

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

12 Accordingly, the purpose of this Act is to:

- 13 (1) Make permanent certain provisions of Act 139, Session
14 Laws of Hawaii 2012, the Justice Reinvestment
15 Initiative, relating to pretrial risk assessments,
16 parole, and parole hearings;
- 17 (2) Create standards and procedures for income-withholding
18 for purposes of enforcing restitution orders;
- 19 (3) Clarify the priority of income withholding orders;



1 (3) Section 8 shall take effect on July 1, 2012, and shall
 2 be applicable to individuals committing an offense on
 3 or after that date [~~7~~ and
 4 ~~(4) Sections 3, 7, 8, and 11 shall be repealed on July 1,~~
 5 ~~2018, and sections 353-10, 353-66, 706-670(1), and~~
 6 ~~353-69, Hawaii Revised Statutes, shall be reenacted in~~
 7 ~~the form in which they read on June 30, 2012]."~~

PART III

9 SECTION 3. Chapter 706, Hawaii Revised Statutes, is
 10 amended by adding a new section to part III to be appropriately
 11 designated and to read as follows:

"§706- Income withholding for payment of restitution.

13 (1) Whenever a person is sentenced to supervision under adult
 14 client services and a judgment or order is entered establishing,
 15 modifying, or enforcing restitution, the court shall allow
 16 ninety days for a defendant to make payment in full. If the
 17 judgment or order is not satisfied after ninety days, the court
 18 shall issue an income withholding order that shall operate as an
 19 assignment, to the clerk of the court in which the order is
 20 entered, of amounts that are due at times that may be specified
 21 in the judgment or order, but no less than \$30 per month, from



1 the defendant's income that is due or to become due in the
2 future from the defendant's employer or successor employers. A
3 copy of the income withholding order shall be filed in the
4 office of the clerk of the court in which the income withholding
5 order was issued.

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

20 (3) Compliance by an employer with the income withholding
21 order shall operate as a discharge of the employer's liability



1 to the defendant for that portion of the defendant's earnings
2 withheld and transmitted to the clerk of the court from which
3 the order is issued, regardless of whether the employer has
4 withheld the correct amount. For each payment made pursuant to
5 an income withholding order, the employer may deduct and retain
6 as an administrative fee an additional amount of \$2 from the
7 income owed to the defendant. The total amount withheld from
8 the defendant's income, including the administrative fee, shall
9 not exceed the maximum amounts permitted under section 303 of
10 the Consumer Credit Protection Act (15 U.S.C. 1673).

11 (4) Any income withholding order made pursuant to this
12 section shall:

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

17 (b) Not be subject to the exemptions or restrictions
18 contained in part III of chapter 651 and in chapters
19 652 and 653.

20 (5) An employer who fails to comply with an income
21 withholding order under this section shall be liable to the



1 obligee for the full amount of all sums not withheld and
2 transmitted as ordered. An employer receiving an income
3 withholding order shall:

4 (a) Transmit amounts withheld to the clerk of the court
5 within five business days after the defendant is paid,
6 either by cash, cashier's check, money order, or
7 commercial check; and

8 (b) Begin withholding no later than the first pay period
9 commencing within seven business days following the
10 date a copy of the income withholding order is served
11 upon the employer by regular mail, personal delivery,
12 or electronic means.

13 (6) An employer who:

14 (a) Complies with an income withholding order that is
15 valid on its face shall not be subject to civil
16 liability to any person, entity, or agency for conduct
17 in compliance with the order; and

18 (b) Is required to withhold amounts from the income of
19 more than one employee, may remit to the clerk of the
20 court a sum total of all amounts in one lump sum via
21 cash, cashier's check, money order, or commercial



1 check, with a listing of the amounts applicable to
2 each employee. Within twenty-one business days after
3 receipt of the amounts withheld by the employer, the
4 clerk of the court shall disburse the amounts to the
5 obligee.

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

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

18 (9) If a defendant changes employment while an income
19 withholding order is in effect, the defendant shall notify and
20 provide the clerk of the court with the new employer's contact
21 information within five business days of the change. The clerk



1 of the court shall notify the defendant's new employer of the
2 defendant's and the new employer's respective obligations under
3 this section. The new employer shall be bound by the income
4 withholding order until further court order.

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

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

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

19 "Income" includes without limitation salaries, wages,
20 earnings, workers' compensation, commissions, fees, bonuses,
21 independent contractor income, and any other entitlement to



1 money, including moneys payable as a disability, death, or other
2 benefit, or moneys from the State or a political subdivision
3 thereof, or from any disability system established by the State
4 or any political subdivision thereof under law."

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

7 "Debt" includes:

- 8 (1) Any delinquency in periodic court-ordered or
9 administrative-ordered payments for child support
10 pursuant to section 576D-1, in an amount equal to or
11 exceeding the sum of payments which would become due
12 over a one-month period;
- 13 (2) Any liquidated sum exceeding \$25 which is due and
14 owing any claimant agency, regardless of whether there
15 is an outstanding judgment for that sum, and whether
16 the sum has accrued through contract, subrogation,
17 tort, operation of law, or judicial or administrative
18 judgment or order;
- 19 (3) Any defaulted education loan note held by the United
20 Student Aid Funds, Inc. incurred under the federal



1 Higher Education Act of 1965 (Public Law 89-329, 79
2 Stat. 1219), as amended;

3 (4) Any federal income taxes due and owing to the United
4 States Treasurer; [~~or~~]

5 (5) Any medicaid overpayment under section 346-59.6 [~~+~~]; or

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

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

10 "§706-646 Victim restitution. (1) As used in this
11 section, "victim" includes any of the following:

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

14 (b) If the victim dies as a result of the crime, a
15 surviving relative of the victim as defined in chapter
16 351;

17 (c) A governmental entity that has reimbursed the victim
18 for losses arising as a result of the crime or paid
19 for medical care provided to the victim as a result of
20 the crime; or



1 (d) Any duly incorporated humane society or duly
2 incorporated society for the prevention of cruelty to
3 animals, contracted with the county or State to
4 enforce animal-related statutes or ordinances, that
5 impounds, holds, or receives custody of a pet animal
6 pursuant to section 711-1109.1, 711-1109.2, or
7 711-1110.5; provided that this section does not apply
8 to costs that have already been contracted and
9 provided for by the counties or State.

