



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 3, 2017

**GOV. MSG. NO. 1178**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 3, 2017, the following bill was signed into law:

HB1135 HD1 SD2 CD1

RELATING TO PUBLIC SAFETY  
**ACT 077 (17)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 PART I

2 SECTION 1. In July 2012, the governor, the chief justice,  
3 the president of the senate, the speaker of the house of  
4 representatives, and the director of public safety joined  
5 together to begin implementing a data-driven justice  
6 reinvestment strategy that was intended to bring back out-of-  
7 state prisoners to Hawaii, reduce spending on corrections, and  
8 reinvest savings generated in strategies that would reduce  
9 recidivism and crime and increase public safety. Act 139,  
10 Session Laws of Hawaii 2012, which became known as the Justice  
11 Reinvestment Initiative, included a provision that would repeal  
12 certain sections of that Act. Given the ongoing problem of  
13 prison overcrowding and the effectiveness of many aspects of Act  
14 139, it is important to retain those effective sections.

15 Despite the general effectiveness of Act 139 at helping  
16 reduce the prison population, the legislature finds that section  
17 10 of that Act, aimed at facilitating restitution payments to  
18 crime victims, has been largely ineffective. Section 10 of Act



1 139 diverts moneys earned by inmates while in prison to the  
2 victim. However, this provision has had very little impact  
3 because the vast majority of offenders owing restitution to  
4 crime victims are not in prison, in part due to the types of  
5 parole and pretrial assessments implemented by Act 139.  
6 Therefore, to better facilitate the payment of restitution to  
7 crime victims while maintaining the effective prison population  
8 reduction elements of Act 139, it is necessary to establish  
9 additional mechanisms through which restitution payments to  
10 crime victims may be secured.

11 Accordingly, the purpose of this Act is to:

12 (1) Make permanent certain provisions of Act 139, Session  
13 Laws of Hawaii 2012, the Justice Reinvestment  
14 Initiative, relating to pretrial risk assessments,  
15 parole, and parole hearings;

16 (2) Amend the definition of "debt" relating to the  
17 recovery of money owed to the State to include court-  
18 ordered restitution subject to civil enforcement;

19 (3) Require that any bail posted by a defendant be applied  
20 toward payment of any court-ordered restitution in the  
21 same case; and



1 (4) Extend victims' access to adult probation records to  
2 include access to payment compliance records.

3 PART II

4 SECTION 2. Act 139, Session Laws of Hawaii 2012, as  
5 amended by section 2 of Act 67, Session Laws of Hawaii 2013, as  
6 amended by section 69 of Act 231, Session Laws of Hawaii 2016,  
7 is amended by amending section 14 to read as follows:

8 "SECTION 14. This Act shall take effect on July 1, 2012;  
9 provided that:

- 10 (1) Section 3 shall take effect on January 1, 2013;
- 11 (2) Section 7 shall take effect on July 1, 2012, for any  
12 individual on parole supervision on or after July 1,  
13 2012; and
- 14 (3) Section 8 shall take effect on July 1, 2012, and shall  
15 be applicable to individuals committing an offense on  
16 or after that date[; ~~and~~
- 17 ~~(4) Sections 3, 7, 8, and 11 shall be repealed on July 1,~~  
18 ~~2018, and sections 353-10, 353-66, 706-670(1), and~~  
19 ~~353-69, Hawaii Revised Statutes, shall be reenacted in~~  
20 ~~the form in which they read on June 30, 2012]."~~



1 PART III

2 SECTION 3. Section 231-52, Hawaii Revised Statutes, is  
3 amended by amending the definition of "debt" to read as follows:

4 "Debt" includes:

5 (1) Any delinquency in periodic court-ordered or  
6 administrative-ordered payments for child support  
7 pursuant to section 576D-1, in an amount equal to or  
8 exceeding the sum of payments which would become due  
9 over a one-month period;

10 (2) Any liquidated sum exceeding \$25 which is due and  
11 owing any claimant agency, regardless of whether there  
12 is an outstanding judgment for that sum, and whether  
13 the sum has accrued through contract, subrogation,  
14 tort, operation of law, or judicial or administrative  
15 judgment or order;

16 (3) Any defaulted education loan note held by the United  
17 Student Aid Funds, Inc. incurred under the federal  
18 Higher Education Act of 1965 (Public Law 89-329, 79  
19 Stat. 1219), as amended;

20 (4) Any federal income taxes due and owing to the United  
21 States Treasurer; [ex]

- 1 (5) Any medicaid overpayment under section 346-59.6 [-]; or
- 2 (6) Any unpaid court-ordered restitution enforceable as a
- 3 civil judgment pursuant to section 706-647."

