
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:



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. 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



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



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



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;



- 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:



- 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.



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.



SB2947, SD1

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)

