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## A BILL FOR AN ACT

RELATING TO INMATES.

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

1           SECTION 1. The legislature finds that Hawaii inmates who  
2 serve their sentences in privately operated, out-of-state  
3 prisons often face blatant and unacceptable violations of rights  
4 guaranteed to them by both the federal and state constitutions,  
5 including their rights to due process, equal protection, free  
6 speech, access to counsel, and to be free from self-  
7 incrimination and cruel and unusual punishment. Attorneys have  
8 reported instances in which private prison operators have  
9 intercepted and read crucial privileged and confidential written  
10 communication between inmates and their attorneys. In at least  
11 one instance, a private prison passed information obtained from  
12 these privileged communications on to prosecutors. In another  
13 instance, prison staff allegedly removed and withheld privileged  
14 correspondence from an inmate's cell. These actions severely  
15 impaired, and very likely prejudiced, the ability of these  
16 inmates to prepare for crucial legal proceedings. Further,  
17 these actions were committed in violation of established



1 department of public safety policies regarding attorney-client  
2 communication.

3       The legislature finds that this pattern of behavior is  
4 unacceptable. Even though the affected inmates are not  
5 physically housed within the State or supervised by state  
6 employees, they nonetheless remain under the jurisdiction of the  
7 department of public safety and should remain subject to all the  
8 rights and protections afforded to inmates who are incarcerated  
9 within the State. In cases where the rights of an inmate are  
10 impaired due to the action of an out-of-state private prison,  
11 the State must be able to take immediate action, including the  
12 immediate return of the affected inmate to Hawaii, to ensure  
13 that the purposes enshrined in both the federal and state  
14 constitutions are maintained and that the integrity of the  
15 State's criminal justice system is preserved.

16       The legislature further finds that, notwithstanding these  
17 violations, inmates housed outside of the State already  
18 encounter issues that inmates incarcerated in Hawaii do not  
19 face. Most significantly, inmates incarcerated on the mainland  
20 are effectively exiled thousands of miles away from their  
21 families, friends, and critical support networks. In addition,



1 a 2017 article that appeared in *Vice* reported that the private  
2 prisons that house Hawaii inmates suffer from numerous instances  
3 of violence, limited transparency, and a lack of oversight on  
4 the part of the State. At least three Hawaii inmates have been  
5 murdered at private facilities on the mainland. Finally, a 2010  
6 report by the office of Hawaiian affairs entitled "The Disparate  
7 Treatment of Native Hawaiians in the Criminal Justice System"  
8 found that native Hawaiians, who already face disproportionate  
9 impacts from the criminal justice system, are significantly more  
10 likely to be moved to an out-of-state prison than inmates of  
11 other ethnicities. Once transferred, they are "cut off from  
12 [the] supportive communities and families that give them a  
13 reason to exit prison as soon as possible." Given the inherent  
14 problems that out-of-state inmates face, it is critical that the  
15 State ensures that these persons are afforded all rights to  
16 which they are entitled.

17 Accordingly, the purpose of this Act is to:

- 18 (1) Clarify that the department of public safety retains  
19 jurisdiction over any Hawaii inmate who has been  
20 transferred to and is incarcerated at a correctional  
21 institution located outside of the State;



1           (2) Provide that the department of public safety may  
 2           transfer any Hawaii inmate who has been transferred to  
 3           and is incarcerated at an out-of-state institution  
 4           back to the State at any time and for any reason,  
 5           regardless of whether that inmate faces a criminal  
 6           charge in the jurisdiction in which the inmate is  
 7           incarcerated; and

8           (3) Ensure that any Hawaii inmate who has been transferred  
 9           to and is incarcerated at an out-of-state correctional  
 10          institution is afforded all rights and privileges  
 11          available to inmates incarcerated at correctional  
 12          institutions located within Hawaii, whether the right  
 13          or privilege is available by law, rule, department  
 14          policy, or any other authority.

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

17          "**§353-16.2 Transfer of inmates to out-of-state**  
 18          **institutions.** (a) The director may effect the transfer of a  
 19          committed felon to any correctional institution located in  
 20          another state regardless of whether the state is a member of the  
 21          Western Interstate Corrections Compact; provided that the



1 institution is in compliance with appropriate health, safety,  
2 and sanitation codes of the state, provides a level of program  
3 activity for the inmate that is suitable, and is operated by  
4 that state, by any of its political subdivisions, or by a  
5 private institution; and provided further that the transfer is  
6 either:

- 7 (1) In the interest of the security, management of the  
8 correctional institution where the inmate is presently  
9 placed, or the reduction of prison overcrowding; or
- 10 (2) In the interest of the inmate.

11 (b) Terms and conditions of the transfer and any  
12 reimbursement for expenses shall be agreed upon between the  
13 department and the out-of-state correctional institution prior  
14 to transfer.

15 (c) Notwithstanding any other law to the contrary, the  
16 department:

- 17 (1) Shall have custody and retain jurisdiction over any  
18 Hawaii inmate who has been transferred to and is  
19 incarcerated at an out-of-state correctional  
20 institution pursuant to subsection (a);



1       (2) May transport any Hawaii inmate who has been  
2       transferred to and is incarcerated at an out-of-state  
3       correctional institution pursuant to subsection (a)  
4       back to the State at any time for any reason,  
5       regardless of whether that inmate faces a criminal  
6       charge in the jurisdiction in which the inmate is  
7       incarcerated; and

8       (3) Shall ensure that any Hawaii inmate who has been  
9       transferred to and is incarcerated at an out-of-state  
10       correctional institution pursuant to subsection (a) is  
11       afforded all rights and privileges available to  
12       inmates incarcerated at correctional institutions  
13       located within the State, whether the right or  
14       privilege is available by law, rule, department  
15       policy, or any other relevant authority."

16       SECTION 3. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



1 SECTION 4. New statutory material is underscored.

2 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: 

JAN 22 2021



# H.B. NO. 398

**Report Title:**

DPS; Corrections; Out-of-State Correctional Institutions;  
Jurisdiction of Inmates

**Description:**

Clarifies that the department of public safety retains custody of and jurisdiction over any Hawaii inmate who has been transferred to and is incarcerated at a correctional institution located outside of the State. Provides that the department of public safety may transfer any Hawaii inmate who was transferred to an out-of-state institution back to the State at any time and for any reason. Requires Hawaii inmates incarcerated outside of the State to be afforded all rights and privileges available to inmates incarcerated at correctional institutions located within the State.

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