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# 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 shall  
18 investigate the acts of any out-of-state facility and may



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1 exercise the ombudsman's power without regard to the finality of  
2 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 the ombudsman determines to  
7 be an appropriate subject for investigation under section 96-8.

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

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

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

17 "**§96-7 Notice to complainant and agency.** If the ombudsman  
18 decides not to investigate, [~~he~~] the ombudsman shall inform the  
19 complainant of that decision and shall state [~~his~~] the reasons.

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

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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)**

12 An appropriate subject for investigation is an administrative  
13 act of an agency or out-of-state facility, which 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.

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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 injuries 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           **"§96-9 Investigation procedures.** (a) In an  
13 investigation, the ombudsman may make inquiries and obtain  
14 information as the ombudsman thinks fit, enter without notice to  
15 inspect the premises of an agency[~~r~~] or out-of-state facility,  
16 and hold private hearings."

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

19           **"§96-11 Consultation with agency; notice to the department**  
20 **of public safety.** (a) Before giving any opinion or  
21 recommendation that is critical of an agency or person, the  
22 ombudsman shall consult with that agency or person.

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

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

9        "**§96-12 Procedure after investigation.** If, after  
 10 investigation, the ombudsman finds that:

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

18 the ombudsman shall report the ombudsman's opinion and  
 19 recommendations to the agency. If the investigation involved an  
 20 out-of-state facility or employee of an out-of-state facility  
 21 the ombudsman shall give the opinion and recommendations to the  
 22 department of public safety. The department of public safety

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

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

12 **"§96-13 Publication of recommendations.** After a  
13 reasonable time has elapsed, the ombudsman may present the  
14 ombudsman's opinion and recommendations to the governor, the  
15 legislature, the public, or any of these. The ombudsman shall  
16 include with this opinion any reply made by the agency or  
17 out-of-state facility."

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

20 **"§96-14 Notice to the complainant.** After a reasonable  
21 time has elapsed, the ombudsman shall notify the complainant of



1 the actions taken by the ombudsman and by the agency[-] or  
2 out-of-state facility."

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

5 "**§96-15 Misconduct by agency or out-of-state facility**  
6 **personnel.** If the ombudsman has a reasonable basis to believe  
7 that there may be a breach of duty or misconduct by any officer  
8 or employee of an agency[7] or out-of-state facility, the  
9 ombudsman may refer the matter to the appropriate authorities  
10 without notice to that person."

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

13 "**§96-18 Agencies and out-of-state facilities may not open**  
14 **letters to ombudsman.** A letter to the ombudsman from a person  
15 held in custody by an agency or housed in an out-of-state  
16 facility shall be forwarded immediately, unopened, to the  
17 ombudsman."

18 SECTION 13. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$ , or so  
20 much thereof as may be necessary for fiscal year 2006-2007, to  
21 the office of the ombudsman for any expenses or staffing needs  
22 resulting from the expansion of jurisdiction to administrative

1 acts relating to the department of public safety and  
2 out-of-state facilities.

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

5 SECTION 14. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 15. This Act shall take effect upon its approval;  
8 provided that section 13 shall take effect on July 1, 2006.





PROPOSED

**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 . (SD1)

