



SB2147

Measure Title:	RELATING TO INCARCERATION ALTERNATIVES.
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.
Companion:	
Package:	None
Current Referral:	PSM/JDL, WAM
Introducer(s):	GABBARD, HARIMOTO, SHIMABUKURO, Baker, Chun Oakland, Galuteria, Keith-Agaran, Kim, Nishihara, Riviere, Slom

DAVID Y. IGE
GOVERNOR



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No. _____

TESTIMONY ON SENATE BILL 2147
RELATING TO PUBLIC SAFETY

By
Nolan P. Espinda, Director

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence Nishihara, Chair
Senator Will Espero, Vice Chair

Senate Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

February 10, 2016; 8:30 a.m.
State Capitol, Conference Room 016

Chairs Nishihara and Keith-Agaran, Vice Chairs Espero and Shimabukuro, and
Members of the Committee:

The Department of Public Safety (PSD) would like to provide **comments** to
Senate Bill (SB) 2147 Relating to Incarceration Alternatives.

It is well established that PSD employs alternatives to incarceration in programs
such as Supervised Release, overseen by the Intake Service Centers (ISC), and Furlough
Programs run by the Community Based Sections (CBS) of the Correctional Centers.
Both ISC and CBS utilize electronic monitors and global positioning systems for those at
higher risk to relapse or in need of additional cognitive support and programming.

In terms of utilizing alternatives to incarceration in sentencing, it should be noted
that sentencing is the province of the Courts (Judiciary), not the Department of Public
Safety. Those offenders sentenced by the court to one year or less in jail and those placed
on probation with Electronic Monitoring in lieu of the jail time would rightfully be
supervised by the Judiciary's Adult Probation Division rather than by PSD staff, since
they would report to the Probation Office upon release from jail to establish contact with
their Probation Officer in order to ensure they are meeting the terms of their probation.
SB 2147 appears to duplicate already established Judiciary programs such as "HOPE"
and other structured intermediate sanctions that the Courts may impose on a defendant.

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February 10, 2016
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Moreover, offenders who are placed on electronic monitors when paroled are monitored by the Hawaii Paroling Authority, in order to ensure that they are meeting with the terms and conditions of parole.

The services named in SB 2147 already exist, but additional funds for intermediate sanctions and other alternatives to incarceration will always be welcome.

Thank you for the opportunity to testify on this measure.



The Judiciary, State of Hawaii

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senator Clarence K. Nishihara, Chair

Senator Will Espero, Vice Chair

and

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 10, 2016, 8:30 a.m

State Capitol, Conference Room 016

by

Sidney Nakamoto

Probation Administrator, First Circuit

Bill No. and Title: Senate Bill No. 2147, Relating to Incarceration Alternatives.

Purpose: 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.

Judiciary's Position:

The Judiciary takes no position on Senate Bill 2147, but respectfully offers the following comments regarding possible costs to the Judiciary to implement this bill. The bill establishes an alternative incarceration pilot program, which will use electronic monitoring for select persons to be released into the community in lieu of incarceration.

A probationer may be eligible to participate in the pilot program if the probationer meets the required criteria. Electronic monitoring traditionally has been used as an added layer of supervision for "higher risk" individuals such as sex offenders. It complements other supervision strategies and is part of a continuum to ensure public safety. This bill seeks to place individuals who may not be necessarily high risk (i.e., current non-violent offense, no history of



Senate Bill No. 2147, Relating to Incarceration Alternatives
Senate Committees on Public Safety, Intergovernmental and Military Affairs and
Judiciary and Labor
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violent offenses, has a place to reside, is currently working or in school or is seeking employment/education) on electronic monitoring which is contradictory to what Evidence Based Practices suggests, namely focusing resources on the high risk populations.

Senate Bill No. 2147 seeks to divert convicted individuals from serving jail time by placing them on electronic monitoring. Though cost saving may be experienced by the Department of Public Safety, the Judiciary would incur additional expenses in the form of: 1) additional probation staff required to implement the project, 2) additional resources needed to secure electronic monitoring equipment, 3) overtime costs may occur as a result of the need to respond to violations, and 4) costs for damaged/lost equipment. No appropriation amount is designated to deal with the additional duties/responsibilities that would be placed on probation to implement such a program.

