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# A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

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

1           SECTION 1. Section 353-66, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§353-66 Terms and conditions of parole; suspension and**  
4 **revocation.** (a) Every parole granted under this part to any  
5 prisoner shall be subject to the express condition, to be set  
6 forth in the official written notification of parole to the  
7 prisoner, but to be binding upon the prisoner in any event, that  
8 all or any portion of the prisoner's credits earned or to be  
9 earned may be forfeited by order of the Hawaii paroling  
10 authority in the event that the prisoner breaks the prisoner's  
11 parole or violates any law of the State or rule of the paroling  
12 authority or any of the terms or conditions of the prisoner's  
13 parole.

14           (b) Every parole granted under this part to any prisoner  
15 convicted of an offense related to a criminal street gang shall  
16 be subject to the express condition that the prisoner submit to  
17 monitoring by an electronic monitoring device if the electronic  
18 monitoring under this paragraph must provide for monitoring of



1 the defendant's location and movements by global positioning  
2 system technology. The paroling authority shall require a  
3 defendant serving a period of parole with electronic monitoring  
4 as provided under this paragraph to pay all or a portion of the  
5 costs of the electronic monitoring, but only if the defendant  
6 has sufficient financial resources to pay the costs or a portion  
7 of the costs.

8 ~~[(b)]~~ (c) No parole shall be revoked and no credits  
9 forfeited without cause, which cause must be stated in the order  
10 revoking the parole, or forfeiting the credits after notice to  
11 the paroled prisoner of the paroled prisoner's alleged offense  
12 and an opportunity to be heard; provided that ~~[when]~~:

13 (1) When a person is convicted in the State of a crime  
14 committed while on parole and is sentenced to  
15 imprisonment, or when it is shown by personal  
16 investigation that a parolee has left the State  
17 without permission from the paroling authority and due  
18 effort is made to reach the parolee by registered mail  
19 directed to the parolee's last known address, no  
20 hearing shall be required to revoke the parolee's  
21 parole; and ~~[provided further that when]~~



1        (2) When any duly licensed psychiatrist or licensed  
2        psychologist finds that continuance on parole will not  
3        be in the best interests of a parolee or the  
4        community, the paroling authority, within the  
5        limitations of the sentence imposed, shall order the  
6        detention and treatment of the prisoner until such  
7        time as the prisoner shall be found by any duly  
8        licensed psychiatrist or licensed psychologist to be  
9        eligible for continuance on parole.

10        [~~(e)~~] (d) If any paroled prisoner leaves the State without  
11        permission from the paroling authority, or if the whereabouts of  
12        any paroled prisoner is not known to the paroling authority  
13        because of the neglect or failure of the prisoner to so inform  
14        it, the paroling authority may order the parole suspended  
15        pending apprehension. From and after the suspension of the  
16        parole of any paroled prisoner and until the paroled prisoner's  
17        return to custody, the paroled prisoner shall be deemed an  
18        escapee and a fugitive from justice, and no part of the time  
19        during which the paroled prisoner is an escapee and a fugitive  
20        from justice shall be part of the paroled prisoner's term.

21        [~~(d)~~] (e) The paroling authority [~~may~~], at any time, may  
22        order the arrest and temporary return to custody of any paroled



1 prisoner, as provided in section 353-65, for the purpose of  
2 ascertaining whether or not there is sufficient cause to warrant  
3 the paroled prisoner's reimprisonment or the revoking of the  
4 paroled prisoner's parole or other action provided for by this  
5 part.

6 ~~(e)~~ (f) Any paroled prisoner retaken and reimprisoned as  
7 provided in this chapter shall be confined according to the  
8 paroled prisoner's sentence for that portion of the paroled  
9 prisoner's term remaining unserved at time of parole, but  
10 successive paroles ~~may~~, in the discretion of the paroling  
11 authority, may be granted to the prisoner during the life and in  
12 respect of the sentence.

