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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

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**PART I**

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SECTION 1. In July 2012, the governor, the chief justice,

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the senate president, the house speaker, and the director of

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public safety joined together to begin implementing a data-

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driven justice reinvestment strategy that was intended to bring

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back out-of-state prisoners to Hawaii, reduce spending on

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corrections, and reinvest savings generated in strategies that

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would reduce recidivism and crime and increase public safety.

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Act 139, Session Laws of Hawaii 2012, which became known as the

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Justice Reinvestment Initiative, included a provision that would

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repeal certain sections of that Act. Given the ongoing problem

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of prison overcrowding and the effectiveness of many aspects of

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Act 139, it is important to retain those effective sections.

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Despite the general effectiveness of Act 139 at helping

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reduce the prison population, the legislature finds that section

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10 of that Act, aimed at facilitating restitution payments to

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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 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) Create standards and procedures for income-withholding  
17 for purposes of enforcing restitution orders;
- 18 (3) Clarify the priority of income withholding orders;
- 19 (4) Amend the definition of "debt" relating to the  
20 recovery of money owed to the State to include court-  
21 ordered restitution subject to civil enforcement;



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

4 (6) Extend victims' access to adult probation records to  
5 include access to payment compliance records.

6 PART II

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

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

13 (1) Section 3 shall take effect on January 1, 2013;

14 (2) Section 7 shall take effect on July 1, 2012, for any  
15 individual on parole supervision on or after July 1,  
16 2012; and

17 (3) Section 8 shall take effect on July 1, 2012, and shall  
18 be applicable to individuals committing an offense on  
19 or after that date[, ~~and~~

20 ~~(4) Sections 3, 7, 8, and 11 shall be repealed on July 1,~~  
21 ~~2018, and sections 353-10, 353-66, 706-670(1), and~~





1       (2) The income withholding order issued pursuant to  
2 subsection (1) shall be effective immediately after service upon  
3 an employer of a copy of the income withholding order, which  
4 service may be effected only by the prosecuting attorney of the  
5 county where the offense occurred by regular mail, personal  
6 delivery, or transmission through electronic means. Thereafter,  
7 for each pay period, the employer shall withhold from the income  
8 that is due to the defendant from the employer and that is not  
9 required to be withheld by any other federal or state law, and  
10 transmit to the clerk of the court in which the order is entered  
11 as much as may remain payable for the pay period, up to the  
12 amount specified in the order. The employer shall immediately  
13 inform the court of any change that would affect the income  
14 withholding order.

15       (3) Compliance by an employer with the income withholding  
16 order shall operate as a discharge of the employer's liability  
17 to the defendant for that portion of the defendant's earnings  
18 withheld and transmitted to the clerk of the court from which  
19 the order is issued, regardless of whether the employer has  
20 withheld the correct amount. For each payment made pursuant to  
21 an income withholding order, the employer may deduct and retain



1 as an administrative fee an additional amount of \$2 from the  
2 income owed to the defendant. The total amount withheld from  
3 the defendant's income, including the administrative fee, shall  
4 not exceed the maximum amounts permitted under section 303 of  
5 the Consumer Credit Protection Act (15 U.S.C. 1673).

6 (4) Any income withholding order made pursuant to this  
7 section shall:

8 (a) Have priority as against any garnishment, attachment,  
9 execution, or other income withholding order, or any  
10 other order, except for any order made pursuant to  
11 chapters 571, 576B, 576D, 576E, 580, and 584; and

12 (b) Not be subject to the exemptions or restrictions  
13 contained in part III of chapter 651 and in chapters  
14 652 and 653.

15 (5) An employer who fails to comply with an income  
16 withholding order under this section shall be liable to the  
17 obligee for the full amount of all sums not withheld and  
18 transmitted as ordered. An employer receiving an income  
19 withholding order shall:

20 (a) Transmit amounts withheld to the clerk of the court  
21 within five business days after the defendant is paid,



1           either by cash, cashier's check, money order, or  
2           commercial check; and  
3        (b) Begin withholding no later than the first pay period  
4           commencing within seven business days following the  
5           date a copy of the income withholding order is served  
6           upon the employer by regular mail, personal delivery,  
7           or electronic means.  
8        (6) An employer who:  
9        (a) Complies with an income withholding order that is  
10           valid on its face shall not be subject to civil  
11           liability to any person, entity, or agency for conduct  
12           in compliance with the order; and  
13        (b) Is required to withhold amounts from the income of  
14           more than one employee, may remit to the clerk of the  
15           court a sum total of all amounts in one lump sum via  
16           cash, cashier's check, money order, or commercial  
17           check, with a listing of the amounts applicable to  
18           each employee. Within twenty-one business days after  
19           receipt of the amounts withheld by the employer, the  
20           clerk of the court shall disburse the amounts to the  
21           obligee.



