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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i**

March 30, 2017

RE: H.B. 1135, H.D. 1, S.D. 1; RELATING TO PUBLIC SAFETY

Chair Keith-Agaran, Chair Tokuda, Vice-Chair Rhoads, Vice Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to Section 2, and in support of Sections 3 to 6, of H.B. 1135, H.D. 1, S.D. 1.

Section 2:

Section 2 of this bill would remove the sunset date on Sections 3, 7, 8 and 11 of Act 139 (2012), which was part of the "Justice Reinvestment Initiative" at that time. Of these four (4) listed sections, the Department would ask that, Section 3, 7 and 8 be permitted to sunset, as originally outlined in Act 139 (2012).

Section 3 of Act 139 (2012) required that the reentry intake service center be mandated to "conduct internal risk assessments...within three working days of admission to the community correctional center..." The Department continues to be against this provision because there has always been an assessment instrument used to determine whether a bail report should be prepared for the courts. Prior to passage of Act 139 (2012), if a bail report was prepared for the court, and indicated the accused is dangerous or a flight risk, the court would hold an expedited bail hearing to determine whether the accused may be placed on supervised release. This ensured a thorough assessment of the individual's risk to the community, and allowed adequate time for all necessary assessments and supporting documents to be presented to the court.

Section 7 of Act 139 (2012) limited a parole violator to 6-months of re-incarceration, or the remaining portion of the prisoner's sentence—whichever is shorter—when parole is revoked. The Department strongly maintains that discretion should be left with the paroling authority to make that determination. In keeping with this rationale of not interfering with the paroling authority's discretion, the Department is also against the provisions of **Section 8**, which mandated release of those assessed as “low-risk,” upon completion of their minimum sentence.

While the Justice Reinvestment Initiative purported to provide vast savings for the State, with which additional treatment programs could then be funded, it does not appear that such savings were ever realized, and we have yet to see any significant improvement in available services. As the Department maintained in 2012, the State must ensure that all necessary treatment programs and personnel providing for supervision are in place before implementing—or making permanent—any initiatives to release prison inmates. To summarily release these individuals without adequate support or services is not only a detriment to the safety and welfare of the larger community, but is also a disservice to these individuals themselves.

Sections 3 through 6:

Sections 3 through 6 of this bill would provide mechanisms to more effectively facilitate and enforce payment of restitution by offenders. Although restitution is ordered by courts in many criminal cases today, it is not strictly enforced, and victims are often left to “fend for themselves” via private civil action against a defendant. In this sense, the current system greatly decreases the chances that victims will ever receive the restitution payments promised to them, and further demoralizes or “re-victimizes” these victims of crime, which discounts the very benefits that restitution is intended to provide, and could in fact lead victims to become offenders themselves (e.g. drug abuse).

To effectively facilitate restitution payments, Sections 3, 4, 5 and 6 of this bill would:

3. create standards and procedures for income-withholding, similar to those used for outstanding child support payments;
4. include unpaid restitution as valid “debt,” for purposes of withholding State income tax refunds (similar to outstanding child support or judgments owed to State agencies);
5. require that any money deposited by way of bail or bond be applied to any restitution, fines, or fees ordered by the court, before any balance is returned to a defendant; and
6. extend victims' access to payment compliance records, for purposes of enforcing restitution orders civilly if desired, without the assessment of any filing fees or surcharge.

Victim restitution is perhaps the *only* core victims’ right that addresses such a wide range of the—often devastating—effects of crime, including physical, emotional, psychological, financial *and* social impacts. At the same time, payment of victim restitution aids in the rehabilitation of offenders, as contemplated by the House Judiciary Committee, upon passing the language that later became Section 706-605, Hawaii Revised Statutes:

Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play...[B]y imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she is righted, to as great a degree as possible, the wrong that he or she has committed.

House Stand. Comm. Rep. No. 425, in 1975 House Journal.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes Section 2, and strongly supports Sections 3 to 6, of H.B. 1135, H.D. 1, S.D. 1. Thank you for the opportunity to testify on this matter.



LATE TESTIMONY

HB1135 HD1 SD1
RELATING TO PUBLIC SAFETY
Senate Committee on Judiciary and Labor
Senate Committee on Ways and Means

March 30, 2017

9:50 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees offer **COMMENTS** on HB1135 HD1 SD1, which would make permanent the important contributions of the Justice Reinvestment Initiative of 2012, and implement a new structure by which restitution can be collected from offenders who are not incarcerated.

The Justice Reinvestment Initiative is a national movement promoting data-driven approaches to improving public safety. Twenty seven states have enacted various features of the Justice Reinvestment principals since 2010. Hawai'i's own state Justice Reinvestment Initiative, Act 139 (Session Laws 2012), currently requires the expedient administration of validated pre-trial risk assessments and limits the length of incarceration for first-time parole violators. **By relying on data-driven evaluations of defendants' flight or recidivism risks and limiting additional prison time for parole violators, these provisions allow the Department of Public Safety to reduce spending on incarceration and reinvest valuable resources into proven strategies to reduce crime and recidivism.** The Native Hawaiian Justice Task Force (NHJTF), in its 2012 report, recognized the important contributions of the Justice Reinvestment Initiative, and even recommended the implementation of additional provisions not included in Act 139.¹

Accordingly, OHA believes that Part II of this measure, which eliminates the sunset date of the JRI pretrial risk assessment and parole provisions, is a critical means to maintain the positive progress our state's Justice Reinvestment Initiative has made toward reforming our criminal justice system.

HB1135 HD1 SD1 also proposes a new structure by which restitution may be collected from offenders who are not or are no longer incarcerated. Restitution is an important component of the healing principles of restorative justice. However, the system proposed here may place a complex administrative burden upon employers, to manage the restitution debts of their offender employees. OHA notes that such a burden may present a barrier to ex-offenders seeking employment, and inhibit their ability to satisfy their restitution obligations.

Mahalo for the opportunity to testify on this measure.

¹ THE OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT 23 n. 28 (2012), http://19of32x2yl33s8o4xza0gf14.wpengine.netdna-cdn.com/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.