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# A BILL FOR AN ACT

RELATING TO THE PHASEOUT OF PRIVATE CORRECTIONAL FACILITIES.

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

1 PART I

2 SECTION 1. The legislature finds that the State has relied  
3 on contracted private, for-profit prisons to house a significant  
4 portion of the State's prison population for more than two  
5 decades. Unfortunately, the inmates who serve their sentences  
6 in these out-of-state facilities are effectively exiled  
7 thousands of miles away from their families, friends, and  
8 crucial support networks. The impacts of this isolation are  
9 felt disproportionately by the native Hawaiian inmates, who are  
10 significantly more likely to be transferred to out-of-state  
11 prisons than inmates of other ethnicities.

12 More specifically, a 2010 report by the office of Hawaiian  
13 affairs, entitled "The Disparate Treatment of Native Hawaiians  
14 in the Criminal Justice System", found that out-of-state  
15 incarceration results in significant trauma to prisoners and  
16 their families. In collecting data and testimony for the  
17 report, the office of Hawaiian affairs found that incarceration



1 outside of the State often resulted in families being torn  
2 apart. For example, one former inmate stated that he "lost  
3 [his] family--wife and kids" when he was forced to serve five  
4 years of his sentence on the mainland. Other individuals  
5 involved in the criminal justice system described how they  
6 witnessed inmates react emotionally when they realized they  
7 would be moved thousands of miles away from their families  
8 without being able to tell them goodbye. The report also found  
9 that when the inmates returned to the State, they were more  
10 likely to encounter difficulties when reentering society due to  
11 the lack of adequate reentry programs at the out-of-state  
12 prisons and the long length of time they spent away from their  
13 support networks and Hawaii culture.

14 The legislature also finds that the adverse impacts of  
15 incarcerating inmates outside of the State were recognized by  
16 the legislature and the department of public safety even before  
17 the State began the practice of contracting with private  
18 mainland prisons. During the Regular Session of 1994, when the  
19 legislature was first considering whether to authorize the use  
20 of private, out-of-state correctional facilities to alleviate  
21 prison overcrowding, standing committees in both the senate and



1 house of representatives expressed concerns about inmates being  
2 transferred away from their support networks and the impact this  
3 would have on their rehabilitation. Committees in both chambers  
4 expressed a clear intent that inmates with strong ties to Hawaii  
5 should not be transferred outside of the State. In 1994, the  
6 senate committee on judiciary stated in standing committee  
7 report no. 1902:

8 "Many inmates currently incarcerated in Hawaii's prisons  
9 have lived their entire lives in Hawaii. These inmates  
10 have no support systems in localities other than Hawaii.

11 Accordingly, on the basis of the representations made  
12 by . . . the director of public safety, priority for  
13 transfers should be given first to non-Hawaii resident  
14 inmates, then to those inmates who have lived in our State  
15 for five years or less, and only thereafter will those with  
16 strong roots in Hawaii be considered for transfer."

17 Similarly, in 1994, the standing committee on public safety and  
18 corrections of the house of representatives stated the following  
19 in standing report number 975-94:



1 "[T]he public defender raised concerns that inmates with a  
2 local support system would be transferred to other states  
3 against their will.

4 An enormous factor in an inmate's rehabilitation is  
5 the inmate's ability to receive visits or phone calls from  
6 friends and relatives. It appears that visits or phone  
7 calls to an inmate would be greatly reduced, if not  
8 eliminated, if an inmate with a local support system is  
9 transferred to a mainland correctional center.

10 In light of this, it is in the intent of your  
11 Committee that any inmate having a strong, nurturing  
12 support system in Hawaii that contributes to the inmate's  
13 rehabilitation shall not be considered for interstate  
14 transfer."

15 Accordingly, the legislature finds that when it enacted  
16 Act 208, Session Laws of Hawaii 1994, which authorized the  
17 transfer of inmates to privately operated correctional  
18 facilities outside of the State, it did so with the clear intent  
19 that the department of public safety would not transfer  
20 individuals with strong community ties. The legislature also  
21 finds that this clear intent has largely been ignored over the



1 last twenty-five years. The legislature further recognizes that  
2 fears regarding the significant detrimental impact that  
3 interstate transfers would have on inmates have turned out to be  
4 true. In addition, the problem of prison overcrowding continues  
5 to persist even though Act 208 was enacted specifically to  
6 alleviate this issue. In addition, larger problems with the use  
7 of mass incarceration have increased since Act 208 was enacted.  
8 Accordingly, the legislature believes that the State must phase  
9 out the practice of transferring inmates to privately operated  
10 mainland correctional facilities.

