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# 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 the  
8 inmate's self or others, jeopardizes the integrity of an  
9 investigation of alleged serious misconduct or criminal  
10 activity, or endangers institutional security. "Administrative  
11 confinement" does not 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) Effective January 1,  
15 2023, long-term confinement shall not be used for administrative  
16 confinement, protective custody, and other forms of non-punitive  
17 housing.

18 (b) Effective January 1, 2023, inmates placed into long-  
19 term confinement shall have access to:

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



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

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

(3) The general population dining facility;

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

(5) Telephone calls and visitation opportunities.

(c) Effective January 1, 2023, no inmate shall be  
classified, assigned, or subject to long-term confinement unless  
the inmate has committed one or more of the following within the  
immediately preceding five-year period while incarcerated:

(1) One act of violence that:

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

(i) Serious injury that required  
hospitalization; or

(ii) Death,

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) Effective January 1, 2024, prior to being classified,  
13       assigned, or subject to long-term confinement, an inmate shall  
14       receive a hearing within ten days of written notice by a  
15       committee of at least three individuals assembled by the  
16       director for this purpose, unless the director certifies in  
17       writing that there is an imminent threat to the safety and  
18       security of the correctional facility at which the inmate is  
19       being housed.

20       (e) Effective January 1, 2024, if a certification under  
21       subsection (d) is made, the hearing shall be conducted within



1 five business days from when the inmate is classified, assigned,  
2 or subject to long-term confinement. The department shall have  
3 the burden of proving an inmate has committed the acts under  
4 subsection (c) that would subject the inmate to long-term  
5 confinement.

6 (f) Effective January 1, 2024, a hearing conducted  
7 pursuant to subsection (d) or (e) shall require:

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

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

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



1 by the inmate and department that was considered by  
2 the committee.

3 (g) Effective January 1, 2024, an inmate shall have the  
4 following rights in a hearing conducted pursuant to subsection  
5 (d) or (e):

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

8 (2) The right to submit documentary evidence to the  
9 committee for its consideration;

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

16 (4) The right to an interpreter to understand and  
17 participate in the hearing;

18 (5) The right to have an appointed advocate to present  
19 evidence on behalf of the inmate at the inmate's  
20 request or if the committee determines that the inmate



1 is unable to prepare and present evidence on the  
2 inmate's own behalf;

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

5 (7) The right to prompt notification of the committee's  
6 determination.

7 (h) Effective January 1, 2024, an inmate may appeal a  
8 determination made by the committee by submitting an appeal in  
9 writing to:

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

13 (2) If the warden denies the appeal, the committee within  
14 fourteen business days of receiving the denial;  
15 provided that the committee shall respond in writing  
16 to the appeal within fourteen business days of the  
17 submission.

18 (i) Effective January 1, 2024, a determination by the  
19 committee at a hearing conducted pursuant to this section shall  
20 not mandate a minimum period of time for an inmate to be  
21 classified, assigned, or subject to long-term confinement. A



1 determination shall include procedures to re-enter the general  
2 population pursuant to the program instituted under subsection  
3 (j).

4 (j) Effective January 1, 2024, the department shall  
5 institute a program for inmates classified, assigned, or subject  
6 to long-term confinement to re-enter the general population,  
7 including:

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

16 (2) Review of the individualized assessment and plan by  
17 correctional personnel;

18 (3) Explanation of the individualized assessment and plan  
19 by correctional personnel to the inmate;

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





1        (A) The inmate's progress regarding the  
2        individualized plan;

3        (B) An assessment of the inmate's mental health  
4        needs; and

5        (C) Recommendations on reducing levels of  
6        restrictions or increasing privileges for the  
7        inmate pursuant to the individualized plan;

8        (5) Establishment of a long-term confinement review  
9        committee to meet with the inmate at least every  
10       ninety days and evaluate the inmate's individualized  
11       plan to determine:

12       (A) The inmate's progress regarding the  
13       individualized plan;

14       (B) Any recommended reductions in restrictions based  
15       on the inmate's progress regarding the  
16       individualized plan;

17       (C) Any recommended increases in programming based on  
18       the inmate's progress regarding the  
19       individualized plan; and



1           (D) Any recommended change of classification status  
2           based on the inmate's progress regarding the  
3           individualized plan; and

4           (6) Return of the inmate to the general population upon  
5           successful completion of the individualized plan.