4 SECTION 4. Section 706-646, Hawaii Revised Statutes, is  
5 amended to read as follows:

- 6 "§706-646 Victim restitution. (1) As used in this  
7 section, "victim" includes any of the following:
- 8 (a) The direct victim of a crime including a business  
9 entity, trust, or governmental entity;
  - 10 (b) If the victim dies as a result of the crime, a  
11 surviving relative of the victim as defined in chapter  
12 351;
  - 13 (c) A governmental entity that has reimbursed the victim  
14 for losses arising as a result of the crime or paid  
15 for medical care provided to the victim as a result of  
16 the crime; or
  - 17 (d) Any duly incorporated humane society or duly  
18 incorporated society for the prevention of cruelty to  
19 animals, contracted with the county or State to  
20 enforce animal-related statutes or ordinances, that  
21 impounds, holds, or receives custody of a pet animal



1           pursuant to section 711-1109.1, 711-1109.2, or  
2           711-1110.5; provided that this section does not apply  
3           to costs that have already been contracted and  
4           provided for by the counties or State.

5           (2) The court shall order the defendant to make  
6           restitution for reasonable and verified losses suffered by the  
7           victim or victims as a result of the defendant's offense when  
8           requested by the victim. The court shall order restitution to  
9           be paid to the crime victim compensation commission if the  
10          victim has been given an award for compensation under chapter  
11          351. If the court orders payment of a fine in addition to  
12          restitution or a compensation fee, or both, the payment of  
13          restitution and compensation fee shall be made pursuant to  
14          section 706-651.

15          (3) In ordering restitution, the court shall not consider  
16          the defendant's financial ability to make restitution in  
17          determining the amount of restitution to order. The court,  
18          however, shall consider the defendant's financial ability to  
19          make restitution for the purpose of establishing the time and  
20          manner of payment. The court shall specify the time and manner  
21          in which restitution is to be paid. While the defendant is in



1 the custody of the department of public safety, restitution  
2 shall be collected pursuant to chapter 353 and any court-ordered  
3 payment schedule shall be suspended. Restitution shall be a  
4 dollar amount that is sufficient to reimburse any victim fully  
5 for losses, including but not limited to:

6 (a) Full value of stolen or damaged property, as  
7 determined by replacement costs of like property, or  
8 the actual or estimated cost of repair, if repair is  
9 possible;

10 (b) Medical expenses; and

11 (c) Funeral and burial expenses incurred as a result of  
12 the crime.

13 (4) In any criminal proceeding before any court, all money  
14 deposited by the defendant as bail and not declared forfeited  
15 shall be applied toward payment of any restitution, fines, or  
16 fees ordered by the court in the same case, consistent with the  
17 priorities in subsection (2).

18 [~~4~~] (5) The restitution ordered shall not affect the  
19 right of a victim to recover under section 351-33 or in any  
20 manner provided by law; provided that any amount of restitution





1 actually recovered by the victim under this section shall be  
2 deducted from any award under section 351-33."

3 SECTION 5. Section 806-73, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) All adult probation records shall be confidential and  
6 shall not be deemed to be public records. As used in this  
7 section, the term "records" includes[7] but is not limited to[7]  
8 all records made by any adult probation officer in the course of  
9 performing the probation officer's official duties. The  
10 records, or the content of the records, shall be divulged only  
11 as follows:

12 (1) A copy of any adult probation case record or of a  
13 portion of it, or the case record itself, upon  
14 request, may be provided to:

15 (A) An adult probation officer, court officer, social  
16 worker of a Hawaii state adult probation unit, or  
17 a family court officer who is preparing a report  
18 for the courts; or

19 (B) A state or federal criminal justice agency, or  
20 state or federal court program that:



- 1 (i) Is providing supervision of a defendant or
- 2 offender convicted and sentenced by the
- 3 courts of Hawaii; or
- 4 (ii) Is responsible for the preparation of a
- 5 report for a court;
- 6 (2) The residence address, work address, home telephone
- 7 number, or work telephone number of a current or
- 8 former defendant shall be provided only to:
- 9 (A) A law enforcement officer as defined in section
- 10 710-1000 to locate the probationer for the
- 11 purpose of serving a summons or bench warrant in
- 12 a civil, criminal, or deportation hearing, or for
- 13 the purpose of a criminal investigation; or
- 14 (B) A collection agency or licensed attorney
- 15 contracted by the judiciary to collect any
- 16 delinquent court-ordered penalties, fines,
- 17 restitution, sanctions, and court costs pursuant
- 18 to section 601-17.5 [†]; [†]
- 19 (3) A copy of a presentence report or investigative report
- 20 shall be provided only to:
- 21 (A) The persons or entities named in section 706-604;