In addition to the costs that the Judiciary would encounter, defendants would likely incur a cost for being placed on Electronic Monitoring. Given the many financial obligations that defendants face upon conviction, this additional cost may create significant hardships. Those who may not be able to afford this requirement may become non-compliant and returned to court which will increase the workload of the courts and may ultimately face further terms of probation and possible incarceration.

The bill does not address efforts to remove a defendant from electronic monitoring after a substantial period of compliance. As a result, on-going costs and expenses will occur throughout the term of probation which may be as long as five (5) years.

In testimony prepared for SB344 last year, costs were estimated at \$100,000 per year to service forty-five (45) probationers using the existing Judiciary contracted electronic monitoring vendor. In using the Hawaii inmate census numbers that were provided it would cost, at a minimum, approximately \$1.2 million to accommodate the inmates that may be eligible.

Thank you for the opportunity to testify on Senate Bill No. 2147.

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: josephine.f.malama@hawaii.gov
Subject: Submitted testimony for SB2147 on Feb 10, 2016 08:30AM
Date: Monday, February 08, 2016 6:19:24 PM

SB2147

Submitted on: 2/8/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Josephine F. Malama	Hawaii Paroling Authority	Comments Only	Yes

Comments: SB 2147 vague and in some areas in non-compliance with existing laws, rules and procedures.

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To: [PSMTestimony](#)
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for SB2147 on Feb 10, 2016 08:30AM
Date: Wednesday, February 03, 2016 9:07:36 PM

SB2147

Submitted on: 2/3/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We FULLY SUPPORT this bill as a common sense way to lessen the costs of incarceration, opening up avenues for those who are seeking release from confinement to actually be able to get out and on with their lives, plus, the bracelets themselves provide an avenue of immediate accountability & safety for the community.

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Cc: rkailianu57@gmail.com
Subject: Submitted testimony for SB2147 on Feb 10, 2016 08:30AM
Date: Wednesday, February 03, 2016 9:45:19 PM

SB2147

Submitted on: 2/3/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	No

Comments: I believe that those selected to wear a bracelet or ankle bracelets be made aware of the benefit and consequence of their selection upon release.

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COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Will Espero, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Maile Shimabukuro, Vice Chair

Wednesday, February 10, 2016

8:30 a.m.

Room 016

SUPPORT with AMENDMENT for SB 2147 - ELECTRONIC MONITORING

Aloha Chairs Nishihara and Keith-Agaran and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 2147 establishes an alternative incarceration pilot program with mandatory electronic monitoring under the DPS for parolees and the judiciary for probationers. Establishes criteria for eligibility, conditions, and retake, allocates funds, and repeals on 12/31/2019.

Community Alliance on Prisons supports alternatives to incarceration and we can support this bill with the amendment **THAT THE INTENTION OF ELECTRONIC MONITORING IS THAT IT IS CAREFULLY IMPLEMENTED WITH AN ALTERNATIVE MINDSET THAT REJECTS THE PUNITIVE PHILOSOPHY THAT HAS DOMINATED CRIMINAL JUSTICE SINCE THE RISE OF MASS INCARCERATION.**

One of our big concerns is that there are two companies who have cornered the market on electronic monitoring: BI and 3m. BI is a subsidiary of Geo Group, the second-largest private prison company in the world after CCA.¹

¹ *Here's What the World Will Look Like After Mass Incarceration*, ANKLE BRACELET AMERICA, SARAH SHOURD, 12.27.15. <http://www.thedailybeast.com/articles/2015/12/27/here-s-what-the-world-will-look-like-after-mass-incarceration.html>

“Frustrated by offender misbehavior, policymakers and courts regularly turn to electronic monitoring (EM) to supervise suspected, convicted, and prior offenders. Considering EM in the context of the criminal system’s culture of control demonstrates the danger in continuing to expand the current system with new EM programs and punishments rather than fixing it.² The use of EM surveillance forces consideration of a number of significant issues, ranging from costs to the Constitution.

The argument for the use of electronic monitoring is that it allows low-level offenders to do their time without the added dangers of a toxic prison environment. In theory, it allows offenders to work, be with their families, access services and be productive citizens, in the meantime placing far less of a burden on taxpayers, but inhibits them from leaving the house for recreation.

Are ankle bracelets and house arrest really “prison-lite”? Or is this the most intensive form of government control beyond prison walls?

