
A BILL FOR AN ACT

RELATING TO CONFINEMENT.

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

1 SECTION 1. Section 353-1, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read:

4 "Administrative confinement" means temporary segregation
5 of an inmate from the general population of a correctional
6 facility when the inmate's continued presence in the general
7 population presents an immediate threat to the safety of self or
8 others, jeopardizes the integrity of an investigation of alleged
9 serious misconduct or criminal activity, or endangers
10 institutional security. "Administrative confinement" does not
11 include protective custody.

12 "Disciplinary confinement" means placement of an inmate in
13 a designated segregation housing unit in a cell separated from
14 the general population of a correctional facility.

15 "Gang" means any ongoing organization, association, or
16 group of three or more individuals, whether formal or informal,
17 having as one of its primary activities the commission of one or



1 more criminal acts, having a common name or common identifying
2 sign or symbol, and whose members individually or collectively
3 engage in or have engaged in a pattern of criminal activity.

4 "Long-term confinement" means any segregation of an inmate
5 within a cell for twenty hours or more within a twenty-four-hour
6 period.

7 "Protective custody" means voluntary or involuntary
8 segregation from the general population of a correctional
9 facility for inmates requesting or requiring protection from
10 other inmates."

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

14 "§353-A Long-term confinement. (a) Long-term confinement
15 shall not be used for administrative confinement, protective
16 custody, and other forms of non-punitive housing.

17 (b) Inmates placed into long-term confinement shall have
18 access to:

19 (1) Educational and programming opportunities consistent
20 with the inmate's classification by the department and



1 federal, state, and county laws, rules, or
2 regulations;

3 (2) A minimum of four hours outside of the cell within a
4 twenty-four-hour period; provided that of the four
5 hours, at least one hour shall include access to
6 indoor or outdoor recreation for exercise;

7 (3) The general population dining facility;

8 (4) The inmate's personal property, including electronics,
9 books, magazines, and other printed material; and

10 (5) Telephone calls and visitation opportunities.

11 (c) An inmate shall not be classified, assigned, or
12 subject to long-term confinement, unless the inmate has
13 committed one or more of the following acts within the
14 immediately preceding five-year period while incarcerated:

15 (1) One act of violence that:

16 (A) Resulted in or was likely to result in:

17 (i) Serious injury that required
18 hospitalization; or

19 (ii) Death,

20 of another inmate or correctional personnel; or



1 (B) Occurred in connection with any non-consensual
2 sexual act;

3 (2) Two or more acts of disruption of correctional
4 facility operations that resulted in:

5 (A) The complete shutdown of a correctional facility;
6 or

7 (B) Serious injury of correctional personnel that
8 required hospitalization; or

9 (3) An escape, attempted escape, or conspiracy to escape
10 from the security perimeter of a correctional facility
11 or from custody, or both.

12 (d) Prior to being classified, assigned, or subject to
13 long-term confinement, an inmate shall receive a hearing by a
14 committee of at least three individuals assembled by the
15 director for this purpose, unless the director certifies in
16 writing that the hearing will pose an imminent threat to the
17 safety and security of the correctional facility at which the
18 inmate is being housed.

19 (e) If a certification under subsection (d) is made, the
20 hearing shall be conducted within five business days from when
21 the inmate is classified, assigned, or subject to long-term



1 confinement. The department shall have the burden of proving an
2 inmate has committed one or more of the acts in subsection (c)
3 that would subject the inmate to long-term confinement.

4 (f) A hearing conducted pursuant to subsection (e) shall
5 require:

6 (1) A minimum of forty-eight hours' written notification
7 to the inmate that a hearing for long-term confinement
8 is being scheduled, which shall include a list of the
9 acts identified in subsection (c) that occurred and
10 the policies and rights of the inmate under this
11 section;

12 (2) A digital audio or video recording of the hearing,
13 which shall be kept on file by the department for one
14 hundred twenty days after the inmate is released from
15 long-term confinement; and

16 (3) A determination by the committee in person, by video
17 conference, or through written documentation within
18 five business days of the hearing date; provided that
19 the determination shall include all evidence presented
20 by the inmate and department that was considered by
21 the committee.



