

JAN 27 2021

A BILL FOR AN ACT

RELATING TO CORRECTIONAL FACILITIES.

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

1 SECTION 1. The legislature finds that mass incarceration
2 has become the subject of increasing scrutiny and criticism.
3 Opponents of mass incarceration note that, instead of producing
4 safer communities, the construction of more jails and prisons
5 has led to disproportionately negative impacts on communities of
6 color, particularly indigenous populations. These opponents
7 instead advocate for evidence-based models of rehabilitation;
8 addiction treatment; job training; restorative justice programs;
9 and traditional cultural practices that promote a sense of
10 belonging and pride.

11 The legislature also finds that rushing to expand state
12 correctional facilities without pausing to thoughtfully re-
13 evaluate systemic issues within the State's corrections system
14 ignores the intersecting local values of community input and
15 environmental protection.

16 Further, the legislature believes that the planned
17 construction of a new and larger jail on Oahu to replace the



1 existing Oahu community correctional center is a significantly
2 flawed undertaking. First, the jail was planned without
3 adequate input or guidance from community stakeholders. Second,
4 insufficient time was spent on identifying factors that have led
5 to an increase in the jail population and on developing policy
6 proposals that could significantly reduce the number of inmates
7 without compromising public safety.

8 The legislature notes that a recent positive development
9 has been the formation of a Hawaii correctional system oversight
10 commission, which was established pursuant to Act 179, Session
11 Laws of Hawaii 2019 (Act 179). The five-member volunteer
12 commission has held regular meetings and conducted other
13 business in accordance with its legislative mandate, despite
14 being stymied by the lack of support staff, including an
15 oversight coordinator, to which it is entitled.

16 In November 2020, the correctional system oversight
17 commission unanimously issued a strong recommendation that the
18 department of public safety "immediately pause the planning for
19 the new jail and create an Advisory Committee to review, and if
20 necessary revise, the planning that has been done to date, and
21 to actively participate in the planning process going forward."



1 (Emphasis in original.) In explaining this recommendation, the
2 commission cited the importance of first conducting a
3 comprehensive analysis of ways to reduce the jail population
4 before making decisions on the jail's capacity, programs it
5 should provide, and its role in the community. The legislature
6 notes that, while Act 179 also established a permanently funded
7 criminal justice research institute to examine all aspects of
8 the criminal justice system and to collect data necessary for
9 monitoring the overall functioning of the criminal justice
10 system, more time is needed to collect data relevant to the
11 jail's optimal capacity.

12 The legislature is acutely aware that, faced with the
13 massive budget shortfall resulting from economic devastation
14 caused by the coronavirus disease 2019 pandemic, it would be
15 prudent to seriously reconsider proceeding with a \$525,000,000
16 construction project that was predicated on obsolete ideas and a
17 flawed planning process. Further, while using public-private
18 partnerships to finance state building costs may be an appealing
19 option in times of financial crisis, the legislature is
20 cognizant of the fact that other states are contemplating ending
21 their existing contracts with private prison corporations. It



1 is widely known that these types of corporations have profited
2 from rising stock values and by constructing numerous detention
3 centers to house undocumented immigrants. Ironically, the State
4 may even negate any potential cost savings achieved from
5 maintaining or expanding contracts with a private prison
6 corporation if the corporation is organized as a real estate
7 investment trust. Because a real estate investment trust pools
8 the capital of numerous investors, individual investors earn
9 dividends from real estate investments without directly buying,
10 managing, or financing any properties. Thus, partnering with a
11 private prison corporation classified as a real estate
12 investment trust to construct a new jail could ultimately cost
13 the State much more than if the State had financed the project
14 on its own, because much of the funds contributed by the State
15 under the partnership would go toward enriching the
16 corporation's shareholders.

17 Accordingly, the purpose of this Act is to:

- 18 (1) Establish a moratorium on the construction of any new
19 correctional facilities in the State, including the
20 planned construction of a new facility to replace the
21 existing Oahu community correctional center; and



1 (2) Require the department of public safety to obtain the
2 approval of the Hawaii correctional system oversight
3 commission before constructing any new correctional
4 facility or expanding any existing correctional
5 facility.

6 SECTION 2. Chapter 353, Hawaii Revised Statutes, is
7 amended by adding two new sections to part I to be appropriately
8 designated and to read as follows:

9 "**§353- In-state correctional facilities; moratorium.**

10 (a) Notwithstanding sections 353-16.35, 353-16.36, or any other
11 law to the contrary, no person, including any government agency
12 or public or private entity, shall construct a new correctional
13 facility in the State on or after July 1, 2021.

14 (b) For the purposes of this section, "new correctional
15 facility" means any prison or community correctional center that
16 has not housed an inmate prior to July 1, 2021.

17 **§353- Construction and development of new correctional**
18 **facilities; approval of Hawaii correctional system oversight**

19 **commission required.** (a) No new correctional facility shall be
20 constructed and no existing correctional facility shall be



1 expanded unless the construction or expansion is first approved
2 by the Hawaii correctional system oversight commission.

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

8 (1) The proposed maximum inmate population of the
9 facility;

10 (2) Any programs proposed for the facility, including
11 reentry programs, facility educational and treatment
12 programs, rehabilitative services, work furloughs, and
13 parole services; and

14 (3) Any other relevant information required by the
15 commission, as established by rules adopted pursuant
16 to chapter 91."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2021.

19

INTRODUCED BY: Clarence K. Nishihara



S.B. NO. 1245

Report Title:

Public Safety; Correctional Facilities; Construction;
Moratorium; Hawaii Correctional Oversight Commission

Description:

Establishes a moratorium on the construction of any new correctional facilities in the State on or after 7/1/2021, including the planned construction of a new facility to replace the existing Oahu community correctional center. 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.

