

JAN 27 2021

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



1 years. The legislature further recognizes that fears regarding  
2 the significant detrimental impact that interstate transfers  
3 would have on inmates have turned out to be true. In addition,  
4 the problem of prison overcrowding continues to persist even  
5 though Act 208 was enacted specifically to alleviate this issue.  
6 In addition, larger problems with the use of mass incarceration  
7 have increased since Act 208 was enacted. Accordingly, the  
8 legislature believes that the State must phase out the practice  
9 of transferring inmates to privately operated mainland  
10 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 to ensure transparency in the State's  
15 correctional system; support safe conditions for employees,  
16 inmates, and detainees; and provide positive reform towards a  
17 rehabilitative and therapeutic correctional system. The  
18 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 Hawaii correctional system oversight commission  
7 recently expressed concerns that the department of public  
8 safety's process to construct a new jail on Oahu was flawed.  
9 Despite the project's large costs, plans have been developed  
10 without meaningful input or guidance from the community and the  
11 facility planners have failed to identify factors driving the  
12 State's jail population. The commission concluded that the  
13 State should reassess the required capacity of the new jail,  
14 noting that many of the assumptions made at the time the  
15 facility's environmental impact statement was written have  
16 changed.

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



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

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



1 the legislature believes that the commission must be included in  
2 the planning and design of any new correctional facility or the  
3 expansion of any existing correctional facility in the State.

4 The purpose of this Act is to require:

- 5 (1) The State to phase out the use of private prisons; and
- 6 (2) The department of public safety to obtain the Hawaii  
7 correctional system oversight commission's approval  
8 before constructing any new correctional facility or  
9 expanding any existing correctional facility.

10 PART II

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

14 "§353- Use of private correctional institutions  
15 prohibited. (a) Beginning July 1, 2025, the State shall not  
16 commit, transfer, or house any inmate at a private correctional  
17 institution.

18 (b) This section shall not be construed to prohibit the  
19 State from contracting with or housing an inmate at:

- 20 (1) Any facility providing rehabilitative, counseling,  
21 treatment, mental health, educational, or medical



- 1           services to a minor who is under the jurisdiction of  
2           the family court;
- 3           (2) Any facility providing evaluation or treatment  
4           services to a person who has been detained or is  
5           subject to an order of commitment by a court;
- 6           (3) Any facility providing educational, vocational,  
7           medical, or other ancillary services to an inmate in  
8           the custody of, and under the direct supervision of,  
9           the State or any of its political subdivisions;
- 10          (4) A residential care facility licensed by the department  
11          of health or department of human services;
- 12          (5) Any school facility used for the disciplinary  
13          detention of a pupil;
- 14          (6) Any facility used for the quarantine or isolation of  
15          persons for public health reasons; or
- 16          (7) Any facility used for the temporary detention of a  
17          person detained or arrested by a merchant, private  
18          investigator or guard, or other person pursuant to  
19          section 803-3.
- 20          (c) For purposes of this section, "private correctional  
21          institution" includes any facility:



- 1        (1) Owned by the State and operated by a non-government  
2            entity; or  
3        (2) Operated under a public-private partnership."

4        SECTION 3. Section 353-16.2, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

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

18        (2) In the interest of the inmate[-];  
19 provided further that beginning July 1, 2021, the director shall  
20 commence reducing the number of committed felons incarcerated in  
21 private correctional institutions. Beginning June 30, 2025, no



1 inmate shall be committed or transferred to any private  
2 correctional institution. For the purpose of this section,  
3 "private correctional institution" shall include any  
4 correctional institution operated under a public-private  
5 partnership."

6 SECTION 4. Section 353-16.3, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§353-16.3 Development of out-of-state Hawaii correctional**  
9 **facilities.** Notwithstanding any other provision to the  
10 contrary, the governor, with the assistance of the director, may  
11 negotiate with any appropriate out-of-state jurisdiction for the  
12 development of Hawaii correctional facilities to reduce prison  
13 overcrowding; provided that any agreement negotiated pursuant to  
14 this section shall be subject to legislative approval by  
15 concurrent resolution in any regular or special session[-];  
16 provided further that the authority to negotiate and execute an  
17 agreement under this section shall expire on June 30, 2025."

18 PART III

19 SECTION 5. Chapter 353, Hawaii Revised Statutes, is  
20 amended by adding a new section to part I to be appropriately  
21 designated and to read as follows:



1           "§353-        Construction and development of new correctional  
2 facilities; approval of Hawaii correctional system oversight  
3 commission required. (a) No new correctional facility shall be  
4 constructed and no existing correctional facility shall be  
5 expanded unless the construction or expansion is first approved  
6 by the Hawaii correctional system oversight commission.

7           (b) To facilitate the approval or disapproval of a  
8 proposed new or expanded correctional facility as provided in  
9 subsection (a), the department shall submit the following  
10 information to the Hawaii correctional system oversight  
11 commission upon the commission's request:

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

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

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



1 SECTION 6. 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 approve or disapprove those plans  
16 before the correctional facility is constructed or  
17 expanded, as provided in section 353- ;

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



1 furloughs, and the Hawaii paroling authority's  
2 oversight of parolees. The commission may make  
3 recommendations to the department of public safety,  
4 the Hawaii paroling authority, and the legislature  
5 regarding reentry and parole services; and

6 [~~(4)~~] (5) Ensure that the comprehensive offender reentry  
7 system under chapter 353H is working properly to  
8 provide programs and services that result in the  
9 timely release of inmates on parole when the maximum  
10 terms have been served instead of delaying the release  
11 for lack of programs and services.

12 To achieve these ends, the commission shall authorize the  
13 oversight coordinator to adopt rules in accordance with chapter  
14 91."

15 PART IV

16 SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.  
19

INTRODUCED BY: Clarence Kristofer



# S.B. NO. 1243

**Report Title:**

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

**Description:**

Requires the State to phase out the use of private correctional facilities to incarcerate Hawaii inmates. Prohibits the construction of new correctional facilities or the expansion of existing correctional facilities without the approval of the Hawaii correctional system oversight commission.

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

