



1 "Serious bodily injury" means bodily injury that creates a  
2 substantial risk of death or causes serious, permanent  
3 disfigurement, or protracted loss or impairment of the function  
4 of any bodily member or organ.

5 **§353C-B Ombudsman for prisoners.** (a) There is  
6 established within the department, for administration purposes  
7 only, the office of the ombudsman for prisons and probation.  
8 The governor shall nominate and, with the advice and consent of  
9 the senate, appoint an ombudsman without regard to chapters 76  
10 and 78.

11 (b) No person may serve as ombudsman within two years of  
12 the last day on which the person served as a member of the  
13 legislature, or while the person is a candidate for or holds any  
14 other state office, or while the person is engaged in any other  
15 occupation for reward or profit. The salary of the ombudsman  
16 shall be the same as the salary of the ombudsman under chapter  
17 96. The salary of the ombudsman shall not be diminished during  
18 the ombudsman's term of office, unless by general law applying  
19 to all salaried officers of the State.

20 If the ombudsman dies, resigns, becomes ineligible to  
21 serve, or is removed or suspended from office, the first



1 assistant to the ombudsman becomes the acting ombudsman until a  
2 new ombudsman is appointed for a full term.

3       **§353C-C Assistance, staff, delegation, funding.** The  
4 ombudsman shall appoint a first assistant and other officers and  
5 employees as may be necessary to carry out this part. All  
6 employees, including the first assistant, shall be hired by the  
7 ombudsman and shall serve at the ombudsman's pleasure. In  
8 determining the salary of each employee, the ombudsman shall  
9 consult with the department of human resources development and  
10 shall follow as closely as possible the recommendations of the  
11 department. The first assistant's salary shall be not more than  
12 eighty-seven per cent of the salary of the ombudsman. The  
13 ombudsman and the ombudsman's full-time staff shall be entitled  
14 to participate in any employee benefit plan.

15       The ombudsman may delegate to the ombudsman's appointees  
16 any of the ombudsman's duties except those specified in sections  
17 353C-L and 353C-M; provided that during the absence of the  
18 ombudsman from the island of Oahu, or the ombudsman's temporary  
19 inability to exercise and discharge the powers and duties of the  
20 ombudsman's office, the powers and duties as contained in  
21 sections 353C-L and 353C-M shall devolve upon the first  
22 assistant during the ombudsman's absence or inability.



1           **§353C-D Procedure.** The ombudsman may establish procedures  
2 for receiving and processing complaints, conducting  
3 investigations, and reporting the ombudsman's findings.  
4 However, the ombudsman may not levy fees for the submission of  
5 investigations.

6           **§353C-E Jurisdiction.** The ombudsman has jurisdiction to  
7 investigate the acts of any employee and may exercise the  
8 ombudsman's power without regard to the finality of any act in  
9 question.

10          **§353C-F Investigation of complaints.** (a) The ombudsman  
11 may investigate any complaint which the ombudsman determines to  
12 be an appropriate subject for investigation under section  
13 353C-H, including complaints submitted by a person held in  
14 custody by the department or the person's family member.

15          (b) The ombudsman may investigate on the ombudsman's own  
16 initiative if the ombudsman reasonably believes that an  
17 appropriate subject for investigation under section 353C-H  
18 exists.

19          **§353C-G Notice to complainant and agency.** If the  
20 ombudsman decides not to investigate, the ombudsman shall inform  
21 the complainant of that decision and shall state reasons for  
22 that decision.



1           If the ombudsman decides to investigate, the ombudsman  
2 shall notify the complainant of the decision and shall also  
3 notify the department of the intention to investigate.

4           **§353C-H Subjects for investigation.** (a) An appropriate  
5 subject for investigation is an act against a prisoner  
6 complained of by the prisoner, the prisoner's immediate family,  
7 or the department that is:

- 8           (1) Unreasonable, unfair, or unnecessarily discriminatory,  
9           oppressive, or abusive; or
- 10          (2) Otherwise contrary to law.

11          (b) The ombudsman shall investigate any incident where a  
12 death or riot occurred or a prisoner sustained serious bodily  
13 injuries as a result of actions taken by an employee or another  
14 person held in custody.

15          **§353C-I Investigation procedures.** (a) In an  
16 investigation, the ombudsman may make inquiries and obtain  
17 information as the ombudsman in the exercise of reasonable  
18 discretion deems appropriate; enter and inspect the premises of  
19 the department or any facility, center, or institution; conduct  
20 private interviews and meetings; and examine witnesses under  
21 oath.

1 (b) The ombudsman is required to maintain secrecy in  
 2 respect to all matters and the identities of the complainants or  
 3 witnesses coming before the ombudsman except so far as  
 4 disclosures may be necessary to enable the ombudsman to carry  
 5 out the ombudsman's duties and to support the ombudsman's  
 6 recommendations.

