform to applicable standards, and obtain  
3       accreditation from, the American Correctional  
4       Association and the National Commission on Correction  
5       Health Care;

6       (13) A requirement that the out-of-state correctional  
7       facility indemnify and hold harmless the State and its  
8       officers, agents, and employees, and reimburse the  
9       State for costs incurred defending the State or any of  
10       its officers, agents, or employees against all claims  
11       including the following:

12       (A) Any claims or losses for services rendered by the  
13       contractor, its officers, agents, or employees,  
14       performing or supplying services in connection  
15       with the performance of the contract;

16       (B) Any failure of the contractor, its officers,  
17       agents, or employees to adhere to the laws,  
18       rules, regulations, or terms agreed to in the  
19       contract;

20       (C) Any constitutional, federal, state or civil  
21       rights claim;

1           (D) Any claims, losses, demands, or causes of action  
2           arising out of the activities of the contractor,  
3           its officers, agents, or employees;

4           (E) Any attorney's fees or court costs arising from  
5           any habeas corpus actions or other inmate suits  
6           that may arise from any event that occurred at  
7           the facility or was a result of the event, or  
8           that may arise over the conditions, management or  
9           operation of the facility, which fees and costs  
10           shall include attorney's fees for the State and  
11           for any court-appointed representation of an  
12           inmate.

13           (14) A requirement that the out-of-state correctional  
14           facility and its personnel comply with the provisions  
15           of this chapter; and

16           (15) A requirement that any ambiguities in the contract  
17           shall be construed against the out-of-state  
18           correctional facility and in favor of the State.

19           **§353-B Transfer of inmates; compliance.** Contracts awarded

20 under the provisions of this section shall, at a minimum:

21           (1) Provide that the out-of-state correctional facility  
22           shall not benefit financially from the labor of



1 inmates nor shall any inmate ever be placed in a  
 2 position of authority over another inmate. Any  
 3 profits realized from the labor of Hawaii inmates in  
 4 the operation of a prison enterprise program shall  
 5 revert to the State;

6 (2) Provide that the out-of-state correctional facility  
 7 shall impose discipline on inmates only in accordance  
 8 with applicable rules, policies, and procedures  
 9 satisfying constitutional minimums, state and federal  
 10 laws, and applicable court orders; and

11 (3) Require that the out-of-state correctional facility  
 12 provide proper food, clothing, housing, and medical  
 13 care as provided for in the contract. The State shall  
 14 not be responsible for any costs associated with the  
 15 medical care of inmates in the custody of the out-of-  
 16 state correctional facility.

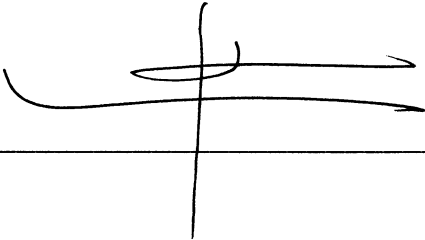
17 **§353-C Transfer of inmates; performance monitoring.** The  
 18 department of public safety or its designee, as provided in the  
 19 contract, shall monitor the performance of the out-of-state  
 20 correctional facility. The powers and responsibilities of the  
 21 department or its designee, when acting as the contract monitor  
 22 of the private prison contract shall include:



1 and shall apply to contracts and contract renewals entered into  
2 after its effective date.

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INTRODUCED BY:



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# SB. NO. 2947

**Report Title:**

Corrections; Inmates; Transfer; Contracts

**Description:**

Establishes criteria for contracts with respect to the transfer of inmates to out-of-state correctional facilities.