The jury is still out on whether this technology is really the great alternative it’s often made out to be.”³

A 2012 study from the Washington University Journal of Law & Policy concluded:

Where EM surveillance augments the culture of control, it exacerbates underlying problems with the American system. Thus far, EM surveillance controls new populations, cultivates new industry, and creates new constitutional concerns without demonstrating new results. Therefore, new policies must ensure that EM surveillance operates as a solution rather than a useless expansion of the current system.⁴

One of the most interesting reports that we have reviewed is one from the Center for Media Justice⁵ as it presents a cautionary tale that considers not only the impact on the system, but on individuals. Sociologists and Criminologists around the nation are seeing the importance of including anecdotal information to complement their research to give life and meaning to the data.

Here is the opening of the Executive Summary:

This report offers a critical assessment of electronic monitoring (EM) in the criminal justice system. The author, who spent a year on an ankle bracelet as a condition of his own parole, draws on his in-depth study of legislation, policies, contracts, and academic literature related to electronic monitoring. In addition to this research, he interviewed

² DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY (2001).

³ See FN1

⁴ **Correction through Omniscience: Electronic Monitoring and the Escalation of Crime Control**, Washington University Journal of Law & Policy - Volume 40 Commemorating the Desegregation Movement in St. Louis, and A Look at the Future of Urban Education Molly Carney. http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1582&context=law_journal_law_policy

⁵ **Electronic Monitoring Is Not the Answer - Critical reflections on a flawed alternative**, James Kilgore, October 2015. <http://centerformediajustice.org/wp-content/uploads/2015/10/EM-Report-Kilgore-final-draft-10-4-15.pdf>

people directly impacted by EM in four states. Interviewees included those who had been on the monitor, their family members, corrections officials, and the CEO of a monitoring company. The report rejects any simplistic rush to deploy electronic monitors as an alternative to incarceration. Instead, the document sets out two critical conditions for EM to be a genuine alternative: (1) it must be used **instead of** incarceration in prison or jail, not as an additional condition of parole, probation, or pre-trial release; (2) it must be implemented with an **alternative mindset** that rejects the punitive philosophy that has dominated criminal justice since the rise of mass incarceration. A genuine alternative mindset as applied to EM must ensure the person on the monitor has a full set of rights and guarantees, including the rights to seek and attend work, to access education and medical treatment, and to participate in community, family and religious activities. Without these rights, the person on the monitor remains less than a full human being, a captive of the punitive, “tough on crime” mentality that has been at the heart of more than three decades of mass incarceration.

Moreover, the author asserts that electronic monitoring is more than just a tool of the criminal justice system. With the rise of GPS-based electronic monitors capable of tracking location, EM devices have become part of the arsenal of surveillance, a technology that enables both the state and business to profile people’s movements and behavior. In the present situation, this surveillance component of EM has completely escaped the view of policy makers and even social justice advocates. EM as a tool of surveillance requires regulation.

The report offers policymakers a clear set of guiding principles; therefore, we are taking the liberty of including them here:

Guiding Principles

1. Electronic monitoring with house arrest must be seen as a form of incarceration.
2. Electronic monitoring should not be added onto a term of parole or probation after a person has served their time.
3. The net of who is placed on an electronic monitor must not be widened, especially not so as to capture people who have not been convicted of any crime.
4. Regulations regarding both the access and archiving of data collected from GPS- based electronic monitors must be put in place.
5. The treatment of people with sex offense histories or any other sub-category of criminal convictions should conform to the same standards of privacy and human rights accorded everyone else in the criminal justice system.
6. Exclusion zones should only be used in rare instances and applied on a case by case basis.
7. Lifetime GPS should be abolished. Whether it be incarceration or tracking via electronic monitor, no carceral status should be beyond review.

8. Enhancing the surveillance power of electronic monitors should be opposed, particularly adding the capacity to monitor biometrics or brain activity, to audio or video record, or to administer pharmaceuticals remotely.
9. Electronic monitors should not be technological mechanisms for reinforcing economic and racial disparity
10. User fees for people on electronic monitors as a result of involvement in the criminal justice system should be banned.
11. The rules for EM regimes should not be punitive. They should be transparent and informed by the rights of the person on the monitor and their loved ones.
12. The companies that provide electronic monitoring services need to be strictly regulated by government authorities.
13. Practitioners and providers of electronic monitoring in the US have established no best practice models which acknowledge the human rights of people on the monitor.

