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# A BILL FOR AN ACT

RELATING TO ALTERNATIVES TO INCARCERATION.

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

1           SECTION 1.   Section 353-10.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§353-10.5   Intermediate sanctions; eligibility; criteria  
4 and conditions.   (a)   [The] As a priority, to prevent

5 overcrowding in community correctional centers, the department  
6 of public safety shall implement and expand alternative programs  
7 that place, control, supervise, and treat selected offenders in  
8 lieu of incarceration.

9           (b)   Pretrial detainees may be considered for placement in  
10 alternative programs if they:

11           (1)   Have been admitted to bail and are not charged with a  
12 non-probationable class A felony; and

13           (2)   Have not, within the previous five years, been  
14 convicted of a crime involving serious bodily injury  
15 or substantial bodily injury as defined by chapter  
16 707.





1 (3) Similar programs created and designated as alternative  
2 programs by the legislature or the director of public  
3 safety for inmates who do not pose significant risks  
4 to the community[-]; and

5 (4) The use of electronic monitoring and surveillance."

6 SECTION 2. Section 353-36, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[+]§353-36 [+] Release of [misdemeanants] offenders to  
9 prevent overcrowding. (a) Notwithstanding chapter 804 and any  
10 other law to the contrary and except as provided in subsection  
11 (b), the director may order the release of [~~a-misdemeanant~~] an  
12 offender on recognizance to prevent overcrowding when a  
13 community correctional center has reached capacity, as  
14 determined by the director[-]; provided that the director may  
15 require that an offender be subject to electronic monitoring and  
16 surveillance as a condition of release. The director shall  
17 consider the circumstances and nature of the [~~misdemeanant's~~]  
18 offender's charge or offense prior to ordering a release  
19 pursuant to this section. The director's order shall supersede  
20 and have the same force and effect as an order entered by a  
21 court pursuant to chapter 804. For purposes of this section and



1 section 353-37, [~~"misdemeanant"~~] "offender" means a person  
2 incarcerated at a community correctional center who has been  
3 charged with a [~~petty misdemeanor or misdemeanor,~~] criminal  
4 offense or an incarcerated person who has been sentenced  
5 pursuant to [~~section 706-663.~~] chapter 706.

6 (b) No person who is incarcerated under any of the  
7 following circumstances shall be eligible for release pursuant  
8 to this section:

9 (1) The person has been denied bail or whose bail has been  
10 set at more than [~~\$5,000~~] \$10,000 pursuant to chapter  
11 804;

12 (2) The person is charged with or convicted of or is on  
13 probation or parole for a serious crime, as defined in  
14 section 804-3;

15 (3) The person has been arrested or convicted for abuse of  
16 family or household members, as defined in section  
17 709-906; or

18 (4) Other than the offense for which release is  
19 contemplated under this section, the person has been  
20 previously convicted of any offense, as defined in  
21 title 37, that involves injury or threat of injury to



1           the person of another, including but not limited to  
2           sexual harassment in the fourth degree, harassment by  
3           stalking, violation of an order of protection, or  
4           violation of a temporary restraining order.

5           (c) The authority to release [~~a misdemeanor~~] an offender  
6 pursuant to this section is granted solely for the purpose of  
7 managing the population of the community correctional centers.  
8 Nothing in this section shall be construed as granting any  
9 person the right to be released. An order releasing [a  
10 ~~misdemeanant~~] an offender pursuant to this section shall not  
11 operate to dismiss or otherwise terminate any charges then  
12 pending against the [~~misdemeanant.~~] offender.

13           (d) The director shall notify the court where the case is  
14 assigned and the prosecuting attorney of the release of any  
15 [~~misdemeanant~~] offender pursuant to this section not later than  
16 forty-eight hours prior to the time of the actual release.

17           (e) The State or any of its officers and employees shall  
18 not be subject to any civil liability or penalty nor to any  
19 criminal prosecution for any error in judgment or discretion  
20 made in good faith and upon reasonable grounds in any action  
21 taken or omitted by the State or any of its officers and



1 employees acting in their official capacity pursuant to this  
2 section."

3 (f) [The] No later than January 1, 2018, the director  
4 shall adopt policies and procedures for the release of  
5 [~~misdemeanants~~] offenders pursuant to this section."

6 SECTION 3. There is appropriated out of the general  
7 revenues of the State of Hawaii the sum of \$ or so much  
8 thereof as may be necessary for fiscal year 2017-2018 and the  
9 same sum or so much thereof as may be necessary for fiscal year  
10 2018-2019 for electronic monitoring and surveillance for  
11 offenders released pursuant to section 353-36, Hawaii Revised  
12 Statutes, or participating in alternative programs established  
13 pursuant to section 353-10.5, Hawaii Revised Statutes.

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

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

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval;  
 2 provided that section 3 shall take effect on July 1, 2017.  
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INTRODUCED BY:

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# H.B. NO. 1246

**Report Title:**

Criminal Offenders; Pre-Trial Release; Alternative Programs;  
Electronic Monitoring and Surveillance; Appropriation

**Description:**

Expands the authority of DPS to release certain pre-trial detainees and sentenced offenders to include felons. Requires electronic monitoring of released detainees and offenders. Authorizes electronic monitoring of offenders in programs that offer alternatives to incarceration. Appropriates funds.

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

