
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 "Contracted facility" means any correctional facility or
5 institution with which the department of public safety has
6 contracted to hold persons committed to the custody of the
7 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 also has
18 jurisdiction to investigate the acts of any contracted facility



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

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

12 (c) The ombudsman shall investigate any complaint
13 submitted by:

14 (1) A person held in the custody of the department of
15 public safety, including a person held at a contracted
16 facility; or

17 (2) The family member of a person in paragraph (1).

18 (d) As used in this section, family member means a spouse,
19 parent, child who is at least eighteen years old, grandparent,
20 or sibling."

21 SECTION 4. Section 96-7, Hawaii Revised Statutes, is
22 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 If the ombudsman decides to investigate a complaint against
9 a contracted facility, the ombudsman shall notify the
10 complainant of the decision and shall also notify the department
11 of public safety. The department of public safety shall be
12 responsible for providing notice of the decision to the
13 contracted facility."

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

16 **"§96-8 Appropriate subjects for investigation.** (a) An
17 appropriate subject for investigation is an administrative act
18 of an agency [~~which~~] or contracted facility that might be:

- 19 (1) Contrary to law;
- 20 (2) Unreasonable, unfair, oppressive, or unnecessarily
21 discriminatory, even though in accordance with law;
- 22 (3) Based on a mistake of fact;



- 1 (4) Based on improper or irrelevant grounds;
- 2 (5) Unaccompanied by an adequate statement of reasons;
- 3 (6) Performed in an inefficient manner; or
- 4 (7) Otherwise erroneous.

5 The ombudsman may investigate to find an appropriate
6 remedy.

7 (b) The ombudsman shall investigate any incident where
8 death or riot occurred in a correctional facility or where a
9 person committed to the custody of the director of public
10 safety, including a person held at a contracted facility,
11 sustained serious bodily injury as a result of actions taken by
12 an officer or employee of the department of public safety, an
13 officer or employee of a contracted facility, or another person
14 held in custody.

15 (c) The ombudsman may investigate to find an appropriate
16 remedy."

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

19 "(a) In an investigation, the ombudsman may make inquiries
20 and obtain information as the ombudsman thinks fit, enter
21 without notice to inspect the premises of an agency, and hold
22 private hearings. The ombudsman may do the same with a



1 contracted facility to the extent authorized by agreement
2 between the State and the contracted facility."

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

5 **"§96-11 Consultation with agency[-]; notice to the**
6 **department of public safety.** (a) Before giving any opinion or
7 recommendation that is critical of an agency or person, the
8 ombudsman shall consult with that agency or person.

9 (b) Before giving any opinion or recommendation from an
10 investigation arising out of section 96-6(b) that is critical of
11 the department of public safety or a contracted facility, the
12 ombudsman shall provide notice to the department of public
13 safety regarding the opinion or recommendation prior to making
14 the opinion or recommendation available under section 96-13."

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

17 **"§96-12 Procedure after investigation.** If, after
18 investigation, the ombudsman finds that:

- 19 (1) A matter should be further considered by the agency;
20 (2) An administrative act should be modified or cancelled;
21 (3) A statute or regulation on which an administrative act
22 is based should be altered;



1 (4) Reasons should be given for an administrative act; or

2 (5) Any other action should be taken by the agency[+] or
3 contracted facility,

4 the ombudsman shall report the ombudsman's opinion and
5 recommendations to the agency.

6 If the investigation involved a contracted facility or
7 officer or employee of a contracted facility, the ombudsman
8 shall provide the opinion and recommendations to the department
9 of public safety. The department of public safety shall provide
10 a copy of the opinion and recommendations to the contracted
11 facility.

12 The ombudsman may request the agency to notify the
13 ombudsman, within a specified time, of any action taken on the
14 ombudsman's recommendations. For investigations involving a
15 contracted facility or officer or employee of a contracted
16 facility, the department of public safety shall be responsible
17 for notifying the ombudsman within a specified time of any
18 action taken by the department of public safety or the
19 contracted facility pursuant to the ombudsman's
20 recommendations."

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



1 **"§96-13 Publication of recommendations.** After a
2 reasonable time has elapsed, the ombudsman may present the
3 ombudsman's opinion and recommendations to the governor, the
4 legislature, the public, or any of these. The ombudsman shall
5 include with this opinion any reply made by the agency[-] or
6 contracted facility."

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

9 **"§96-14 Notice to the complainant.** After a reasonable
10 time has elapsed, the ombudsman shall notify the complainant of
11 the actions taken by the ombudsman and by the agency[-] or
12 contracted facility."

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

15 **"§96-15 Misconduct by agency or contracted facility**
16 **personnel.** If the ombudsman has a reasonable basis to believe
17 that there may be a breach of duty or misconduct by any officer
18 or employee of an agency[-] or contracted facility, the
19 ombudsman may refer the matter to the appropriate authorities
20 without notice to that person."

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



1 "§96-18 Agencies may not open letters to ombudsman[-];
2 contracted facilities. A letter to the ombudsman from a person
3 held in custody by an agency shall be forwarded immediately,
4 unopened, to the ombudsman. The contract between the State and
5 a contracted facility shall similarly provide that a letter to
6 the ombudsman from an inmate in the contracted facility shall be
7 forwarded immediately, unopened, to the ombudsman."

8 SECTION 13. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2007-2008 and the
11 same sum, or so much thereof as may be necessary for fiscal year
12 2008-2009 for any expenses or staffing needs resulting from the
13 expansion of jurisdiction to administrative acts relating to the
14 department of public safety and contracted facilities.

15 The sums appropriated shall be expended by the office of
16 ombudsman for the purposes of this Act.

17 SECTION 14. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 15. This Act shall take effect on July 1, 2007,
20 and shall apply to investigations of contracted facilities with
21 which the department of public safety has entered into a



1 contract or with which the department has renewed a contract,
2 after its effective date.
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INTRODUCED BY:

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JAN 23 2007



Report Title:

Public safety; ombudsman

Description:

Clarifies that the Office of Ombudsman has the authority to investigate 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.