Kate Weisburd, a lawyer with the East Bay Community Law Center in California who's had many clients placed in an ankle bracelet, agrees that it's an imperfect solution. "I think there's a huge disconnect between policymakers and those of us that see this play out up close and personal," says Weisburd. **"It's an attractive, shiny new toy,"** continues Weisburd, **"but we simply don't have enough data yet. There's no evidence that it results in less jail time, [or] saves money, let alone rehabilitates."**

Jeremy Travis, president of the John Jay College of Criminal Justice at the City University of New York said, *"As a society we've become more and more punitive even though crime is at its lowest rate ever. We put people in prison for offenses that would have received a light sanction in former times. In that context electronic monitoring and other low-cost technological interventions can be seen as a modern tool for a problem that's exploded over the last 40 years. ... We should always be cautious about expanding the power of the state, this is highly intrusive government intervention in the lives of individuals. Prisons are such an intrusion, and electronic monitoring is, as well."* Travis warns that it could make recidivism tougher. After all, if someone were to monitor every moment of every private citizen, wouldn't it eventually catch even the saintliest American breaking the law?

Community Alliance on Prisons offers these perspectives because developing sound, public policy requires thoughtful, humane, and compassionate consideration. We support alternatives to incarceration and we also support creating a robust reentry system that develops a philosophy of assistance rather than surveillance to help people successfully reintegrate back to their communities. Have EMs helped or hindered reentry? The question policymakers must ask themselves is this: **Should we be focusing on rehabilitation or retribution?** And, as Kate Weisburd wondered: **"What if we're simply trading in one burden for another?"**

Would more community-based programming to address the pathways that lead individuals to incarceration or interaction with the criminal justice system be a better, long-lasting strategy to reduce our imprisoned population?

Community Alliance on Prisons supports not incarcerating low level lawbreakers and seeks to widen the discussion on the range of researched options available to address Hawai`i's needs.

As Jeremy Travis, president of the John Jay College of Criminal Justice at the City University of New York said, *"As a society we've become more and more punitive even though crime is at its lowest rate ever. We put people in prison for offenses that would have received a light sanction in former times."*

Mahalo for this opportunity to share our research with the committee and respectfully ask for the inclusion of our language about "intention" in the bill.

From: [E. Funakoshi](#)
To: [PSMTestimony](#); [JDLTestimony](#)
Subject: SB 2147 AS AMENDED
Date: Sunday, February 07, 2016 8:16:17 PM

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Will Espero, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Maile Shimabukuro, Vice Chair Wednesday, February 10, 2016 8:30 a.m.

Room 016

SUPPORT with Amendment for SB 2147 – ELECTRONIC MONITORING

Aloha Chairs Nishihara and Keith-Agaran, Vice Chairs Espero Maile Shimabukuro, and
Committee Members:

I am e. Ileana funakoshi writing in support of SB 2147 as amended.

The cost of incarceration of prisoners have escalated over the years and electronic monitoring
I believe will help to reduce the cost of incarceration.

However, electronic monitoring should be used to monitor, not restrict their activities within
the community. The monitoring device will track them which, in itself, divulges into their
privacy. It must also be uncomfortable and embarrassing to wear. But, it is an alternative to
become part of a community again and prove that they can assimilate into the community.

Thank you for the opportunity to submit my testimony.

Mahalo and Aloha,
e. Ileana funakoshi

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: gladys.baisa@mauicounty.us
Subject: Submitted testimony for SB2147 on Feb 10, 2016 08:30AM
Date: Tuesday, February 09, 2016 2:50:27 PM

SB2147

Submitted on: 2/9/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Coelho Baisa	Individual	Support	No

Comments: I can support this bill with the amendment that the intention of electronic monitoring is that it is carefully implemented with an alternative mindset that rejects the punitive philosophy that had dominated criminal justice since the rise of mass incarceration.

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Cc: tabraham08@gmail.com
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Date: Tuesday, February 09, 2016 3:59:07 PM

SB2147

Submitted on: 2/9/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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Cc: lady.flach@gmail.com
Subject: *Submitted testimony for SB2147 on Feb 10, 2016 08:30AM*
Date: Monday, February 08, 2016 4:37:34 PM

SB2147

Submitted on: 2/8/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Oppose	No

Comments:

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