1       (7) An income withholding order shall be terminated by a  
2 court order, when appropriate. The court shall promptly refund  
3 any amount withheld in error to the defendant.

4       (8) If there is more than one restitution judgment or  
5 order, the amounts withheld from the income of a defendant shall  
6 be allocated among the different restitution judgments or  
7 orders. If the multiple income withholding orders would cause  
8 the amounts withheld from the defendant's income to exceed wage  
9 withholding limitations established under this section, the  
10 amount withheld shall be allocated so that in no case shall the  
11 allocation result in a withholding for any of the restitution  
12 obligations not being implemented.

13       (9) If a defendant changes employment while an income  
14 withholding order is in effect, the defendant shall notify and  
15 provide the clerk of the court with the new employer's contact  
16 information within five business days of the change. The clerk  
17 of the court shall notify the defendant's new employer of the  
18 defendant's and the new employer's respective obligations under  
19 this section. The new employer shall be bound by the income  
20 withholding order until further court order.





1       (10) As used in this section, and notwithstanding any  
2 other provision of law:

3       "Business day" means a day on which the employer's office  
4 is open for regular business.

5       "Employer" means any individual, partnership, association,  
6 joint stock company, trust, corporation, personal representative  
7 of the estate of a deceased individual, or receiver, trustee, or  
8 successor of any of the same, employing any individual,  
9 including the United States government, State, and any political  
10 subdivision thereof, who is or shall become obligated for  
11 payment of income; provided that this definition shall not apply  
12 if the employed individual is incarcerated in a correctional  
13 facility or engaged in an inmate work furlough program within  
14 the State.

15       "Income" includes without limitation salaries, wages,  
16 earnings, workers' compensation, commissions, fees, bonuses,  
17 independent contractor income, and any other entitlement to  
18 money, including moneys payable as a disability, death, or other  
19 benefit, or moneys from the State or a political subdivision  
20 thereof, or from any disability system established by the State  
21 or any political subdivision thereof under law."



1 SECTION 4. Section 231-52, Hawaii Revised Statutes, is  
2 amended by amending the definition of "debt" to read as follows:

3 "Debt" includes:

- 4 (1) Any delinquency in periodic court-ordered or  
5 administrative-ordered payments for child support  
6 pursuant to section 576D-1, in an amount equal to or  
7 exceeding the sum of payments which would become due  
8 over a one-month period;
- 9 (2) Any liquidated sum exceeding \$25 which is due and  
10 owing any claimant agency, regardless of whether there  
11 is an outstanding judgment for that sum, and whether  
12 the sum has accrued through contract, subrogation,  
13 tort, operation of law, or judicial or administrative  
14 judgment or order;
- 15 (3) Any defaulted education loan note held by the United  
16 Student Aid Funds, Inc. incurred under the federal  
17 Higher Education Act of 1965 (Public Law 89-329, 79  
18 Stat. 1219), as amended;
- 19 (4) Any federal income taxes due and owing to the United  
20 States Treasurer; [ø]
- 21 (5) Any medicaid overpayment under section 346-59.6 [-]; or



1        (6) Any unpaid court-ordered restitution enforceable as a  
2        civil judgment pursuant to section 706-647."

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

5        "**§706-646 Victim restitution.** (1) As used in this  
6 section, "victim" includes any of the following:

7        (a) The direct victim of a crime including a business  
8        entity, trust, or governmental entity;

9        (b) If the victim dies as a result of the crime, a  
10       surviving relative of the victim as defined in chapter  
11       351;

12       (c) A governmental entity that has reimbursed the victim  
13       for losses arising as a result of the crime or paid  
14       for medical care provided to the victim as a result of  
15       the crime; or

16       (d) Any duly incorporated humane society or duly  
17       incorporated society for the prevention of cruelty to  
18       animals, contracted with the county or State to  
19       enforce animal-related statutes or ordinances, that  
20       impounds, holds, or receives custody of a pet animal  
21       pursuant to section 711-1109.1, 711-1109.2, or



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

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

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



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

- 5 (a) Full value of stolen or damaged property, as  
6 determined by replacement costs of like property, or  
7 the actual or estimated cost of repair, if repair is  
8 possible;
- 9 (b) Medical expenses; and
- 10 (c) Funeral and burial expenses incurred as a result of  
11 the crime.

