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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. (a)

15 Any 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:



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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

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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. All out-of-state correctional  
 9 facilities shall furnish the department of public  
 10 safety with a list of their staff training programs,  
 11 as well as a description of the training. Copies of  
 12 the schedules and descriptions shall be posted on the  
 13 department of public safety's website for public  
 14 viewing;

15 (4) A requirement that the out-of-state correctional  
 16 facility shall not employ any person at the  
 17 correctional facility until the contractor has  
 18 submitted to the Hawaii criminal justice data center  
 19 of the department of the attorney general, on a form  
 20 prescribed by the center, a request that the center  
 21 conduct a criminal records check of the person, and a  
 22 requirement that the out-of-state correctional

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1 facility shall not employ any person at the facility  
2 if the records check or other information possessed by  
3 the contractor indicates that the person has a  
4 criminal history or record, regardless of the form of  
5 judgment;

6 (5) A requirement that the out-of-state correctional  
7 facility be staffed at all times to ensure supervision  
8 of inmates and maintenance of security within the  
9 facility and to provide for appropriate programs,  
10 transportation, security, and other operational needs.  
11 In determining security needs for the out-of-state  
12 correctional facility, the contractor and the contract  
13 requirements shall take into account all relevant  
14 factors including, but not limited to, the proximity  
15 of the facility to neighborhoods and schools, as well  
16 as the proximity to hospitals, medical clinics, and  
17 critical care facilities;

18 (6) A requirement that the out-of-state correctional  
19 facility, its officers, guards, employees, and agents  
20 immediately notify the department of public safety and  
21 any other law enforcement or other governmental  
22 entities, agencies, or personnel named in the contract



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1 or required to be informed as provided in this chapter  
2 of any riot, rebellion, escape, crime, or other  
3 emergency occurring inside or outside the facility,  
4 and hold the State free from any liability.

5 Notification shall be made by telephone and in  
6 writing. The written notice may be made by facsimile  
7 transmission or mail;

8 (7) A requirement that the contract clearly state whether  
9 the policies and procedures for discipline to be used  
10 are the State's or those of the state in which the  
11 facility is located;

12 (8) A requirement that the contractor adopt and use in the  
13 out-of-state correctional facility a drug testing and  
14 treatment program that meets the standards of any drug  
15 testing and treatment program the department of public  
16 safety uses for its inmates in state correctional  
17 facilities;

18 (9) A requirement that the out-of-state correctional  
19 facility provide advance written notice to the  
20 department of public safety and any other law  
21 enforcement or other governmental entities, agencies,  
22 or personnel named in the contract, of its intent to

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1 provide for transport of any inmates to or from the  
2 out-of-state correctional facility, and of the  
3 intended destination;

4 (10) A requirement that the out-of-state correctional  
5 facility shall be solely responsible for any damage  
6 caused by a inmate in its custody and shall be solely  
7 responsible for security and all costs associated with  
8 transporting and housing inmates to and from locations  
9 outside the out-of-state correctional facility  
10 including court, medical, and sending facility  
11 locations. The out-of-state correctional facility's  
12 responsibility for costs shall include all costs which  
13 may be required by court officials for additional  
14 security for the inmate that is provided by federal,  
15 state, county, or city officials;

16 (11) A requirement that no inmate shall be housed in any  
17 other facility than the one identified in the  
18 contract. All records in the possession of, or  
19 available to, the sending entity, including  
20 classification, medical information, conduct, and  
21 confinement history of the inmate, shall be provided  
22 to the contractor;

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1       (12) The out-of-state correctional facility shall have a  
2       conversion plan that will be followed if, for any  
3       reason, the facility is closed or ceases to operate.  
4       The conversion plan shall provide, in part, that the  
5       out-of-state correctional facility shall be  
6       responsible for housing, and provide for the  
7       transportation of the inmates who are in the facility  
8       at the time it is closed or ceases to operate and for  
9       the cost of such housing and transporting of those  
10       inmates;

