
A BILL FOR AN ACT

RELATING TO CORRECTIONS.

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

1 SECTION 1. Section 353-16.2, 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 out-of-
10 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, requirements that:



- 1 (1) The out-of-state correctional facility provide the
2 services in a facility that meets correctional
3 standards satisfying constitutional minimums, state
4 and federal laws, rules and regulations, and
5 applicable court orders, including, but not limited
6 to, all sanitation, food service, safety, and health
7 regulations;
- 8 (2) The out-of-state correctional facility send copies of
9 reports of inspections completed by appropriate
10 authorities on compliance with laws, rules, and
11 regulations of the type described in paragraph (1) to
12 the department of public safety;
- 13 (3) The out-of-state correctional facility provide
14 training to its personnel on a level acceptable to the
15 department of public safety. This section shall not
16 be construed to confer peace officer status upon any
17 employee of the out-of-state correctional facility or
18 to authorize the use of firearms. An out-of-state
19 correctional officer or other designated employee of
20 an out-of-state correctional facility may carry and
21 use firearms in the course of the officer's or
22 employee's employment only if the officer or employee



1 is certified as having satisfactorily completed a
2 training program approved by the contractor in
3 compliance with normal standards for employees of
4 correctional facilities. This section shall not be
5 construed to confer state employee status upon any
6 employee of the out-of-state correctional facility.
7 All out-of-state correctional facilities shall furnish
8 the department of public safety with a list of their
9 staff training programs, as well as a description of
10 the training. Copies of the schedules and
11 descriptions shall be posted on the department of
12 public safety's website for public viewing;
13 (4) The out-of-state correctional facility shall not
14 employ any person at the correctional facility until
15 the contractor has submitted to the Hawaii criminal
16 justice data center of the department of the attorney
17 general, on a form prescribed by the center, a request
18 that the center conduct a criminal history record
19 check of the person, and a requirement that the out-
20 of-state correctional facility shall not employ any
21 person at the facility if the record check or other
22 information possessed by the contractor indicates that



1 the person has a criminal history or record,
2 regardless of the form of judgment;
3 (5) The out-of-state correctional facility be staffed at
4 all times to ensure supervision of inmates and
5 maintenance of security within the facility and to
6 provide for appropriate programs, transportation,
7 security, and other operational needs. In determining
8 security needs for the out-of-state correctional
9 facility, the contractor and the contract requirements
10 shall take into account all relevant factors
11 including, but not limited to, the proximity of the
12 facility to neighborhoods and schools, as well as the
13 proximity to hospitals, medical clinics, and critical
14 care facilities;
15 (6) The out-of-state correctional facility, its
16 administrators, correctional officers, employees, and
17 agents immediately notify the department of public
18 safety and any other law enforcement or other
19 governmental entities, agencies, or personnel named in
20 the contract or required to be informed as provided in
21 this chapter of any riot, rebellion, escape, crime, or
22 other emergency occurring inside or outside the

1 facility, and hold the State free from any liability.
2 Notification shall be made by telephone and in
3 writing. The written notice may be made by facsimile
4 transmission or mail;
5 (7) The contract clearly state whether the policies and
6 procedures for disciplining inmates to be used are the
7 State's or those of the state in which the facility is
8 located;
9 (8) The contractor adopt and use in the out-of-state
10 correctional facility a drug testing and treatment
11 program that meets the standards of any drug testing
12 and treatment program the department of public safety
13 uses for its inmates in state correctional facilities;
14 (9) The out-of-state correctional facility provide advance
15 written notice to the department of public safety and
16 any other law enforcement or other governmental
17 entities, agencies, or personnel named in the
18 contract, of its intent to provide for transport of
19 any inmates to or from the out-of-state correctional
20 facility, and of the intended destination;
21 (10) The out-of-state correctional facility shall be solely
22 responsible for any damage caused by a inmate in its



1 custody and shall be solely responsible for security
2 and all costs associated with transporting and housing
3 inmates to and from locations outside the out-of-state
4 correctional facility including court, medical, and
5 sending facility locations. The out-of-state
6 correctional facility's responsibility for costs shall
7 include all costs that may be required by court
8 officials for additional security for the inmate that
9 is provided by federal, state, county, or city
10 officials;

11 (11) No inmate shall be housed in any other facility than
12 the one identified in the contract. All records in
13 the possession of, or available to, the sending
14 entity, including classification, medical information,
15 conduct, and confinement history of the inmate, shall
16 be provided to the contractor;

