

Victim Restitution Matters:



Hawai'i's Results at a Glance

100+%

increase in the number of people incarcerated and on parole paying restitution

139%

increase in the amount of restitution collected from people incarcerated or on parole

88%

increase in the number of restitution disbursements of \$25 and higher to crime victims

51%

increase in the number of cases in which restitution is paid in full in three years or less

Four Lessons from Hawai'i to Ensure Financial Justice for Crime Victims

When a crime is committed, the victim of the crime pays a price—whether physically, emotionally, financially, or a combination of these. For many crime victims, restitution is the primary pathway to mitigate the financial impact of the crime; however, the restitution process is often inefficient and fraught with institutional barriers. One state—Hawai'i—decided to tackle these issues head on and ultimately increased the number of people convicted of a crime who pay restitution and the frequency and amount of restitution disbursed to crime victims. Hawai'i's four-pronged approach combined institutional changes with interagency collaboration to prioritize restitution in the state. As a result of Hawai'i's efforts, the state has upended commonly held assumptions about the ability of people convicted of a crime to pay restitution. Other states can take similar actions to improve their restitution programs to ensure financial justice for crime victims and accountability for people convicted of crimes.

"Restitution helps repair the financial harm the victim endured, while requiring the person who committed the crime to accept responsibility for their actions, taking a key step toward their rehabilitation. Saying that we want to repair financial harm means nothing to victims unless we make a sincere and concerted effort to make sure they get restitution. If an offender is not serious about paying restitution, they are not serious about rehabilitating themselves." —Dennis Dunn, Director, Victim Witness Kokua Program, Department of the Prosecuting Attorney, City and County of Honolulu



State of Hawai'i
Crime Victim Compensation Commission



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

The Reality of Restitution

Restitution offsets the financial harm of crime-related expenses by holding the person who committed the crime financially accountable to the crime victim through a court order. Although restitution is a right to which victims are entitled, a restitution order is only the first step. The failure to order and enforce restitution can undermine a victim's faith and trust in the criminal justice system.

In addition to the trauma of being victimized, for the 40 percent of Americans who cannot afford an emergency expense of a few hundred dollars, the unexpected financial burden resulting from a crime can make being victimized even more devastating.¹ Unless restitution is paid in full in a timely manner, many crime victims never financially recover from the crime or cannot afford to replace what is lost or damaged.

The challenge of restitution collection can be attributed to a number of conflicting interests and institutional complexities. These include the following:

1. Widely held misperceptions that people convicted of a crime cannot pay restitution

Criminal justice agencies are often slow to collect restitution because they believe people convicted of a crime cannot afford to pay it. Advocates for people convicted of crime suggest that they lack sufficient resources to pay restitution. On the other hand, crime victim advocates note that victims often cannot afford to cover their crime-related financial losses and need restitution to recover. It is a sentenced individual's obligation to take financial responsibility for their criminal actions, and it is the government's obligation to enforce court-ordered restitution on behalf of crime victims.

2. Conflation of restitution with legal financial obligations (LFOs) and failure to prioritize restitution payments above LFOs

The purpose and importance of restitution is obscured by the conflation of restitution with other LFOs. Restitution is a monetary reimbursement paid directly to crime victims by the person who committed the crime to repay them for their crime-related losses. For many crime victims,

restitution is the primary pathway to recoup their crime-related financial losses. LFOs are fines and fees imposed on the person who committed the crime by the state to fund and maintain the criminal justice infrastructure. Unlike restitution, LFOs support general criminal justice functions that jurisdictions choose to fund by relying on people who commit crimes to pay for services instead of allocating tax dollars for these functions.

Unfortunately, not all states prioritize restitution payments over LFOs and ensure victims receive priority for restitution payments over governmental agencies, insurance companies, and others. By prioritizing restitution above LFOs, policymakers increase the likelihood that crime victims will be made financially whole and that the people convicted of crime will pay restitution in full. In addition, it will offer people convicted of crime a meaningful chance to repair the harm they caused.