- 1 (B) The Hawaii paroling authority;
- 2 (C) Any psychiatrist, psychologist, or other
- 3 treatment practitioner who is treating the
- 4 defendant pursuant to a court order or parole
- 5 order for that treatment;
- 6 (D) The intake service centers;
- 7 (E) In accordance with applicable law, persons or
- 8 entities doing research; and
- 9 (F) Any Hawaii state adult probation officer or adult
- 10 probation officer of another state or federal
- 11 jurisdiction who:
  - 12 (i) Is engaged in the supervision of a defendant
  - 13 or offender convicted and sentenced in the
  - 14 courts of Hawaii; or
  - 15 (ii) Is engaged in the preparation of a report
  - 16 for a court regarding a defendant or
  - 17 offender convicted and sentenced in the
  - 18 courts of Hawaii;
- 19 (4) Access to adult probation records by a victim, as
- 20 defined in section 706-646 to enforce an order filed



1           pursuant to section 706-647, shall be limited to the  
2           [~~name~~]:

3           (A) Name and contact information of the defendant's  
4           adult probation officer;

5           (B) Compliance record of the defendant with court-  
6           ordered payments;

7           (C) Amounts paid by the defendant;

8           (D) Dates of the payments made by the defendant;

9           (E) Payee of payments made by the defendant; and

10          (F) Remaining unpaid balance,

11          without the assessment of a filing fee or surcharge;

12          (5) Upon written request, the victim, or the parent or  
13          guardian of a minor victim or incapacitated victim, of  
14          a defendant who has been placed on probation for an  
15          offense under section 580-10(d)(1), 586-4(e),  
16          586-11(a), or 709-906 may be notified by the  
17          defendant's probation officer when the probation  
18          officer has any information relating to the safety and  
19          welfare of the victim;

20          (6) Notwithstanding paragraph (3) and upon notice to the  
21          defendant, records and information relating to the



1 defendant's risk assessment and need for treatment  
2 services; information related to the defendant's past  
3 treatment and assessments, with the prior written  
4 consent of the defendant for information from a  
5 treatment service provider; provided that for any  
6 substance abuse records such release shall be subject  
7 to title 42 Code of Federal Regulations part 2,  
8 relating to the confidentiality of alcohol and drug  
9 abuse patient records; and information that has  
10 therapeutic or rehabilitative benefit, may be provided  
11 to:

12 (A) A case management, assessment[+], [+] or treatment  
13 service provider assigned by adult probation to  
14 service the defendant; provided that such  
15 information shall be given only upon the  
16 acceptance or admittance of the defendant into a  
17 treatment program;

18 (B) Correctional case manager, correctional unit  
19 manager, and parole officers involved with the  
20 defendant's treatment or supervision; and



- 1 (C) In accordance with applicable law, persons or  
2 entities doing research;
- 3 (7) Probation drug test results may be released with prior  
4 written consent of a defendant to the defendant's  
5 treating physician when test results indicate  
6 substance use which may be compromising the  
7 defendant's medical care or treatment;
- 8 (8) Records obtained pursuant to section [†]704-404(9) [†]  
9 may be made available as provided in that section;
- 10 (9) Any person, agency, or entity receiving records, or  
11 contents of records, pursuant to this subsection shall  
12 be subject to the same restrictions on disclosure of  
13 the records as Hawaii state adult probation offices;  
14 and
- 15 (10) Any person who uses the information covered by this  
16 subsection for purposes inconsistent with the intent  
17 of this subsection or outside of the scope of the  
18 person's official duties shall be fined no more than  
19 \$500."



1 PART IV


2 SECTION 6. This Act does not affect rights and duties that  
3 matured, penalties that were incurred, and proceedings that were  
4 begun before its effective date.

5 SECTION 7. If any provision of this Act, or the  
6 application thereof to any person or circumstance, is held  
7 invalid, the invalidity does not affect other provisions or  
8 applications of the Act that can be given effect without the  
9 invalid provision or application, and to this end the provisions  
10 of this Act are severable.

11 SECTION 8. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect upon its approval.

APPROVED this 3 day of JUL, 2017



GOVERNOR OF THE STATE OF HAWAII

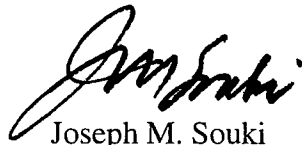


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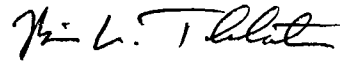
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives



**THE SENATE OF THE STATE OF HAWAII**

Date: May 2, 2017  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the  
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.



President of the Senate



Clerk of the Senate