



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

And

The Senate Committee on Ways and Means

Senator Jill N. Tokuda, Chair

Senator Donovan Dela Cruz, Vice Chair

Thursday, March 30, 2017, 9:50 a.m.

State Capitol, Conference Room 211

WRITTEN TESTIMONY ONLY

by

Sidney Nakamoto

Probation Administrator, First Circuit

Bill No. and Title: House Bill No. 1135, House Draft 1, Senate Draft 1, Relating to Public Safety.

Purpose: 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)

Judiciary's Position:

The Judiciary supports the underlying intent of this bill which is to improve the collection of restitution for crime victims. However, the Judiciary has concerns that this bill could have an



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adverse impact on Judiciary operations with a substantial need for resources, and respectfully offers the following comments.

The main purpose of HB1135, HD1, SD1 would be to help ensure that offenders satisfy their restitution obligations to their victims by requiring employers to withhold income for payment of restitution. While the Judiciary believes that the intent for offenders to comply with their restitution payments is important, there are several challenges and concerns regarding implementation of the provisions in this bill.

HB1135, HD1, SD1 requires the defendant to report any changes in employment to the Clerk of the Court and places the responsibility on the Clerk to notify the defendant's new employer of its obligation to withhold restitution payment. Not only is this responsibility not aligned with the duties of the Clerk, but monitoring defendants will be difficult, particularly for defendants who fail to notify the clerk of his/her change in employment. Further, the bill does not address what happens when a defendant fails to report a change in employment, when clerks cannot verify a defendant's change in employment, or when defendants fail to report a change.

The mandatory minimum of \$30 per month in restitution payment plus the \$2 per month administrative fee may be discouraging for some defendants who are trying to make ends meet on limited income. Further, the bill has no flexibility to allow the minimum amount to be adjusted by the court.

The requirement for employers to submit a cashier check, a money order, or commercial check may cost more than the \$2 monthly administrative fee that employers are able to retain, which may result in employers resisting compliance. This may also discourage employers from hiring or retaining employees that have Income Withholding Orders, especially since such an Order may alert an employer of the employee's involvement with the Courts. This would hinder the defendant's effort in rehabilitation and accountability, and would impede his/her ability to pay restitution.

This bill allows the victim to access the adult probation records to determine the defendant's compliance with court-ordered payments; the amounts, dates, and payee of payments made by the defendant; and the balance unpaid. Accommodating these requests will increase the already significant workload of the probation staff and fiscal office.

If HB1135, HD1, SD1 is enacted, the Judiciary will face a significant increase in the court's workload. In order to implement procedures to accommodate the provisions in this bill, it is estimated that it would cost nearly \$671,000 annually for the existing population that is supervised by probation. The estimated cost includes the projected staffing requirements needed statewide: two Social Worker (SW) IVs, two Judicial Clerk IIIs, and one Accountant I for O'ahu, one SW IV, one Judicial Clerk III, and one Accountant I for Maui; two SW IVs, two Judicial Clerk IIIs, and one Accountant I for Hawai'i; and one SW IV, one Judicial Clerk III, and one



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Accountant I for Kaua'i. Collectively, this is six SW IVs, six Judicial Clerk IIIs, and four Accountants to implement the program statewide.

In addition to the \$671,000 annual cost, one-time equipment costs needed to support the staffing are estimated at about \$76,000. Therefore, the Judiciary would require approximately \$747,000 the first year the bill provisions are implemented and \$671,000 each year thereafter.

The Judiciary respectfully requests that any appropriation to implement the requirements of this bill be in addition to its FY 2017-2019 Biennium Budget request in Senate Bill 469, House Draft 1.

Thank you for the opportunity to comment on this measure.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1135, H.D. 1, S.D. 1, RELATING TO PUBLIC SAFETY.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

DATE: Thursday, March 30, 2017 **TIME:** 9:50 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lisa M. Itomura,
Deputy Attorney General, at 586-8379)

Chairs Keith-Agaran and Tokuda and Members of the Committees:

The Department of the Attorney General offers comments on this bill. The intent of this bill is to amend Act 139, Session Laws of Hawaii 2012, as amended, to make permanent certain provisions of the Justice Reinvestment Initiative concerning pretrial risk assessments, parole, and parole hearings.

The bill, as amended by Senate Draft 1, also includes a new section 3 that creates standards and procedures for employer income-withholding for restitution owed by employees to crime victims, establishes unpaid restitution as a valid debt for the withholding of state income tax refunds, requires that money deposited as bail or bond be applied to restitution, fines, or fees before being returned to the defendant, and extends crime victims' access to certain records for the purpose of enforcing restitution orders.

We can appreciate the intent of the new section 3 and simply caution that Article III, section 14, of the Constitution of the State of Hawaii, states: "[e]ach law shall embrace but one subject, which shall be expressed in its title." While it might be argued that the title, "Relating to Public Safety" appropriately describes the provisions of section 3, because restitution is a part of the correctional process, a court could find that the subject of section 3 is not appropriately expressed in the title.

For this reason, we suggest consideration might be given to deleting section 3 of this bill in its current form, based on the one-subject issue.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



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No. _____

TESTIMONY ON HOUSE BILL 1135, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO PUBLIC SAFETY

By
Nolan P. Espinda, Director

Senate Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan, M. Dela Cruz, Vice Chair

Thursday, March 30, 2017; 10:50 a.m.
State Capitol, Conference Room 211

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of House Bill (HB) 1135, House Draft (HD) 1, Senate Draft (SD) 1 to delete the sunset provisions of Act 139, Session Laws of Hawaii 2012, applicable to PSD and the Hawaii Paroling Authority.

The Department also respectfully requests that HB 1135 be amended to include funding to conduct the validation study, as required by Act 139.

Thank you for the opportunity to present this testimony.