17 (12) The out-of-state correctional facility shall have a
18 conversion plan that will be followed if, for any
19 reason, the facility is closed or ceases to operate.
20 The conversion plan shall provide, in part, that the
21 out-of-state correctional facility shall be
22 responsible for housing and transporting the inmates



1 who are in the facility at the time it is closed or
2 ceases to operate and for the cost of housing and
3 transporting those inmates;

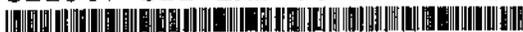
4 (13) The out-of-state correctional facility conform to
5 applicable standards, and obtain accreditation from,
6 the American Correctional Association and the National
7 Commission on Correction Health Care;

8 (14) The out-of-state correctional facility indemnify and
9 hold harmless the State and its officers, agents, and
10 employees, and reimburse the State for costs incurred
11 defending the State or any of its officers, agents, or
12 employees against all claims including the following:

13 (A) Any claims or losses for services rendered by the
14 contractor, its officers, agents, or employees,
15 performing or supplying services in connection
16 with the performance of the contract;

17 (B) Any failure of the contractor, its officers,
18 agents, or employees to adhere to the laws,
19 rules, regulations, or terms agreed to in the
20 contract;

21 (C) Any constitutional, federal, state, or civil
22 rights claim;



1 (D) Any claims, losses, demands, or causes of action
2 arising out of the activities of the contractor,
3 its officers, agents, or employees;

4 (E) Any attorney's fees or court costs arising from
5 any habeas corpus actions or other inmate suits
6 that may arise from any event that occurred at
7 the facility or was a result of the event, or
8 that may arise over the conditions, management or
9 operation of the facility, which fees and costs
10 shall include attorney's fees for the State and
11 for any court-appointed representation of an
12 inmate;

13 (15) The out-of-state correctional facility and its
14 personnel comply with this chapter;

15 (16) The office of the ombudsman shall have the authority
16 to investigate complaints by inmates against the out-
17 of-state facility and, for such purpose, the out-of-
18 state facility shall be treated as an agency, as
19 defined in section 96-1, and shall be subject to and
20 comply with the provisions of chapter 96; and

1 (17) Any ambiguities in the contract shall be construed
2 against the out-of-state correctional facility and in
3 favor of the State.

4 (b) All contracts awarded under this section shall be
5 placed on the department of public safety's website for public
6 viewing.

7 §353-B Inmates; protections. Contracts awarded under this
8 section at a minimum, shall:

9 (1) Prohibit the out-of-state correctional facility from
10 benefiting financially from the labor of inmates, and
11 prohibit the placing of an inmate in a position of
12 authority over another inmate. Any profits realized
13 from the labor of Hawaii inmates in the operation of a
14 prison enterprise program shall revert to the State of
15 Hawaii;

16 (2) Require the out-of-state correctional facility to
17 impose discipline on inmates only in accordance with
18 applicable rules, policies, and procedures satisfying
19 constitutional minimums, state and federal laws, and
20 applicable court orders; and

21 (3) Require the out-of-state correctional facility to
22 provide proper food, clothing, housing, and medical



1 care as provided for in the contract. The State shall
2 not be responsible for any other costs associated with
3 the medical care of inmates in the custody of the out-
4 of-state correctional facility.

5 **§353-C Transfer of inmates; performance monitoring.** The
6 department of public safety or its designee, as provided in the
7 contract, shall monitor the performance of the out-of-state
8 correctional facility. The powers and responsibilities of the
9 department or its designee, when acting as the contract monitor
10 of the private prison contract shall include:

- 11 (1) Determining whether the requirements of the contract
12 are being satisfactorily performed;
- 13 (2) Determining whether the out-of-state correctional
14 facility and its personnel are complying with this
15 chapter;
- 16 (3) Determining whether applicable rules, policies, and
17 procedures of the department are being followed by the
18 out-of-state correctional facility and its personnel;
- 19 (4) Determining whether the facility is being operated in
20 a manner that adequately safeguards and protects the
21 safety of the public; and



1 (5) Determining whether the adoption of supplemental
2 rules, policies, or procedures is required to
3 interpret or make specific application of the
4 provisions of this chapter."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval
7 and shall apply to contracts and contract renewals entered into
8 after its effective date.

Report Title:

Corrections; Inmates; Transfer; Contracts

Description:

Establishes criteria for contracts with respect to the transfer of inmates to out-of-state correctional facilities. (SD2)

