

# **HB 2654 HD1**

RELATING TO VICTIM RESTITUTION.

Clarifies the Director of Public Safety's authority to deduct 25% of all moneys earned, new deposits, and credits to an inmate's individual account for restitution. Applies to orders issued after the effective date of this Act. Effective July 1, 2014.  
(HB2654 HD1)

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL (HB) 2654, HOUSE DRAFT (HD) 1  
RELATING TO VICTIM RESTITUTION

by  
Ted Sakai, Director  
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 17, 2014, 10:00 AM  
State Capitol, Conference Room 016

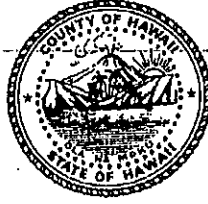
Chairs Espero and Hee, Vice Chairs Baker and Shimabukuro, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of HB 2654, HD 1 as amended. However, we continue to have concerns with the recommended changes to Sections 353-22.6. These changes could place us in a situation where we would have to not enforce a court order. The language in Section 3 of the bill should be sufficient.

Thank you for the opportunity to testify.

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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 2654 HD1

A BILL FOR AN ACT RELATING TO JUVENILE JUSTICE

COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 17, 2014, 10:00 AM  
State Capitol, Conference Room 016

Honorable Chairs Espero and Hee, Vice Chairs Baker and Shimabukuro, and Members of the Committee on Public Safety, Intergovernmental and Military Affairs and the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 2654 HD1.

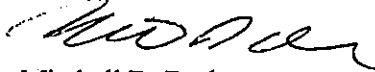
The purpose of this measure is to clarify the Director of Public Safety's authority to deduct 25% of all moneys earned, new deposits, and credits to an inmate's individual account for restitution.

Studies have shown that when a defendant is held fully accountable to their crime victims, the recidivism rate is actually lower than those defendants who are not. Section 353-22.6, Hawaii Revised Statutes was amended to increase the amount of restitution collected from inmates from 10% to 25% of all inmate earnings, deposits, and credits; however, this collection has not been uniformly applied to all inmates at all correctional facilities.

This Act will also ensure that the 25% of inmate earnings, deposits, and credits shall be deducted to satisfy victim restitution orders and that amount shall not be lowered by any other existing statute or court order. Additionally, this Act will make certain that victims of crimes will actually receive their restitution payments.

The Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of House Bill No. 2654 HD1. Thank you for the opportunity to testify on this matter.

Respectfully,



Mitchell D. Roth  
Prosecuting Attorney  
County of Hawai'i

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White, LCSW**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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TESTIMONY IN SUPPORT OF  
H.B. NO. 2654 HD1  
A BILL FOR AN ACT RELATING TO VICTIM RESTITUTION

Justin F. Kollar, Prosecuting Attorney  
County of Kauai

House Committee on Judiciary

Tuesday, March 17, 2014  
10:00 a.m., Room 016

Honorable Chair Rhoads, Vice-Chair Har, and Committee Members:

The Office of the Prosecuting Attorney, County of Kauai submits the following testimony in **strong support** of H.B. 2654 HD1, Relating to Victim Restitution.

The Justice Reinvestment Act (Act 139), commonly referred to as the JRI Act, passed during the 2012 legislative session. The JRI Act is landmark legislation that is not only designed to increase public safety while reducing spending on corrections, but also created the first comprehensive victim services component. To meet victim needs and increase offender accountability, the JRI Act amended HRS § 353-22.6 to increased the amount of restitution to be paid by inmates from 10% of inmate wages to 25% of all earnings, deposits and credits. The clear intent of the amendment to HRS § 353-22.6 was for the inmates to pay 25% of their earnings, deposits and credits to satisfy their outstanding restitution obligations.