13 ~~(f)~~ (g) The Hawaii paroling authority may require a  
14 paroled prisoner to undergo and complete a substance abuse  
15 treatment program when the paroled prisoner has committed a  
16 violation of the terms and conditions of parole involving  
17 possession or use, not including to distribute or manufacture as  
18 defined in section 712-1240, of any dangerous drug, detrimental  
19 drug, harmful drug, intoxicating compound, marijuana, or  
20 marijuana concentrate, as defined in section 712-1240, unlawful  
21 methamphetamine trafficking as provided in section 712-1240.6,  
22 or involving possession or use of drug paraphernalia under



1 section 329-43.5. If the paroled prisoner fails to complete the  
2 substance abuse treatment program or the Hawaii paroling  
3 authority determines that the paroled prisoner cannot benefit  
4 from any substance abuse treatment program, the paroled prisoner  
5 shall be subject to revocation of parole and return to  
6 incarceration. As a condition of parole, the Hawaii paroling  
7 authority may require the paroled prisoner to:

8 (1) Be assessed by a certified substance abuse counselor  
9 for substance abuse dependency or abuse under the  
10 applicable Diagnostic and Statistical Manual and  
11 Addiction Severity Index;

12 (2) Present a proposal to receive substance abuse  
13 treatment in accordance with the treatment plan  
14 prepared by a certified substance abuse counselor  
15 through a substance abuse treatment program that  
16 includes an identified source of payment for the  
17 treatment program;

18 (3) Contribute to the cost of the substance abuse  
19 treatment program; and

20 (4) Comply with any other terms and conditions for parole.

21 As used in this subsection, "substance abuse treatment  
22 program" means drug or substance abuse treatment services



1 provided outside a correctional facility by a public, private,  
 2 or nonprofit entity that specializes in treating persons who are  
 3 diagnosed with having substance abuse or dependency and  
 4 preferably employs licensed professionals or certified substance  
 5 abuse counselors.

6 Nothing in this subsection shall be construed to give rise  
 7 to a cause of action against the State, a state employee, or a  
 8 treatment provider."

9 SECTION 2. Section 706-624, Hawaii Revised Statutes, is  
 10 amended by amending subsection (1) to read as follows:

11 "(1) Mandatory conditions. The court shall provide, as an  
 12 explicit condition of a sentence of probation[+] that the  
 13 defendant:

14 (a) [~~That the defendant not~~] Not commit another federal or  
 15 state crime or engage in criminal conduct in any  
 16 foreign jurisdiction or under military jurisdiction  
 17 that would constitute a crime under Hawaii law during  
 18 the term of probation;

19 (b) [~~That the defendant report~~] Report to a probation  
 20 officer as directed by the court or the probation  
 21 officer;



- 1 (c) [~~That the defendant remain~~] Remain within the  
2 jurisdiction of the court, unless granted permission  
3 to leave by the court or a probation officer;
- 4 (d) [~~That the defendant notify~~] Notify a probation officer  
5 prior to any change in address or employment;
- 6 (e) [~~That the defendant notify~~] Notify a probation officer  
7 promptly if arrested or questioned by a law  
8 enforcement officer;
- 9 (f) [~~That the defendant permit~~] Permit a probation officer  
10 to visit the defendant at the defendant's home or  
11 elsewhere as specified by the court; [~~and~~]
- 12 (g) [~~That the defendant make~~] Make restitution for losses  
13 suffered by the victim or victims if the court has  
14 ordered restitution pursuant to section 706-646[-];  
15 and
- 16 (h) Submit to monitoring by an electronic monitoring  
17 device if the offense was related to a criminal street  
18 gang and that fact has been proven or admitted.  
19 Electronic monitoring under this paragraph must  
20 provide for monitoring of the defendant's location and  
21 movements by global positioning system technology.  
22 The court shall require a defendant serving a period



1           of probation with electronic monitoring as provided  
 2           under this paragraph to pay all or a portion of the  
 3           costs of the electronic monitoring, but only if the  
 4           defendant has sufficient financial resources to pay  
 5           the costs or a portion of the costs."

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

8           SECTION 4. This Act shall take effect upon its approval.

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**Report Title:**

Electronic Monitoring; Probation and Parole

**Description:**

Requires electronic monitoring of probationers and parolees convicted of offenses related to criminal street gangs.