7 **§353C-J Powers.** Subject to the privileges which witnesses  
 8 have in the courts of this State, the ombudsman may:

9 (1) Compel at a specified time and place, by a subpoena,  
 10 the appearance and sworn testimony of any person who  
 11 the ombudsman reasonably believes may be able to give  
 12 information relating to a matter under investigation;  
 13 and

14 (2) Compel any person to produce documents, papers, or  
 15 objects that the ombudsman reasonably believes may  
 16 relate to a matter under investigation.

17 The ombudsman may bring suit in an appropriate state court  
 18 to enforce these powers.

19 **§353C-K Procedure after investigation.** If, after  
 20 investigation, the ombudsman finds that:

21 (1) A prisoner's rights were violated;

- 1           (2) An action should be further considered by the
- 2           department;
- 3           (3) A department procedure or practice should be modified
- 4           or terminated;
- 5           (4) A statute or regulation on which the procedure or
- 6           practice is based should be altered; or
- 7           (5) Any other action should be taken by the department;
- 8 the ombudsman shall report the ombudsman's opinion and
- 9 recommendations to the department. The department shall notify
- 10 the ombudsman, within thirty days, of the action taken on the
- 11 ombudsman's recommendations.

12           **§353C-L Publication of recommendations.** After a

13 reasonable time has elapsed, the ombudsman may present the

14 ombudsman's opinion and recommendations to one or more of the

15 following: the governor, the legislature, or the public. The

16 ombudsman shall include with this opinion any reply made by the

17 department.

18           **§353C-M Notice to the complainant.** After a reasonable

19 time has elapsed, the ombudsman shall notify the complainant of

20 the actions taken by the ombudsman and by the department.

21           **§353C-N Misconduct by department personnel and**

22 **contractors.** If the ombudsman has a reasonable basis to believe

1 that there may be a breach of duty or misconduct by any officer  
2 or employee of the department, or by any person or entity with  
3 whom the department has a contract, the ombudsman may refer the  
4 matter to the appropriate authorities without notice to that  
5 person.

6 **§353C-O Annual report.** The ombudsman shall submit to the  
7 governor, the legislature, and the public an annual report  
8 discussing the ombudsman's activities under this chapter.

9 **§353C-P Judicial review, immunity.** No proceeding or  
10 decision of the ombudsman may be reviewed in any court, unless  
11 it contravenes the provisions of this chapter. The ombudsman  
12 has the same immunities from civil and criminal liability as a  
13 judge of this State. The ombudsman and the ombudsman's staff  
14 shall not testify in any court with respect to matters coming to  
15 their attention in the exercise or purported exercise of their  
16 official duties except as may be necessary to enforce the  
17 provisions of this chapter.

18 **§353C-Q Letters from the ombudsman.** A letter to the  
19 ombudsman from a person held in custody by the department shall  
20 be forwarded immediately, unopened, to the ombudsman.

21 **§353C-R Penalty for obstruction.** A person who willfully  
22 hinders the lawful actions of the ombudsman or the ombudsman's





1 staff or willfully refuses to comply with their lawful demands,  
2 shall be fined not more than \$1,000."

3 SECTION 2. Section 96-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "agency" to read as  
5 follows:

6 "Agency" includes any permanent governmental entity,  
7 department, organization, or institution, and any officer,  
8 employee, or member thereof acting or purporting to act in the  
9 exercise of the officer's, employee's, or member's official  
10 duties, except:

- 11 (1) The judiciary and its staff;
- 12 (2) The legislature, its committees, and its staff;
- 13 (3) An entity of the federal government;
- 14 (4) A multistate governmental entity;
- 15 (5) The governor and the governor's personal staff;
- 16 (6) The lieutenant governor and the lieutenant governor's  
17 personal staff;
- 18 (7) The department of public safety, as provided for under  
19 part of chapter 353C;
- 20 [~~7~~] (8) The mayors of the various counties; and
- 21 [~~8~~] (9) The councils of the various counties."

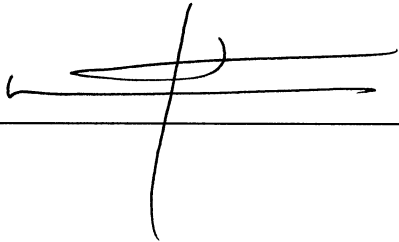
1 SECTION 3. In codifying the new sections added by section  
2 1 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 4. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

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

8

INTRODUCED BY:



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**Report Title:**  
Ombudsman for Prisons and Probation

**SB. NO. 2949**

**Description:**

Creates an office of the ombudsman for prisons and probation to be administratively attached to DPS to investigate prisoner complaints, deaths, and riots.