11 The legislature notes that the State had the authority to  
12 transfer certain inmates to publicly operated correctional  
13 facilities, such as prisons owned and operated directly by the  
14 federal government or a state, prior to the passage of Act 208,  
15 Session Laws of Hawaii 1994. The State will retain that  
16 authority under this Act.

17 The legislature also finds that the department of public  
18 safety is currently planning for the construction of a new jail  
19 to replace the existing Oahu community correctional center in  
20 Kalihi. In 2018, the governor announced that he had selected  
21 the Halawa animal quarantine facility site as the location for



1 the new jail. The new facility would cost \$525,000,000, and the  
2 State planned to fund the facility using either general  
3 obligation bond proceeds or through a public-private  
4 partnership, in which the State would engage with a private  
5 party to develop and operate the jail. However, the legislature  
6 takes notice of the negative impacts of using private  
7 correctional facilities, including a lack of oversight and  
8 accountability and recurring violations of inmates'  
9 constitutional rights. Accordingly, the legislature does not  
10 believe it would be prudent to move forward with the  
11 construction of a new, privately operated jail within the State.

12 The legislature further finds that Act 179, Session Laws of  
13 Hawaii 2019, established the Hawaii correctional system  
14 oversight commission (commission) to ensure transparency in the  
15 State's correctional system; support safe conditions for  
16 employees, inmates, and detainees; and provide positive reform  
17 towards a rehabilitative and therapeutic correctional system.  
18 The commission is responsible for overseeing the State's  
19 correctional system, establishing maximum inmate population  
20 limits for each correctional facility and monitoring crucial  
21 reentry programs, facility educational and treatment programs,



1 rehabilitative services, work furloughs, and parole services.  
2 Since its inception, the commission has played a leading role in  
3 addressing the COVID-19 response in the State's correctional  
4 system despite being unable to hire any staff or access any of  
5 its appropriated funding.

6 The commission recently expressed concerns that the  
7 department of public safety's process to construct a new jail on  
8 Oahu was flawed. Despite the project's large costs, plans have  
9 been developed without meaningful input or guidance from the  
10 community and the facility planners have failed to identify  
11 factors driving the State's jail population. The commission  
12 concluded that the State should reassess the required capacity  
13 of the new jail, noting that many of the assumptions made at the  
14 time the facility's environmental impact statement was written  
15 have changed.

16 Recently, the State markedly reduced the inmate population  
17 at the Oahu community correctional center to reduce chronic  
18 overcrowding in the face of the coronavirus disease 2019  
19 pandemic. As a result, the population of Oahu community  
20 correctional center was reduced from over one thousand inmates  
21 to less than eight hundred inmates. A study conducted by the



1 Lawyers for Equal Justice determined that the vast majority of  
2 inmates released did not re-offend and most of those who did  
3 reoffend had been arrested for "poverty related offenses", such  
4 as those related to homelessness, including entering a closed  
5 public park or obstructing a public sidewalk.

6       These population reduction efforts, as well as future moves  
7 toward pretrial reform and sentencing reform, would alter the  
8 requirements of any new correctional center in the State.  
9 Accordingly, the commission recommended that planning for the  
10 new jail be paused so that additional review and crucial  
11 planning may be conducted. The legislature believes that it is  
12 crucial that the Hawaii correctional system oversight commission  
13 be included in this review and planning. In addition, as the  
14 State phases out the use of private correctional facilities, the  
15 commission's crucial role in establishing important corrections  
16 policies and providing crucial oversight will become even more  
17 important. Therefore, to ensure the State has a coordinated  
18 approach to the management of the State's correctional  
19 facilities as it brings prisoners formerly incarcerated in  
20 private, out-of-state correctional facilities back to Hawaii,  
21 the legislature believes that the commission must be included in



1 the planning and design of any new correctional facility or the  
2 expansion of any existing correctional facility in the State.