1 (g) An inmate shall have the following rights in a hearing
2 conducted pursuant to subsection (e):

3 (1) The right to appear in person or by video conference
4 and to address the committee;

5 (2) The right to submit documentary evidence to the
6 committee for its consideration;

7 (3) The right to call and cross-examine witnesses;
8 provided that if there are specific or written
9 findings by the committee that this process may
10 jeopardize the safety and security of the correctional
11 facility, the inmate shall be allowed to ask questions
12 through a designated third party;

13 (4) The right to an interpreter to understand and
14 participate in the hearing;

15 (5) The right to have an appointed advocate to present
16 evidence on behalf of the inmate at the inmate's
17 request or if the committee determines that the inmate
18 is unable to prepare and present evidence on the
19 inmate's own behalf;

20 (6) The right to retain an attorney at the inmate's own
21 expense to represent the inmate at the hearing; and



1 (7) The right to prompt notification of the committee's
2 determination.

3 (h) An inmate may appeal a determination made by the
4 committee by submitting an appeal in writing to:

5 (1) The warden of the correctional facility; provided that
6 the warden shall respond in writing to the appeal
7 within fourteen business days of the submission; and

8 (2) If the warden denies the appeal, the committee within
9 fourteen business days of receiving the denial;
10 provided that the committee shall respond in writing
11 to the appeal within fourteen business days of the
12 submission.

13 (i) A determination by the committee at a hearing
14 conducted pursuant to this section shall not mandate a minimum
15 period of time for an inmate to be classified, assigned, or
16 subject to long-term confinement. A determination shall mandate
17 no more than one year of long-term confinement and shall include
18 procedures to re-enter the general population pursuant to the
19 program instituted under subsection (j).



1 (j) The department shall institute a program for inmates
2 classified, assigned, or subject to long-term confinement to re-
3 enter the general population, including:

4 (1) Creating an individualized assessment and plan for an
5 inmate to re-enter the general population, to be
6 completed within thirty days of an inmate's placement
7 into long-term confinement; provided that each
8 individualized plan shall set benchmarks and good
9 behavior requirements for the inmate to receive
10 reduced levels of restrictions or increased privileges
11 until the inmate completes long-term confinement;

12 (2) Reviewing the individualized assessment and plan by
13 correctional personnel;

14 (3) Explaining the individualized assessment and plan by
15 correctional personnel to the inmate;

16 (4) At least every thirty days, conducting an evaluation
17 of the inmate by correctional personnel that includes:

18 (A) The inmate's progress with the individualized
19 plan;

20 (B) An assessment of the inmate's mental health
21 needs; and



- 1 (C) Recommendations on reducing levels of
2 restrictions or increasing privileges for the
3 inmate pursuant to the individualized plan;
- 4 (5) Establishing a long-term confinement review committee
5 to meet with the inmate at least every ninety days and
6 evaluate the inmate's individualized plan to
7 determine:
- 8 (A) The inmate's progress regarding the
9 individualized plan;
- 10 (B) Any recommended reductions in restrictions based
11 on the inmate's progress regarding the
12 individualized plan;
- 13 (C) Any recommended increases in programming based on
14 the inmate's progress regarding the
15 individualized plan; and
- 16 (D) Any recommended change of classification status
17 based on the inmate's progress regarding the
18 individualized plan; and
- 19 (6) Returning the inmate to the general population upon
20 successful completion of the individualized plan.



(k) Inmates shall not be classified, assigned, or subject to long-term confinement for more than one year, unless the department conducts a hearing that establishes:

(1) Evidence that the inmate committed an act that resulted in or was likely to result in serious injury or death within the previous year; or

(2) Evidence that there is a significant risk that the inmate will cause physical injury to department personnel, correctional personnel, other inmates, or members of the general public; provided that association with a gang or other group that poses a security threat shall not in and of itself be used to meet the requirements of this paragraph.

(1) If an inmate is classified, assigned, or subject to long-term confinement for more than one year pursuant to this section, the department shall:

(1) Provide a written record of all alternatives to long-term confinement considered for the inmate and why the alternatives were not implemented; and

(2) Create a plan to transition the inmate out of long-term confinement.



1 (m) At least once every three months, any inmate subject
2 to long-term confinement for more than one year shall be
3 entitled to a hearing by a committee of at least three
4 individuals assembled by the director for this purpose. The
5 hearing shall be conducted pursuant to the procedures set forth
6 in subsection (f).

