

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

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

Despite the general effectiveness of Act 139 at helping reduce the prison population, the legislature finds that section 10 of that Act, aimed at facilitating restitution payments to crime victims, has been largely ineffective. Section 10 of Act 139 diverts moneys earned by inmates while in prison to the victim. However, this provision has had very little impact because the vast majority of offenders owing restitution to crime victims are not in prison, in part due to the types of parole and pretrial assessments implemented by Act 139. Therefore, to better facilitate the payment of restitution to crime victims while maintaining the effective prison population reduction elements of Act 139, it is necessary to establish additional mechanisms through which restitution payments to crime victims may be secured.

Accordingly, the purpose of this Act is to:

- (1) Make permanent certain provisions of Act 139, Session Laws of Hawaii 2012, the Justice Reinvestment Initiative, relating to pretrial risk assessments, parole, and parole hearings;
- (2) Amend the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement;
- (3) Require that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case; and
- (4) Extend victims' access to adult probation records to include access to payment compliance records.

PART II

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

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

- (1) Section 3 shall take effect on January 1, 2013;
- (2) Section 7 shall take effect on July 1, 2012, for any individual on parole supervision on or after July 1, 2012; and
- (3) Section 8 shall take effect on July 1, 2012, and shall be applicable to individuals committing an offense on or after that date~~;~~ and

- (4) Sections 3, 7, 8, and 11 shall be repealed on July 1, 2018, and sections 353-10, 353-66, 706-670(1), and 353-69, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2012].”

PART III

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

““Debt” includes:

- (1) Any delinquency in periodic court-ordered or administrative-ordered payments for child support pursuant to section 576D-1, in an amount equal to or exceeding the sum of payments which would become due over a one-month period;
- (2) Any liquidated sum exceeding \$25 which is due and owing any claimant agency, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order;
- (3) Any defaulted education loan note held by the United Student Aid Funds, Inc. incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended;
- (4) Any federal income taxes due and owing to the United States Treasurer; [øf]
- (5) Any medicaid overpayment under section 346-59.6[-]; or
- (6) Any unpaid court-ordered restitution enforceable as a civil judgment pursuant to section 706-647.”

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

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

- (a) The direct victim of a crime including a business entity, trust, or governmental entity;
 - (b) If the victim dies as a result of the crime, a surviving relative of the victim as defined in chapter 351;
 - (c) A governmental entity that has reimbursed the victim for losses arising as a result of the crime or paid for medical care provided to the victim as a result of the crime; or
 - (d) Any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals, contracted with the county or State to enforce animal-related statutes or ordinances, that impounds, holds, or receives custody of a pet animal pursuant to section 711-1109.1, 711-1109.2, or 711-1110.5; provided that this section does not apply to costs that have already been contracted and provided for by the counties or State.
- (2) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant’s offense when requested by the victim. The court shall order restitution to be paid to the crime victim compensation commission if the victim has been given an award for compensation under chapter 351. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall be made pursuant to section 706-651.

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

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

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

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

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

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

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
 - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
 - (B) A state or federal criminal justice agency, or state or federal court program that:
 - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or
 - (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
 - (A) A law enforcement officer as defined in section 710-1000 to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or
 - (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5[;];
- (3) A copy of a presentence report or investigative report shall be provided only to:
 - (A) The persons or entities named in section 706-604;

- (B) The Hawaii paroling authority;
 - (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
 - (D) The intake service centers;
 - (E) In accordance with applicable law, persons or entities doing research; and
 - (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
 - (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
 - (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;
- (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the ~~[name]~~:
- (A) Name and contact information of the defendant's adult probation officer;
 - (B) Compliance record of the defendant with court-ordered payments;
 - (C) Amounts paid by the defendant;
 - (D) Dates of the payments made by the defendant;
 - (E) Payee of payments made by the defendant; and
 - (F) Remaining unpaid balance,
without the assessment of a filing fee or surcharge;
- (5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
- (6) Notwithstanding paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services; information related to the defendant's past treatment and assessments, with the prior written consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, may be provided to:
- (A) A case management, assessment~~[]~~,~~[]~~ or treatment service provider assigned by adult probation to service the defendant; provided that such information shall be given only upon the acceptance or admittance of the defendant into a treatment program;
 - (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
 - (C) In accordance with applicable law, persons or entities doing research;
- (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test

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

PART IV

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

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

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

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

(Approved July 3, 2017.)