3. Lack of data in many states to accurately evaluate their restitution programs

The lack of data collection and analysis and insufficient collaboration between agencies charged with restitution management leaves most states unable to answer basic questions about restitution, including how much is owed, collected, and disbursed as well as how much people sentenced to pay restitution can really pay. Without this information, states cannot accurately evaluate how well their restitution management is working and what improvements need to be made. By enhancing data collection, states can evaluate the impact of their efforts to improve restitution collection and disbursement to victims. In Hawai'i, data changed the restitution narrative from "can't pay" to "can pay."

“Hawai’i has demonstrated that people convicted of a crime can pay restitution when states make it a priority. By taking action that any state can take, Hawai’i has doubled the amount of restitution collected and disbursed to victims in just a few years. My hope is that other states will adopt a similar approach to help victims receive what is rightfully theirs.”
—Pamela Ferguson-Brey, Executive Director of Hawai’i’s Crime Victim Compensation Commission

Hawai’i Takes Action

In 2011, Hawai’i pursued a data-driven Justice Reinvestment Initiative to improve the state’s criminal justice and corrections practices in order to increase victim and public safety and reduce the number of people being held in mainland² prisons because state facilities were filled. Victim advocates pushed back on the proposed reduction because the mainland facilities consistently collected more restitution compared with Hawai’i’s correctional facilities.

The Crime Victim Compensation Commission’s (CVCC) role in this process was to ensure that decisions about reform initiatives were informed by the needs of victims, survivors, and community safety. The CVCC worked with victims, survivors, and advocates to identify key issues and concerns related to Justice Reinvestment. One key concern was the shortfall in restitution collections. Failure to collect and pay restitution left many crime victims unable to recover from the physical, emotional, and financial impact they suffered as a result of the crime.

At the time, Hawai’i law required that only 10 percent of an incarcerated person’s wages be set aside for restitution to their crime victims, regardless of whether they had additional funds in their prison accounts. This resulted in scant amounts of restitution being collected. In addition, restitution collection in Hawai’i’s correctional facilities was, at times, inconsistent.³

Justice Reinvestment proposed to reduce system delays by releasing people from confinement, which could result in less time for them to meet their restitution obligations to crime victims before release. This, combined with Hawai’i’s small and inconsistent restitution collections, caused victim advocates to be concerned that the amount of restitution collected would decrease if things did not change. Incarcerated people often had sufficient

resources in their prison accounts to begin making meaningful payments toward victim restitution at the time of their confinement.

In 2012, as part of Justice Reinvestment, Hawai’i enacted legislation that included provisions to increase the amount of restitution collected from 10 percent of an incarcerated person’s wages to 25 percent of their wages and all cash deposits received into their prison accounts. These changes increased the likelihood that restitution would be collected and that meaningful restitution would be paid to crime victims more promptly.

Eight years after the state passed Justice Reinvestment legislation, Hawai’i has the data to demonstrate the success of these changes: (1) the number of people incarcerated and on parole who are paying restitution has increased more than 100 percent; (2) restitution collections from people incarcerated or on parole have increased 139 percent; (3) the number of disbursements of \$25 and higher to crime victims has increased 88 percent; and (4) the number of cases in which restitution is paid in full in three years or less has increased 51 percent.

How did Hawai’i do it? By taking four key actions that any state can pursue:

1. Foster an institutional culture where restitution is a priority for agency leaders and staff.
2. Increase coordination and collaboration across agencies to collect, track, and disburse restitution effectively.
3. Collect, analyze, and share restitution data.
4. Assess and improve statutory and administrative restitution policies and practices.

Four key actions Hawai'i has taken to improve restitution collection

1. Foster an institutional culture where restitution is a priority for agency leaders and staff.

Leadership from state and local agencies responsible for seeking, ordering, collecting, tracking, and disbursing restitution is critical to ensuring that agency policies and practices are updated and that staff are implementing them correctly to maximize the amount of restitution recovered for crime victims.

