

JAN 21 2016

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# A BILL FOR AN ACT

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RELATING TO INCARCERATION ALTERNATIVES.

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

1       SECTION 1. The legislature finds that there is a need to  
2       reduce prison overcrowding. With the exception of inmates  
3       serving a mandatory sentence, many persons could be released  
4       from incarceration into the community, and many persons who do  
5       not pose a threat to public safety could be sentenced to  
6       probation if they are required to wear an electronic monitoring  
7       device to determine their location at all times. Electronic  
8       monitoring devices enable the department of public safety and  
9       the judiciary to keep persons under surveillance while in the  
10      community, rather than in a prison setting.

11       The legislature further finds that existing law permits the  
12      use of an electronic monitoring device in intermediate  
13      sentencing as an alternative to incarceration. However, the  
14      legislature believes that the program should be expanded.  
15      Expansion of the number of persons required to wear an  
16      electronic monitoring device in the intermediate sentencing  
17      program reduces the number of incarcerated inmates, reduces



1 expenses, reduces correctional officers' overtime, enhances  
2 rehabilitation, keeps families intact, reduces recidivism, and  
3 reduces the out-of-state inmate population under the  
4 jurisdiction of the department of public safety.

5 The legislature further finds that the average daily inmate  
6 census in Hawaii is approximately six thousand, which includes  
7 in-state and out-of-state inmates. The legislature believes  
8 that a minimum of 10 to 15 per cent of those inmates are  
9 eligible to be released into the community if they are required  
10 to wear an electronic monitoring device while serving the  
11 remainder of their sentences.

12 The purpose of this Act is to establish an alternative  
13 incarceration pilot program, which will use electronic  
14 monitoring for select persons to be released into the community  
15 in lieu of incarceration.

16 SECTION 2. (a) No later than January 1, 2017, the  
17 department of public safety shall establish an alternative  
18 incarceration pilot program to release qualified parolees into  
19 the community under certain conditions, in lieu of  
20 incarceration.



1           (b) A parolee shall be eligible for the pilot program if  
2 the parolee meets the following minimum criteria:

3           (1) The parolee's current sentence is for a non-violent  
4 offense;

5           (2) There is no history of conviction for a violent  
6 offense;

7           (3) There is no history of escape or attempt to escape  
8 while incarcerated;

9           (4) The parolee has a place to reside while on parole;

10          (5) The parolee has employment or an offer for employment  
11 with a minimum of thirty-two hours per week or, in the  
12 alternative, is actively seeking employment and  
13 secures employment within sixty days following the  
14 granting of parole;

15          (6) In lieu of paragraph (5), the parolee is enrolled as a  
16 full-time or part-time student in an institution of  
17 higher education or a trade school program; provided  
18 that an average grade is maintained;

19          (7) Criteria under paragraphs (5) and (6) may be combined  
20 to include part-time education and part-time work, in



1           which case the minimum number of hours under paragraph

2           (5) shall not be required;

3           (8) The prosecuting attorney has no objection to the

4           parolee's admission into the pilot program;

5           (9) The parole officer has no objection to the person's

6           admission into the pilot program;

7           (10) The parolee agrees to wear an electronic monitoring

8           device at all times while participating in the pilot

9           program; and

10          (11) The parolee agrees to abide by any other conditions of

11          parole or the department of public safety.

12          (c) Applications to participate in the pilot program shall

13          be submitted in accordance with rules adopted by the department

14          of public safety.

15          (d) A parolee in the pilot program shall be retaken if the

16          parolee:

17          (1) Is charged with a criminal offense while participating

18          in the pilot program;

19          (2) Sets off the electronic monitoring device more than

20          three times for unauthorized absence;



- (3) Has more than three unauthorized failures to report to work or failure to attend a class, as applicable;
- (4) Tampers with the electronic monitoring device;
- (5) Tests positive in a urinalysis showing any amount of a controlled substance; or
- (6) Violates any of the terms and conditions of the parole.

A parolee in the pilot program shall be retaken and incarcerated upon the parolee's request to be reincarcerated.

(e) The department of public safety shall adopt administrative rules, pursuant to chapter 91, Hawaii Revised Statutes, as necessary to effectuate the purposes of this Act.