6           (k) Effective January 1, 2024, inmates shall not be  
7           classified, assigned, or subject to long-term confinement for  
8           more than one year, unless the department conducts a hearing  
9           that establishes:

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

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



1       (1) Effective January 1, 2024, if an inmate is classified,  
2 assigned, or subject to long-term confinement for more than one  
3 year pursuant to this section, the department shall:

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

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

9       (m) Effective January 1, 2024, at least once every three  
10 months, any inmate subject to long-term confinement for more  
11 than one year shall be entitled to a hearing by a committee of  
12 at least three individuals assembled by the director for this  
13 purpose. The hearing shall be conducted pursuant to the  
14 procedures set forth in subsection (f).

15       **§353-B Disciplinary confinement.** (a) Effective January 1,  
16 2023, disciplinary confinement shall be used only when less  
17 restrictive interventions are not available and when an inmate  
18 has committed an act identified in subsection (e) or (f).

19       (b) Effective January 1, 2023, inmates placed into  
20 disciplinary confinement shall have access to:

21       (1) One personal telephone call per week;



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

3        (3) Medical care, including emergency services.

4        (c) Effective January 1, 2023, inmates placed into  
5        disciplinary confinement shall not be subjected to additional  
6        punishments, including basic property restrictions, inhumane  
7        living conditions, or the use of excessive force.

8        (d) Effective January 1, 2024, when an inmate is  
9        classified, assigned, or subject to disciplinary confinement,  
10       the act that necessitated the disciplinary confinement shall be  
11       identified in writing to the inmate.

12       (e) Effective January 1, 2024, no inmate shall be subject  
13       to disciplinary confinement unless the department determines  
14       that the inmate has committed one or more of the following  
15       within the immediately preceding year while incarcerated:

16       (1) An act that violated the correctional facility's  
17       policies; or

18       (2) An act of violence that:

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

20                (i) Serious injury that required  
21                hospitalization; or



1                   (ii) Death,

2                   of another inmate or correctional personnel; or

3                   (B) Occurred in connection with any non-consensual  
4                   sexual act.

5                   (f) Effective January 1, 2024, no inmate shall be subject  
6 to disciplinary confinement unless the department determines the  
7 inmate has committed two or more of the following:

8                   (1) An act of disruption that resulted in the complete  
9                   shutdown of a correctional facility;

10                  (2) An act that resulted in serious injury of correctional  
11                  personnel that required hospitalization; or

12                  (3) An escape, attempted escape, or conspiracy to escape  
13                  from the security perimeter of a correctional facility  
14                  or from custody, or both.

15                  (g) Effective January 1, 2024, prior to being classified,  
16 assigned, or subject to disciplinary confinement, an inmate  
17 shall receive a hearing before a committee of at least three  
18 individuals assembled by the director for this purpose, unless  
19 the director certifies in writing that there is an imminent  
20 threat to the safety and security of the correctional facility  
21 at which the inmate is being housed. The department shall have



1 the burden of proving an inmate has committed the act or acts in  
2 subsection (e) or (f) that would subject the inmate to  
3 disciplinary confinement.

4 (h) Effective January 1, 2024, a hearing conducted  
5 pursuant to subsection (g) shall require:

6 (1) The inmate to be classified, assigned, or subject to  
7 administrative confinement pursuant to section 353-C  
8 until completion of the hearing;

9 (2) A minimum of forty-eight hours' written notification  
10 to the inmate that a hearing for disciplinary  
11 confinement is being scheduled, which shall include a  
12 list of the act or acts identified in subsection (e)  
13 or (f) that occurred and the policies and rights of  
14 the inmate under this section;

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

19 (4) A determination by the committee in person, by video  
20 conference, or through written documentation within  
21 five business days of the hearing date; provided that



1           the determination shall include all evidence presented  
2           by the inmate and department that was considered by  
3           the committee.

4           (i) Effective January 1, 2024, an inmate shall have the  
5           following rights in a hearing conducted pursuant to subsection  
6           (g):

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

9           (2) The right to submit documentary evidence to the  
10           committee for its consideration;

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

17           (4) The right to an interpreter to understand and  
18           participate in the hearing;

19           (5) The right to have an appointed advocate to present  
20           evidence on behalf of the inmate at the inmate's  
21           request or if the committee determines that the inmate



1 is unable to prepare and present evidence on the  
2 inmate's own behalf;

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

5 (7) The right to prompt notification of the committee's  
6 determination.

7 (j) Effective January 1, 2024, an inmate may appeal a  
8 determination made by the committee by submitting an appeal in  
9 writing to:

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

13 (2) If the warden denies the appeal, the committee within  
14 fourteen business days of receiving the denial;  
15 provided that the committee shall respond in writing  
16 to the appeal within fourteen business days of the  
17 submission.