7 **§353-B Disciplinary confinement.** (a) Disciplinary
8 confinement shall be used only when less restrictive
9 interventions are not available and when an inmate has committed
10 an act identified in subsection (e) or (f).

11 (b) Inmates placed into disciplinary confinement shall
12 have access to:

13 (1) One personal telephone call per week;

14 (2) A minimum of one hour per day of access to indoor or
15 outdoor recreation for exercise; and

16 (3) Medical care, including emergency services.

17 (c) Inmates placed into disciplinary confinement shall not
18 be subjected to additional punishments, including basic property
19 restrictions, inhumane living conditions, or the use of
20 excessive force.



1 (d) When an inmate is classified, assigned, or subject to
2 disciplinary confinement, the act that necessitated the
3 disciplinary confinement shall be identified in writing to the
4 inmate.

5 (e) An inmate shall be subject to disciplinary confinement
6 if the department determines that the inmate has committed one
7 or more of the following acts:

8 (1) An act that violated the correctional facility's
9 policies; or

10 (2) An act of violence that:

11 (A) Resulted in or was likely to result in:

12 (i) Serious injury that required
13 hospitalization; or

14 (ii) Death,
15 of another inmate or correctional personnel; or

16 (B) Occurred in connection with any non-consensual
17 sexual act.

18 (f) An inmate shall be subject to disciplinary confinement
19 the department determines the inmate has committed two or more
20 of the following acts:



- 1 (1) An act of disruption that resulted in the complete
2 shutdown of a correctional facility;
- 3 (2) An act that resulted in serious injury of correctional
4 personnel that required hospitalization; or
- 5 (3) An escape, attempted escape, or conspiracy to escape
6 from the security perimeter of a correctional facility
7 or from custody, or both.
- 8 (g) Prior to being classified, assigned, or subject to
9 disciplinary confinement, an inmate shall receive a hearing
10 before a committee of at least three individuals assembled by
11 the director for this purpose. The department shall have the
12 burden of proving an inmate has committed one or more of the
13 acts in subsection (e) or two or more of the acts in subsection
14 (f) that would subject the inmate to disciplinary confinement.
- 15 (h) A hearing conducted pursuant to subsection (g) shall
16 require:
- 17 (1) The inmate to be classified, assigned, or subject to
18 administrative confinement pursuant to section 353-C
19 until completion of the hearing;
- 20 (2) A minimum of forty-eight hours' written notification
21 to the inmate that a hearing for disciplinary



1 confinement is being scheduled, which shall include a
2 list of the acts identified in subsection (e) or (f)
3 that occurred and the policies and rights of the
4 inmate under this section;

5 (3) A digital audio or video recording of the hearing,
6 which shall be kept on file by the department for one
7 hundred twenty days after the inmate is released from
8 disciplinary confinement; and

9 (4) A determination by the committee in person, by video
10 conference, or through written documentation within
11 five business days of the hearing date; provided that
12 the determination shall include all evidence presented
13 by the inmate and department that was considered by
14 the committee.

15 (i) An inmate shall have the following rights in a hearing
16 conducted pursuant to subsection (g):

17 (1) The right to appear in person or by video conference
18 and to address the committee;

19 (2) The right to submit documentary evidence to the
20 committee for its consideration;



- 1 (3) The right to call and cross-examine witnesses;
2 provided that if there are specific or written
3 findings by the committee that this process may
4 jeopardize the safety and security of the correctional
5 facility, the inmate shall be allowed to ask questions
6 through a designated third party;
- 7 (4) The right to an interpreter to understand and
8 participate in the hearing;
- 9 (5) The right to have an appointed advocate to present
10 evidence on behalf of the inmate at the inmate's
11 request or if the committee determines that the inmate
12 is unable to prepare and present evidence on the
13 inmate's own behalf;
- 14 (6) The right to retain an attorney at the inmate's own
15 expense to represent the inmate at the hearing; and
- 16 (7) The right to prompt notification of the committee's
17 determination.
- 18 (j) An inmate may appeal a determination made by the
19 committee by submitting an appeal in writing to:



1 (1) The warden of the correctional facility; provided that
2 the warden shall respond in writing to the appeal
3 within fourteen business days of the submission; and

4 (2) If the warden denies the appeal, the committee within
5 fourteen business days of receiving the denial;
6 provided that the committee shall respond in writing
7 to the appeal within fourteen business days of the
8 submission.

