

JAN 23 2009

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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. 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 with facilities or institutions to hold  
5 inmates subject to investigation by ombudsman. Every contract  
6 entered into between the department and a correctional facility  
7 or institution, including contracts with private or out-of-state  
8 entities, shall require the correctional facility or institution  
9 to cooperate and participate fully in any investigation of a  
10 state correctional facility or contracted facility, as defined  
11 under section 96-1, and conducted under chapter 96."

12           SECTION 2. Section 96-1, Hawaii Revised Statutes, is  
13 amended by adding a new definition to be appropriately inserted  
14 and to read as follows:

15           ""Contracted facility" means any correctional facility or  
16 institution with which the department of public safety has  
17 contracted to hold inmates, and any officer, employee, or member



1 thereof acting, or purporting to act, in the exercise of the  
2 officer's, employee's, or member's official duties."

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

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

- 10 (1) The judiciary and its staff;
- 11 (2) The legislature, its committees, and its staff;
- 12 (3) An entity of the federal government;
- 13 (4) A multistate governmental entity;
- 14 (5) The governor and the governor's personal staff;
- 15 (6) The lieutenant governor and the lieutenant governor's  
16 personal staff;
- 17 (7) The mayors of the various counties; and
- 18 (8) The councils of the various counties."

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



1           "§96-7 Notice to complainant and agency. If the ombudsman  
2 decides not to investigate, [he] the ombudsman shall inform the  
3 complainant of that decision and shall state [his] the reasons.

4           If the ombudsman decides to investigate, [he] the ombudsman  
5 shall notify the complainant of [his] the decision and [he]  
6 shall also notify the agency of [his] the intention to  
7 investigate."

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

10           "§96-9 Investigation procedures. (a) In an  
11 investigation, the ombudsman may make inquiries and obtain  
12 information as the ombudsman thinks fit, enter without notice to  
13 inspect the premises of an agency, and hold private hearings.  
14 If the investigation involves a correctional facility under  
15 chapter 353 or a contracted facility, the ombudsman may visit at  
16 a suitable hour.

17           (b) The ombudsman is required to maintain secrecy in  
18 respect to all matters and the identities of the complainants or  
19 witnesses coming before the ombudsman, except so far as  
20 disclosures may be necessary to enable the ombudsman to carry  
21 out the ombudsman's duties and to support the ombudsman's  
22 recommendations."



1 SECTION 6. Section 353-16.2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§353-16.2 Transfer of inmates to out-of-state  
4 institutions; ombudsman investigation. (a) The director may  
5 effect the transfer of a committed felon to any correctional  
6 institution located in another state regardless of whether the  
7 state is a member of the Western Interstate Corrections Compact;  
8 provided that the institution is in compliance with appropriate  
9 health, safety, and sanitation codes of the state, provides a  
10 level of program activity for the inmate that is suitable, and  
11 is operated by that state, by any of its political subdivisions,  
12 or by a private institution; and provided further that the  
13 transfer is either:

- 14 (1) In the interest of the security, management of the  
15 correctional institution where the inmate is presently  
16 placed, or the reduction of prison overcrowding; or  
17 (2) In the interest of the inmate.

18 (b) Terms and conditions of the transfer and any  
19 reimbursement for expenses shall be agreed upon between the  
20 department and the out-of-state correctional institution prior  
21 to transfer.



1           (c) Any out-of-state correctional facility that has  
 2 custody of committed felons transferred from the Hawaii state  
 3 correctional system shall cooperate and participate fully in any  
 4 investigation of the facility under chapter 96."

5           SECTION 7. There is appropriated out of the general  
 6 revenues of the State of Hawaii the sum of \$                    or so  
 7 much thereof as may be necessary for fiscal year 2009-2010 for  
 8 any expenses or staffing needs resulting from the ombudsman's  
 9 jurisdiction to investigate the administrative acts of  
 10 contracted facilities, as defined under section 96-1, Hawaii  
 11 Revised Statutes.

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

14           SECTION 8. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16           SECTION 9. This Act shall take effect upon its approval;  
 17 provided that sections 1 and 6 shall not be applied so as to  
 18 impair any contract existing as of the effective date of this  
 19 Act in a manner violative of either the Hawaii Constitution or  
 20 Article I, section 10, of the United States Constitution.

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INTRODUCED BY: Will Espero

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**Report Title:**

Public Safety; Ombudsman; Correctional Facilities;  
Appropriation; Contracted Facilities

**Description:**

Makes clear that the office of the ombudsman has the authority to investigate facilities that hold Hawaii inmates, appropriates funds to conduct investigations, and makes gender neutral amendments.