18 (k) Effective January 1, 2024, the maximum length of time  
19 an inmate shall be classified, assigned, or subject to  
20 disciplinary confinement shall be fifteen days; provided that if





1 additional time is necessary, the inmate shall be subject to the  
2 procedures for long-term confinement pursuant to section 353-A.

3 **§353-C Administrative confinement.** (a) Effective  
4 January 1, 2023, administrative confinement shall be used only  
5 when less restrictive interventions are not available and there  
6 is a stated, legitimate purpose for placement in administrative  
7 confinement pursuant to subsection (d).

8 (b) Effective January 1, 2023, inmates placed into  
9 administrative confinement shall have access to:

10 (1) One personal telephone call per day;

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

13 (3) The general population dining facility;

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

16 (5) Visitation opportunities.

17 (c) Effective January 1, 2024, when an inmate is  
18 classified, assigned, or subject to administrative confinement,  
19 the reason or reasons for the administrative confinement shall  
20 be identified in writing to the inmate.



1        (d) Effective January 1, 2024, no inmate shall be subject  
2        to administrative confinement unless the department determines  
3        that there is a stated, legitimate purpose for this confinement.

4        (e) Effective January 1, 2024, prior to being classified,  
5        assigned, or subject to administrative confinement, an inmate  
6        shall receive a hearing before a committee of at least three  
7        individuals assembled by the director for this purpose, unless  
8        the director certifies in writing that there is an imminent  
9        threat to the safety and security of the correctional facility  
10       at which the inmate is being housed.

11       (f) Effective January 1, 2024, if a certification under  
12       subsection (e) is made, the hearing shall be conducted within  
13       five business days from when the inmate is classified, assigned,  
14       or subject to administrative confinement. The department shall  
15       have the burden of proving there is a stated, legitimate purpose  
16       that would subject the inmate to administrative confinement.

17       (g) Effective January 1, 2024, the maximum length of time  
18       an inmate shall be classified, assigned, or subject to  
19       administrative confinement shall be thirty days; provided that  
20       if additional time is necessary, the inmate shall be subject to



1 the procedures for long-term confinement pursuant to section  
2 353-A.

3 **§353-D Long-term confinement practices; review; report.**

4 (a) Effective July 1, 2022, the department and the Hawaii  
5 correctional system oversight commission established under  
6 chapter 353L shall conduct ongoing reviews of the policies,  
7 standards, and treatment of inmates classified, assigned, or  
8 subject to long-term confinement to determine the effectiveness  
9 of long-term confinement practices in the State's correctional  
10 facilities.

11 (b) Effective July 1, 2022, the department and the Hawaii  
12 correctional system oversight commission shall submit an annual  
13 report to the governor and the legislature no later than twenty  
14 days prior to the convening of each regular session. The annual  
15 report shall include findings and recommendations regarding  
16 long-term confinement practices, including any proposed  
17 legislation on improving long-term confinement practices."

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

20 **"§353-16.3 Development of out-of-state Hawaii correctional**  
21 **facilities. [Notwithstanding] Effective August 1, 2024,**



1 notwithstanding any other provision to the contrary, the  
2 governor, with the assistance of the director, may negotiate  
3 with any appropriate out-of-state jurisdiction for the  
4 development of Hawaii correctional facilities to reduce prison  
5 overcrowding; provided that any agreement negotiated pursuant to  
6 this section shall ~~[be]~~:

- 7       (1) Be subject to legislative approval by concurrent  
8           resolution in any regular or special session~~[-]~~; and  
9       (2) Require that the out-of-state correctional facilities  
10           be held to the same standards of care and health and  
11           safety policies adopted by the department, including  
12           policies and procedures for appeal for long-term  
13           confinement pursuant to section 353-A, disciplinary  
14           confinement pursuant to section 353-B, and  
15           administrative confinement pursuant to section 353-C,  
16           as applicable."

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

20       SECTION 5. In codifying the new sections added by section  
21 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect on July 1, 3000.

6



**Report Title:**

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

**Description:**

Establishes policies and procedures for long-term confinement, disciplinary confinement, and administrative confinement of inmates in the State's correctional facilities. Provides that any agreement negotiated with an out-of-state correctional facility require the out-of-state correctional facility to adhere to the same standards of care and health and safety policies adopted by the department of public safety. Effective 7/1/3000. (HD1)

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