11       (13) A requirement that the out-of-state correctional  
12       facility conform to applicable standards, and obtain  
13       accreditation from, the American Correctional  
14       Association and the National Commission on Correction  
15       Health Care;

16       (14) A requirement that the out-of-state correctional  
17       facility indemnify and hold harmless the State and its  
18       officers, agents, and employees, and reimburse the  
19       State for costs incurred defending the State or any of  
20       its officers, agents, or employees against all claims  
21       including the following:

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- 1           (A) Any claims or losses for services rendered by the  
2           contractor, its officers, agents, or employees,  
3           performing or supplying services in connection  
4           with the performance of the contract;
- 5           (B) Any failure of the contractor, its officers,  
6           agents, or employees to adhere to the laws,  
7           rules, regulations, or terms agreed to in the  
8           contract;
- 9           (C) Any constitutional, federal, state or civil  
10           rights claim;
- 11           (D) Any claims, losses, demands, or causes of action  
12           arising out of the activities of the contractor,  
13           its officers, agents, or employees;
- 14           (E) Any attorney's fees or court costs arising from  
15           any habeas corpus actions or other inmate suits  
16           that may arise from any event that occurred at  
17           the facility or was a result of the event, or  
18           that may arise over the conditions, management or  
19           operation of the facility, which fees and costs  
20           shall include attorney's fees for the State and  
21           for any court-appointed representation of an  
22           inmate.



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

4       (16) A requirement that the office of the ombudsman shall  
5       have the authority to investigate complaints by  
6       inmates against the out-of-state facility. The out-  
7       of-state facility shall provide the office of the  
8       ombudsman access to the out-of-state facility, the  
9       complaining inmates, necessary witnesses, and any  
10       other information the office of the ombudsman deems  
11       necessary for the investigation; and

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

15       (b) All contracts awarded under the provisions of this  
16       section shall be placed on the department of public safety's  
17       website for public viewing.

18       **§353-B Transfer of inmates; compliance.** Contracts awarded  
19       under the provisions of this section shall, at a minimum:

20       (1) Provide that the out-of-state correctional facility  
21       shall not benefit financially from the labor of  
22       inmates nor shall any inmate ever be placed in a

1           position of authority over another inmate. Any  
 2           profits realized from the labor of Hawaii inmates in  
 3           the operation of a prison enterprise program shall  
 4           revert to the State;

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

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

16          **§353-C Transfer of inmates; performance monitoring.** The  
 17          department of public safety or its designee, as provided in the  
 18          contract, shall monitor the performance of the out-of-state  
 19          correctional facility. The powers and responsibilities of the  
 20          department or its designee, when acting as the contract monitor  
 21          of the private prison contract shall include:

- 1        (1) A determination whether the requirements of the
- 2                    contract are being satisfactorily performed;
- 3        (2) A determination whether the out-of-state correctional
- 4                    facility and its personnel are complying with the
- 5                    provisions of this chapter;
- 6        (3) A determination whether applicable rules, policies,
- 7                    and procedures of the department are being followed by
- 8                    the out-of-state correctional facility and its
- 9                    personnel;
- 10       (4) A determination whether the facility is being operated
- 11                    in a manner which adequately safeguards and protects
- 12                    the safety of the public;
- 13       (5) Approval of all inmate releases on furlough or work
- 14                    release; and
- 15       (6) A determination whether the adoption of supplemental
- 16                    rules, policies, or procedures is required to
- 17                    interpret or make specific application of the
- 18                    provisions of this chapter."

19        SECTION 3. New statutory material is underscored.

20        SECTION 4. This Act shall take effect upon its approval  
21 and shall apply to contracts and contract renewals entered into  
22 after its effective date.

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**Report Title:**

Corrections; Inmates; Transfer; Contracts

**Description:**

Establishes criteria for contracts with respect to the transfer of inmates to out-of-state correctional facilities. (SD1)