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

20 (3) In ordering restitution, the court shall not consider
21 the defendant's financial ability to make restitution in



1 determining the amount of restitution to order. The court,
2 however, shall consider the defendant's financial ability to
3 make restitution for the purpose of establishing the time and
4 manner of payment. The court shall specify the time and manner
5 in which restitution is to be paid. While the defendant is in
6 the custody of the department of public safety, restitution
7 shall be collected pursuant to chapter 353 and any court-ordered
8 payment schedule shall be suspended. Restitution shall be a
9 dollar amount that is sufficient to reimburse any victim fully
10 for losses, including but not limited to:

11 (a) Full value of stolen or damaged property, as
12 determined by replacement costs of like property, or
13 the actual or estimated cost of repair, if repair is
14 possible;

15 (b) Medical expenses; and

16 (c) Funeral and burial expenses incurred as a result of
17 the crime.

18 (4) In any criminal proceeding before any court, all money
19 deposited by the defendant as bail and not declared forfeited
20 shall be applied toward payment of any restitution, fines, or



1 fees ordered by the court in the same case, consistent with the
2 priorities in subsection (2).

3 [~~4~~] (5) The restitution ordered shall not affect the
4 right of a victim to recover under section 351-33 or in any
5 manner provided by law; provided that any amount of restitution
6 actually recovered by the victim under this section shall be
7 deducted from any award under section 351-33."

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

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

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

20 (A) An adult probation officer, court officer, social
21 worker of a Hawaii state adult probation unit, or



1 a family court officer who is preparing a report
2 for the courts; or

3 (B) A state or federal criminal justice agency, or
4 state or federal court program that:

5 (i) Is providing supervision of a defendant or
6 offender convicted and sentenced by the
7 courts of Hawaii; or

8 (ii) Is responsible for the preparation of a
9 report for a court;

10 (2) The residence address, work address, home telephone
11 number, or work telephone number of a current or
12 former defendant shall be provided only to:

13 (A) A law enforcement officer as defined in section
14 710-1000 to locate the probationer for the
15 purpose of serving a summons or bench warrant in
16 a civil, criminal, or deportation hearing, or for
17 the purpose of a criminal investigation; or

18 (B) A collection agency or licensed attorney
19 contracted by the judiciary to collect any
20 delinquent court-ordered penalties, fines,



1 restitution, sanctions, and court costs pursuant
2 to section 601-17.5[+];[+]

3 (3) A copy of a presentence report or investigative report
4 shall be provided only to:

5 (A) The persons or entities named in section 706-604;

6 (B) The Hawaii paroling authority;

7 (C) Any psychiatrist, psychologist, or other
8 treatment practitioner who is treating the
9 defendant pursuant to a court order or parole
10 order for that treatment;

11 (D) The intake service centers;

12 (E) In accordance with applicable law, persons or
13 entities doing research; and

14 (F) Any Hawaii state adult probation officer or adult
15 probation officer of another state or federal
16 jurisdiction who:

17 (i) Is engaged in the supervision of a defendant
18 or offender convicted and sentenced in the
19 courts of Hawaii; or

20 (ii) Is engaged in the preparation of a report
21 for a court regarding a defendant or



1 offender convicted and sentenced in the
2 courts of Hawaii;

3 (4) Access to adult probation records by a victim, as
4 defined in section 706-646 to enforce an order filed
5 pursuant to section 706-647, shall be limited to the
6 [name];

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

9 (B) Compliance record of the defendant with court-
10 ordered payments;

11 (C) Amounts paid by the defendant;

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

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

14 (F) Remaining unpaid balance;

15 without the assessment of a filing fee or surcharge;

16 (5) Upon written request, the victim, or the parent or
17 guardian of a minor victim or incapacitated victim, of
18 a defendant who has been placed on probation for an
19 offense under section 580-10(d)(1), 586-4(e),
20 586-11(a), or 709-906 may be notified by the
21 defendant's probation officer when the probation



1 officer has any information relating to the safety and
2 welfare of the victim;

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

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



- 1 (B) Correctional case manager, correctional unit
2 manager, and parole officers involved with the
3 defendant's treatment or supervision; and
- 4 (C) In accordance with applicable law, persons or
5 entities doing research;
- 6 (7) Probation drug test results may be released with prior
7 written consent of a defendant to the defendant's
8 treating physician when test results indicate
9 substance use which may be compromising the
10 defendant's medical care or treatment;
- 11 (8) Records obtained pursuant to section [†]704-404(9)[†]
12 may be made available as provided in that section;
- 13 (9) Any person, agency, or entity receiving records, or
14 contents of records, pursuant to this subsection shall
15 be subject to the same restrictions on disclosure of
16 the records as Hawaii state adult probation offices;
17 and
- 18 (10) Any person who uses the information covered by this
19 subsection for purposes inconsistent with the intent
20 of this subsection or outside of the scope of the



1 person's official duties shall be fined no more than
2 \$500."

3 PART IV

4 SECTION 7. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

16



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. (SD2)

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