Hawai'i's CVCC has been a leader in improving restitution collection in the state for decades. As part of the state's Justice Reinvestment effort, CVCC advocated for and was instrumental in helping policymakers decide to increase the amount of restitution deducted from incarcerated people's accounts, leading to the change in statute in 2012.⁴ At that time, the state also appropriated funding for county-based victim advocate positions and positions within Hawai'i's Department of Public Safety (PSD) and CVCC to improve restitution and victims' services. Further, CVCC has proactively sought funding from the federal government through the Victims of Crime Act to support two positions in PSD to improve the consistency and accuracy of collecting restitution payments from incarcerated people. Through CVCC's efforts to develop and maintain its restitution database, Hawai'i now has the data to show the impact of policy and practice changes. In 2011, 640 people in prison or jail were making payments toward a restitution obligation. By 2018, 1,295 people were paying restitution obligations through wage deductions, cash receipts, voluntary contributions, and work furlough payments.⁵

As state leaders were having conversations about prioritizing restitution during Justice Reinvestment, Hawai'i's Paroling Authority (HPA) also began focusing on making restitution collection a priority in 2012. HPA's administrator ensured that agency staff understood restitution collection was a priority and delivered training to parole officers emphasizing the importance of their role in collecting restitution, helping officers communicate effectively with crime victims, and identifying strategies for

enforcing and collecting restitution. The agency recognized officers who made restitution a priority and authorized officers to use incentives and sanctions in response to compliance, or lack thereof, with the restitution payment plan. After the restitution data dashboard launched in 2016, HPA leadership began reviewing trends to ensure that parole officers continued to collect restitution payments. These efforts led to a notable increase in the number of people on parole paying restitution. As a result, more people were paying restitution more frequently and the total number of payments and amount collected increased (see Figure 1).

Figure 1. Restitution Collections from People on Parole in Hawai'i, FY2013 and FY2018⁶

	FY2013	FY2018	% Change
Number of people on parole paying restitution	147	303	106%
Total number of payments received	674	1,586	135%
Total amount collected	\$69,962	\$166,302	138%

Note that not all individuals on parole owe restitution.

Three steps states can take to ensure that leadership is committed and ready to take action

1. Incorporate restitution collection into correctional agency and supervision agency missions to ensure that restitution is prioritized.
2. Train corrections and supervision workforce in restitution management and provide ongoing technical and other support as needed.
3. Report to policymakers about the importance of restitution and the impact of collection and disbursement efforts.

“Payment in full of restitution is an integral part of the rehabilitative process, and this is continually reinforced throughout the period of supervision. Restitution is not voluntary; the court orders it as part of the sentence, and the parole board sets it as a condition of supervision. Parole officers who use every opportunity to discuss restitution help lead people on parole to repay the obligation to their victims who can better recover financially as a result.”
 —Tommy Johnson, Hawai'i Paroling Authority Administrator

2. Increase coordination and collaboration across agencies to collect, track, and disburse restitution effectively.

No one agency is responsible for all facets of restitution. While every state is different, successful restitution practices require coordination across courts, county clerks, prosecutors, defense attorneys, corrections staff, supervision officers, and victim advocates and victims' rights attorneys. Agencies need to clearly identify their roles and responsibilities for restitution management and work together to identify and solve problems.

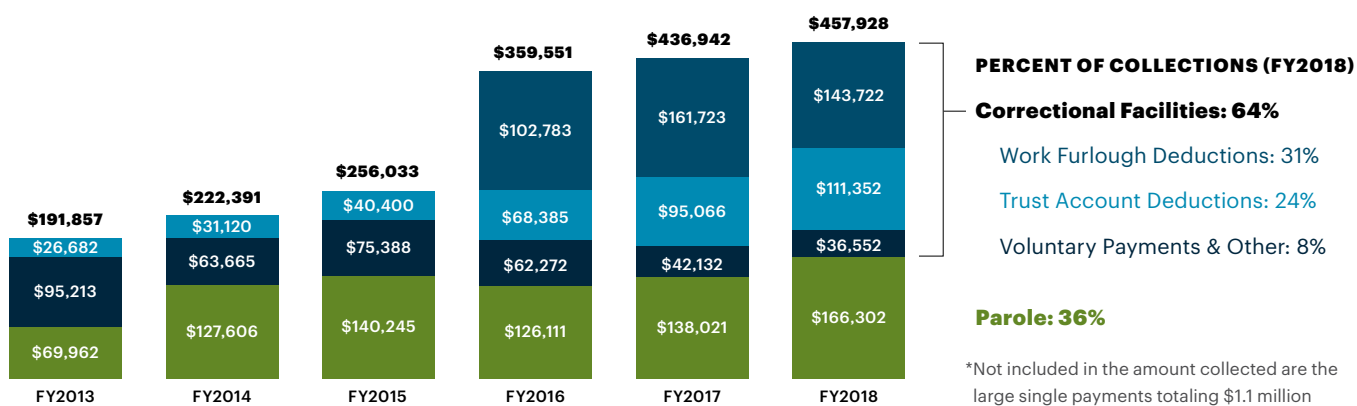
Prior to 2012, system-wide efforts in Hawai'i to monitor and enforce compliance with restitution orders were undermined by a lack of policy and information sharing. To assist with implementing the 2012 legislation, the state created the Justice Reinvestment Initiative Victim Restitution Workgroup and the Justice Reinvestment Initiative Victim Services Workgroup. These workgroups identified issues with implementing the legislation and collaboratively developed solutions to remove obstacles to the timely, consistent, and accurate collection of restitution. Both workgroups included representatives from the judiciary, victim witness programs of the county