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

17 ~~[(4)]~~ (5) The restitution ordered shall not affect the  
18 right of a victim to recover under section 351-33 or in any  
19 manner provided by law; provided that any amount of restitution  
20 actually recovered by the victim under this section shall be  
21 deducted from any award under section 351-33."



1 SECTION 6. Section 806-73, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

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

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

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

17 (B) A state or federal criminal justice agency, or  
18 state or federal court program that:

19 (i) Is providing supervision of a defendant or  
20 offender convicted and sentenced by the  
21 courts of Hawaii; or



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



- 1 defendant pursuant to a court order or parole  
2 order for that treatment;
- 3 (D) The intake service centers;
- 4 (E) In accordance with applicable law, persons or  
5 entities doing research; and
- 6 (F) Any Hawaii state adult probation officer or adult  
7 probation officer of another state or federal  
8 jurisdiction who:
- 9 (i) Is engaged in the supervision of a defendant  
10 or offender convicted and sentenced in the  
11 courts of Hawaii; or
- 12 (ii) Is engaged in the preparation of a report  
13 for a court regarding a defendant or  
14 offender convicted and sentenced in the  
15 courts of Hawaii;
- 16 (4) Access to adult probation records by a victim, as  
17 defined in section 706-646 to enforce an order filed  
18 pursuant to section 706-647, shall be limited to the  
19 [name] :
- 20 (A) Name and contact information of the defendant's  
21 adult probation officer;





- 1           (B) Compliance record of the defendant with court-  
2           ordered payments;
- 3           (C) Amounts paid by the defendant;
- 4           (D) Dates of the payments made by the defendant;
- 5           (E) Payee of payments made by the defendant; and
- 6           (F) Remaining unpaid balance;
- 7           without the assessment of a filing fee or surcharge;
- 8           (5) Upon written request, the victim, or the parent or  
9           guardian of a minor victim or incapacitated victim, of  
10           a defendant who has been placed on probation for an  
11           offense under section 580-10(d)(1), 586-4(e),  
12           586-11(a), or 709-906 may be notified by the  
13           defendant's probation officer when the probation  
14           officer has any information relating to the safety and  
15           welfare of the victim;
- 16           (6) Notwithstanding paragraph (3) and upon notice to the  
17           defendant, records and information relating to the  
18           defendant's risk assessment and need for treatment  
19           services; information related to the defendant's past  
20           treatment and assessments, with the prior written  
21           consent of the defendant for information from a



1 treatment service provider; provided that for any  
2 substance abuse records such release shall be subject  
3 to title 42 Code of Federal Regulations part 2,  
4 relating to the confidentiality of alcohol and drug  
5 abuse patient records; and information that has  
6 therapeutic or rehabilitative benefit, may be provided  
7 to:

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

14 (B) Correctional case manager, correctional unit  
15 manager, and parole officers involved with the  
16 defendant's treatment or supervision; and

17 (C) In accordance with applicable law, persons or  
18 entities doing research;

19 (7) Probation drug test results may be released with prior  
20 written consent of a defendant to the defendant's  
21 treating physician when test results indicate



- 1 substance use which may be compromising the  
2 defendant's medical care or treatment;
- 3 (8) Records obtained pursuant to section [†] 704-404(9) [†]  
4 may be made available as provided in that section;
- 5 (9) Any person, agency, or entity receiving records, or  
6 contents of records, pursuant to this subsection shall  
7 be subject to the same restrictions on disclosure of  
8 the records as Hawaii state adult probation offices;  
9 and
- 10 (10) Any person who uses the information covered by this  
11 subsection for purposes inconsistent with the intent  
12 of this subsection or outside of the scope of the  
13 person's official duties shall be fined no more than  
14 \$500."

15 **PART IV**

16 SECTION 7. 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 8. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 9. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on July 1, 2050.

7



**Report Title:**

Public Safety; Justice Reinvestment Initiative; Crime Victims Restitution; Collection; Enforcement

**Description:**

Amends Act 139, Session Laws of Hawaii 2012, to make permanent certain provisions of the Justice Reinvestment Initiative relating to pretrial risk assessments, parole, and parole hearings. Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Clarifies the priority of income withholding orders. Amends the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement. Extends victims' access to adult probation records to include access to payment compliance records. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Takes effect 7/1/2050. (SD1)

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