9 (k) The maximum length of time an inmate shall be
10 classified, assigned, or subject to disciplinary confinement
11 shall be fifteen days; provided that if additional time is
12 necessary, the inmate shall be subject to the procedures for
13 long-term confinement pursuant to section 353-A.

14 **§353-C Administrative confinement.** (a) Administrative
15 confinement shall be used only when less restrictive
16 interventions are not available and there is a stated,
17 legitimate purpose for placement in administrative confinement
18 pursuant to subsection (d).

19 (b) Inmates placed into administrative confinement shall
20 have access to:

21 (1) One personal telephone call per day;



1 (2) A minimum of two hours per day of indoor or outdoor
2 recreation for exercise;

3 (3) The general population dining facility;

4 (4) The inmate's personal property, including electronics,
5 books, magazines, and other printed material; and

6 (5) Visitation opportunities.

7 (c) When an inmate is classified, assigned, or subject to
8 administrative confinement, the reason or reasons for the
9 administrative confinement shall be identified in writing to the
10 inmate.

11 (d) An inmate shall be subject to administrative
12 confinement if the department determines that there is a stated,
13 legitimate purpose for this confinement.

14 (e) Prior to being classified, assigned, or subject to
15 administrative confinement, an inmate shall receive a hearing
16 before a committee of at least three individuals assembled by
17 the director for this purpose.

18 (f) If a certification under subsection (e) is made, the
19 hearing shall be conducted within five business days from when
20 the inmate is classified, assigned, or subject to administrative
21 confinement. The department shall have the burden of proving



1 there is a stated, legitimate purposes that would subject the
2 inmate to administrative confinement.

3 (g) The maximum length of time an inmate shall be
4 classified, assigned, or subject to disciplinary confinement
5 shall be thirty days; provided that if additional time is
6 necessary, the inmate shall be subject to the procedures for
7 long-term confinement pursuant to section 353-A.

8 **§353-D Long-term confinement practices; review; report.**

9 (a) The department and the Hawaii correctional system oversight
10 commission established under chapter 353L shall conduct ongoing
11 reviews of the policies, standards, and treatment of inmates
12 classified, assigned, or subject to long-term confinement to
13 determine the effectiveness of long-term confinement practices
14 in the State's correctional facilities.

15 (b) The department and commission shall submit an annual
16 report to the governor and the legislature no later than twenty
17 days prior to the convening of each regular session. The annual
18 report shall include findings and recommendations regarding
19 long-term confinement practices, including any proposed
20 legislation on improving long-term confinement practices."



SECTION 3. Section 353-16.3, Hawaii Revised Statutes, is amended to read as follows:

"§353-16.3 Development of out-of-state Hawaii correctional facilities. Notwithstanding any other provision to the contrary, the governor, with the assistance of the director, may negotiate with any appropriate out-of-state jurisdiction for the development of Hawaii correctional facilities to reduce prison overcrowding; provided that any agreement negotiated pursuant to this section shall ~~be~~:

- (1) Be subject to legislative approval by concurrent resolution in any regular or special session[-]; and
- (2) Be held to the same standards of care and health and safety policies adopted by the department, including policies and procedures for appeal for long-term confinement pursuant to section 353-A, disciplinary confinement pursuant to section 353-B, and administrative confinement pursuant to section 353-C, as applicable."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.



H.B. NO. 1738

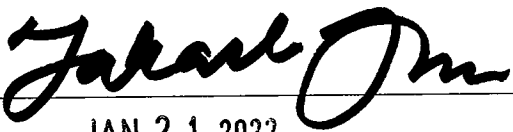
1 SECTION 5. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 6. Statutory material to be repealed in bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect upon its approval.

8

INTRODUCED BY:


JAN 21 2022



H.B. NO. 1738

Report Title:

Correctional Facilities; Long-term Confinement; Disciplinary Confinement; Administrative Confinement

Description:

Establishes policies and procedures for long-term confinement, disciplinary confinement, and administrative confinement of inmates in the State's correctional facilities.

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