The JRI Act and the HRS § 353-22 amendment went into effect on July 1, 2012. After July 1, 2012, the Commission, as the clearinghouse for restitution payments collected from inmates, received court judgments containing restitution orders that were inconsistent with HRS § 353-22.6. The court

judgments stated that the defendant did not need to make any restitution payments while the inmate was incarcerated or stated that the inmate pay less than 25% of all earnings, deposits and credits. The Attorney General's Office advised the Department of Public Safety (PSD) that it must comply with the courts' orders instead of HRS § 353-22.6.

The Crime Victim Compensation Commission, in its testimony, notes that in a survey of all Halawa Correctional Facility inmates incarcerated on August 19, 2013, 140 inmates had restitution orders imposed on or after January 1, 2012. Of those 140 inmates, 29.8% of their restitution orders had court-ordered restitution payments that were for amounts less than the 25% of HRS § 353-22.6.

As the Commission's testimony further notes, the courts are continuing to order restitution payments that preempt HRS § 353-22.6. Crime Victims are being denied the restitution payments that the JRI Act promised them.

The Attorney General also advised PSD that the 25% deduction set forth in the amended HRS § 353-22.6 could only be applied to judgments/sentences imposed on or after July 1, 2012. As the preamble to this bill points out, due process should not be offended as HRS § 353-22.6 modifies the method of payment. Quarles v. Kane, 482 F.3d 1154 (9th Cir. 2007) (ex post facto prohibition is not implicated when the rate of payment, and not the amount of restitution, is modified). The Commission calculated that approximately \$----- will not be collected for victim in Fiscal Year 2013 because the 25% deduction of inmate earnings, deposits and credit will not be applied retroactively as the 2012 legislature intended.

This bill gives HRS § 353-22.5 the effect that the legislature intended and provides significant restitution payments to crime victims.

For these reasons, we **strongly support** H.B. 2654 HD1 as written. We ask the Committee to **pass** the bill. Thank you for the opportunity to testify on this matter.

Respectfully,



Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

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Michael P. Matsumoto

Phyllis Muraoka

Gidget Russetta

Joshua A. Wisch

DATE: March 17, 2014

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

FROM: Alana Peacott-Ricardos, Policy Research Associate  
The Sex Abuse Treatment Center

RE: H.B. 2654, H.D. 1  
Relating to Victim Restitution

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC supports H.B. 2654, which clarifies the authority of the director of public safety to deduct 25% of all moneys earned, new deposits, and credits to an inmate's individual account for restitution. However, we prefer the language of the original draft which would have the provisions of the bill apply to orders for restitution in effect on and entered after the bill's effective date.

In 2012, the Hawai'i State Legislature passed the Justice Reinvestment Act (Act 139, or the "JRI Act," as it is commonly referred). Under the JRI Act, section 353-22.6 of the Hawai'i Revised Statutes (HRS) was amended to increase the amount of restitution to be paid by inmates from 10% of inmate wages to 25% of all earnings, deposits and credits. The clear intent of the amendment was for the inmates to pay 25% of their earnings, deposits and credits to satisfy their outstanding restitution obligations.

We understand that a number of court orders since the passage of the JRI Act have not been in accord with its provisions, by stating that the defendant did not need to make any restitution payments while incarcerated or that the inmate pay less than 25% of all earnings, deposits and credits. The Department of the Attorney General advised the Department of Public Safety that it must comply with the court orders and that HRS § 353-22.6 could only be applied to judgments/sentences imposed on or after July 1, 2012.

H.B. 2654 clarifies and implements the intent of the amendment—that inmates pay 25% of their earnings, deposits and credits to satisfy their outstanding restitution obligations—notwithstanding orders to the contrary.

We urge you to support H.B. 2654, as originally drafted, to ensure that more victims of crime receive the restitution due to them. Thank you for this opportunity to testify.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 12, 2014 11:12 AM  
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**Subject:** \*Submitted testimony for HB2654 on Mar 17, 2014 10:00AM\*

**HB2654**

Submitted on: 3/12/2014

Testimony for PSM/JDL on Mar 17, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**HB2654**

Submitted on: 3/14/2014

Testimony for PSM/JDL on Mar 17, 2014 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Huntington	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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