SECTION 3. (a) No later than January 1, 2017, the judiciary shall establish an alternative incarceration pilot program to release qualified inmates into the community on probation under certain conditions, in lieu of incarceration.

(b) A probationer shall be eligible to participate in the pilot program if the probationer meets the following minimum criteria:

- (1) The probationer's current sentence is for a non-violent offense;



- 1           (2)    There is no history of conviction for a violent  
2                   offense;
- 3           (3)    There is no history of escape or attempt to escape  
4                   while incarcerated;
- 5           (4)    The probationer has a place to reside while on  
6                   probation;
- 7           (5)    The probationer has employment or an offer for  
8                   employment with a minimum of thirty-two hours per week  
9                   or, in the alternative, is actively seeking employment  
10                  and secures that employment within sixty days  
11                  following the granting of probation or court-ordered  
12                  sentencing;
- 13          (6)    In lieu of paragraph (5), the probationer is enrolled  
14                  as a full-time or part-time student in an institution  
15                  of higher education or a trade school program;  
16                  provided that an average grade is maintained;
- 17          (7)    Criteria under paragraphs (5) and (6) may be combined  
18                  to include part-time education and part-time work, in  
19                  which case the minimum number of hours under paragraph  
20                  (5) shall not be required;



(8) The prosecuting attorney has no objection to the probationer's admission into the pilot program;

(9) The probation office has no objection to the person's admission into the pilot program;

(10) The probationer agrees to wear an electronic monitoring device at all times while participating in the pilot program; and

(11) The probationer agrees to abide by any other conditions of probation or the judiciary.

(c) Applications to participate in the pilot program shall be submitted in accordance with rules adopted by the judiciary. The selection of participants in the pilot program shall include but not be limited to a review of pretrial detainee records and daily intake records.

(d) A probationer in the pilot program shall be retaken if the probationer:

(1) Is charged with a criminal offense while participating in the pilot program;

(2) Sets off the electronic monitoring device more than three times for unauthorized absence;



- (3) Has more than three unauthorized failures to report to work or failure to attend a class, as applicable;
- (4) Tampers with the electronic monitoring device;
- (5) Tests positive in a urinalysis showing any amount of a controlled substance; or
- (6) Violates any of the terms and conditions of the probation.

A probationer in the pilot program shall be retaken and resentenced to incarceration upon the probationer's request to be incarcerated.

(e) The judiciary shall adopt rules as necessary to effectuate the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2016-2017 for the alternative incarceration pilot program.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so





1 much thereof as may be necessary for fiscal year 2016-2017 for  
2 the alternative incarceration pilot program.

3 The sum appropriated shall be expended by the judiciary for  
4 the purposes of this Act.

5 SECTION 6. The department of public safety with regards to  
6 parolees and the judiciary with regards to probationers shall  
7 report to the legislature no later than twenty days prior to the  
8 convening of the regular sessions of 2017, 2018, and 2019 on the  
9 following:

- 10 (1) The status of implementation of their respective  
11 alternative incarceration pilot program;
- 12 (2) The number of inmates or probationers, as applicable,  
13 admitted into the pilot program in the year preceding  
14 the report;
- 15 (3) The number of inmates or probationers, as applicable,  
16 retaken in the year preceding the report; and
- 17 (4) Any other relevant information on the pilot program,  
18 including recommendations for statutory amendments.

19 SECTION 7. This Act is not intended to supplant or change  
20 the procedures of existing intermediate sanctions using



SECTION 8. This Act does not affect rights and duties that  
matured, penalties that were incurred, and proceedings that were  
begun before its effective date.

8           (1) Sections 4 and 5 shall take effect on July 1, 2016;  
9           and

11

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# S.B. NO. 2147

**Report Title:**

Intermediate Sanctions; Electronic Monitoring; Alternative Incarceration Pilot Program; Appropriation

**Description:**

Establishes an alternative incarceration pilot program with mandatory electronic monitoring under the department of public safety for parolees and the judiciary for probationers. Establishes criteria for eligibility, conditions, and retake. Makes appropriations. Repeals on 12/31/2019.

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

