
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. Chapter 353, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§353- Contracts to hold persons committed to the
5 custody of the director of public safety. Every contract
6 entered into between the department and a correctional facility
7 or institution to hold persons committed to the custody of the
8 director shall require the correctional facility or institution
9 to comply with the provisions of chapter 96."

10 SECTION 2. Section 96-1, Hawaii Revised Statutes, is
11 amended by adding two new definitions to be appropriately
12 inserted and to read as follows:

13 "Contracted facility" means any correctional facility or
14 institution, and any officer, employee, or member thereof acting
15 or purporting to act in the exercise of the officer's,
16 employee's, or member's official duties, with which the
17 department of public safety has contracted to hold persons
18 committed to the custody of the director of public safety.



1 "Contractual act" means an administrative act of a
2 contracted facility that affects a person committed to the
3 custody of the director of public safety."

4 SECTION 3. Section 96-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§96-5 Jurisdiction.** The ombudsman [~~has~~] shall have
7 jurisdiction to investigate the administrative acts of agencies,
8 and the ombudsman may exercise the ombudsman's powers without
9 regard to the finality of any administrative act. The ombudsman
10 shall also have jurisdiction to investigate the contractual acts
11 of any contracted facility and may exercise the ombudsman's
12 power without regard to the finality of any contractual act in
13 question."

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

16 "**§96-7 Notice to complainant and agency[.] or contracted**
17 **facility.** If the ombudsman decides not to investigate, [~~he~~] the
18 ombudsman shall inform the complainant of that decision and
19 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~~]



1 shall also notify the agency of [~~his~~] the intention to
2 investigate.

3 If the ombudsman decides to investigate a complaint against
4 a contracted 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 providing notice of the decision to the
8 contracted facility."

9 SECTION 5. Section 96-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§96-8 Appropriate subjects for investigation.** An
12 appropriate subject for investigation is an administrative act
13 of an agency [~~which~~] or contractual act of a contracted facility
14 that might be:

- 15 (1) Contrary to law;
- 16 (2) Unreasonable, unfair, oppressive, or unnecessarily
17 discriminatory, even though in accordance with law;
- 18 (3) Based on a mistake of fact;
- 19 (4) Based on improper or irrelevant grounds;
- 20 (5) Unaccompanied by an adequate statement of reasons;
- 21 (6) Performed in an inefficient manner; or
- 22 (7) Otherwise erroneous.



1 The ombudsman may investigate to find an appropriate
2 remedy."

3 SECTION 6. Section 96-9, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) In an investigation, the ombudsman may make inquiries
6 and obtain information as the ombudsman thinks fit, enter
7 without notice to inspect the premises of an agency[+] or
8 contracted facility, and hold private hearings."

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

11 "**§96-11 Consultation with agency[+] or contracted**
12 **facility**. Before giving any opinion or recommendation that is
13 critical of an agency, contracted facility, or person, the
14 ombudsman shall consult with that agency, contracted facility,
15 or person."

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

18 "**§96-12 Procedure after investigation.** If, after
19 investigation, the ombudsman finds that:

20 (1) A matter should be further considered by the agency[+] or
21 contracted facility;



- 1 (2) An administrative act or contractual act should be
- 2 modified or cancelled;
- 3 (3) A statute or regulation on which an administrative act
- 4 or contractual act is based should be altered;
- 5 (4) Reasons should be given for an administrative act[+]
- 6 or contractual act; or
- 7 (5) Any other action should be taken by the agency[+] or
- 8 contracted facility,

9 the ombudsman shall report the ombudsman's opinion and
10 recommendations to the agency[-] or contracted facility.

11 The ombudsman may request the agency or contracted facility
12 to notify the ombudsman, within a specified time, of any action
13 taken on the ombudsman's recommendations."

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

16 "**§96-13 Publication of recommendations.** After a
17 reasonable time has elapsed, the ombudsman may present the
18 ombudsman's opinion and recommendations to the governor, the
19 legislature, the public, or any of these. The ombudsman shall
20 include with this opinion any reply made by the agency[-] or
21 contracted facility."



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

3 **"§96-14 Notice to the complainant.** After a reasonable
4 time has elapsed, the ombudsman shall notify the complainant of
5 the actions taken by the ombudsman and by the agency[~~-~~] or
6 contracted facility."

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

9 **"§96-15 Misconduct by agency or contracted facility**
10 **personnel.** If the ombudsman has a reasonable basis to believe
11 that there may be a breach of duty or misconduct by any officer
12 or employee of an agency[~~-~~] or contracted facility, the
13 ombudsman may refer the matter to the appropriate authorities
14 without notice to that person."

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

17 **"§96-18 Agencies and contracted facilities may not open**
18 **letters to ombudsman.** A letter to the ombudsman from a person
19 held in custody by an agency or contractual facility shall be
20 forwarded immediately, unopened, to the ombudsman."

21 SECTION 13. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2007-2008 for any
2 expenses or staffing needs resulting from the expansion of the
3 ombudsman's jurisdiction to contractual acts of correctional
4 facilities or institutions contracted by the department of
5 public safety to hold persons committed to the custody of the
6 director of public safety.

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

9 SECTION 14. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 15. This Act shall take effect on July 1, 2007,
12 and shall apply to investigations of contracted facilities with
13 which the department of public safety has entered into a
14 contract or with which the department has renewed a contract,
15 after its effective date.



Report Title:

Public Safety; Ombudsman

Description:

Clarifies that the Office of Ombudsman has the authority to investigate contractual acts of facilities with which the Department of Public Safety has contracted to hold individuals committed to the custody of the Director of Public Safety.
(HB1440 HD2)