3 The purpose of this Act is to:

4 (1) Require the commission to create a comprehensive plan  
5 to phase out private correctional institutions by 2025  
6 and transmit a report containing the plan and any  
7 proposed legislation to the legislature; and

8 (2) Require the department of public safety to obtain  
9 input on and recommendations from the commission on  
10 any master plan for construction of a new correctional  
11 facility or expansion of an existing correctional  
12 facility, and include the input and recommendations in  
13 any environmental impact statement for the project.

14 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
15 amended by adding a new section to part I to be appropriately  
16 designated and to read as follows:

17 "§353- Construction and expansion of correctional  
18 facilities; input and recommendations of Hawaii correctional  
19 system oversight commission required. (a) No new correctional  
20 facility shall be constructed and no existing correctional  
21 facility shall be expanded unless:



1       (1) The department first obtains input on and  
2       recommendations from the Hawaii correctional system  
3       oversight commission on any master plan for the  
4       facility; and

5       (2) The input and recommendations from the Hawaii  
6       correctional system oversight commission are included  
7       in any environmental impact statement on the project.

8       (b) To facilitate the input and recommendations of the  
9       Hawaii correctional system oversight commission as provided in  
10      subsection (a), the department shall submit the following  
11      information to the Hawaii correctional system oversight  
12      commission upon the commission's request:

13      (1) The proposed maximum inmate population of the  
14      facility;

15      (2) Any programs proposed for the facility, including  
16      reentry programs, facility educational and treatment  
17      programs, rehabilitative services, work furloughs, and  
18      parole services; and

19      (3) Any other relevant information required by the  
20      commission as established by rules adopted pursuant to  
21      chapter 91."



1 SECTION 3. Section 353L-3, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The commission shall:

4 (1) Oversee the State's correctional system and have  
5 jurisdiction over investigating complaints at  
6 correctional facilities and facilitating a  
7 correctional system transition to a rehabilitative and  
8 therapeutic model;

9 (2) Establish maximum inmate population limits for each  
10 correctional facility and formulate policies and  
11 procedures to prevent the inmate population from  
12 exceeding the capacity of each correctional facility;

13 (3) Consult with the department of public safety on the  
14 planning of any new or expanded correctional facility  
15 in the State, and provide input and recommendations on  
16 any master plan for the facility, for inclusion in any  
17 environmental impact statement on the project, as  
18 provided in section 353- ;

19 (4) Work with the department of public safety in  
20 monitoring and reviewing the comprehensive offender  
21 reentry program, including facility educational and



1 treatment programs, rehabilitative services, work  
2 furloughs, and the Hawaii paroling authority's  
3 oversight of parolees. The commission may make  
4 recommendations to the department of public safety,  
5 the Hawaii paroling authority, and the legislature  
6 regarding reentry and parole services; ~~[and]~~  
7 ~~[(4)]~~ (5) Ensure that the comprehensive offender reentry  
8 system under chapter 353H is working properly to  
9 provide programs and services that result in the  
10 timely release of inmates on parole when the maximum  
11 terms have been served instead of delaying the release  
12 for lack of programs and services~~[-]~~; and  
13 (6) Create a comprehensive plan to phase out private  
14 correctional institutions by 2025. The commission  
15 shall seek input from the department of the attorney  
16 general, office of the prosecuting attorney, office of  
17 the public defender, judiciary, and department of  
18 public safety in creating the plan. A report  
19 transmitting the plan, including any proposed  
20 legislation, shall be submitted to the legislature no  
21 later than twenty days prior to the convening of the



1           regular session of 2022. For the purposes of this  
2           subsection, "private correctional institution"  
3           includes any facility:

4           (A) Owned by the State and operated by a non-  
5           governmental entity; or

6           (B) Operated under a public-private partnership.

7           To achieve these ends, the commission shall authorize the  
8 oversight coordinator to adopt rules in accordance with  
9 chapter 91."

10           SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 5. This Act shall take effect on July 1, 3050.



**Report Title:**

Corrections; Private Prisons; Phase-out; Hawaii Correctional Oversight Commission

**Description:**

Requires the Hawaii correctional oversight commission to create a comprehensive plan to phase out the use of private correctional institutions by 2025. Prohibits the construction of new correctional facilities and the expansion of existing correctional facilities without first obtaining input and recommendations of the Hawaii correctional system oversight commission. Effective 7/1/3050. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