prosecutor's offices, PSD, HPA, the Department of the Attorney General, and CVCC.⁷ Their collaboration continues today and has been essential to improving restitution management and doubling the amount of restitution collected between FY2013 and FY2018 (see Figure 2) even while the institutional population declined 6.4 percent (from 5,853 to 5,477 people) and the parole population declined 1.7 percent (from 1,589 to 1,562 people).

Three steps states can take to ensure that all relevant agencies work together

1. Identify agencies responsible for restitution management and their roles and responsibilities for improving the restitution process.
2. Convene an interagency working group to facilitate collaboration, information sharing, and problem-solving. Where possible, address any IT infrastructure issues that interfere with agencies' ability to communicate electronically with one another.
3. Ensure that responsible agencies collectively review restitution data and promote implementation of policies and practices to improve restitution management.

Figure 2. Restitution Collections in Hawai'i Correctional Facilities, Work Furlough, and Parole, FY2013–FY2018^{*8}



“One way that we can see this work in other states is to...find ways to establish those baselines and be able to show those numbers. It can make a big difference in being able to show how victims are actually being helped by this and also help bring about even more policy or legislative fixes if that’s what’s necessary in your state to be able to restore victims in a just way.” —Former Hawai’i Attorney General Doug Chin

3. Collect, analyze, and share restitution data.

Criminal justice agencies need to do more than commit to collecting restitution data. Relevant agencies need to obtain and share data about how much restitution is ordered, collected, and disbursed to ensure that orders of restitution do not fall through the cracks, payments to victims are not delayed, and people convicted of a crime are held accountable.

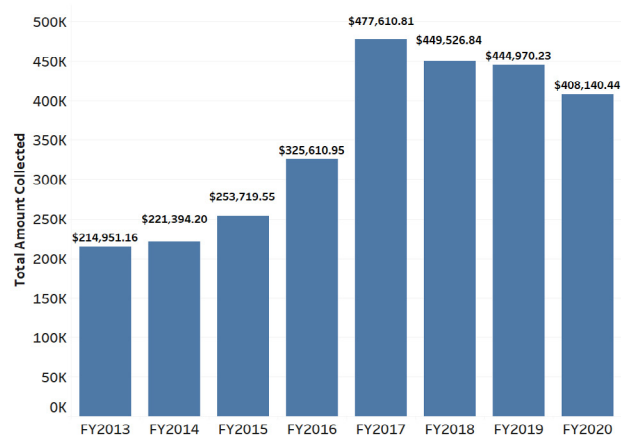
Prior to 2012, Hawai’i state policymakers and criminal justice professionals had limited information about the outcomes of restitution orders because state agencies did not prioritize analyzing and sharing restitution data. To address this issue, Hawai’i obtained funding from the U.S. Department of Justice and provided funds of its own for the CVCC to build a restitution database that identifies who owes restitution, how much they owe, to whom it is owed, how it is collected, when it is collected, and how it is disbursed. CVCC launched the database in early 2016. Now, CVCC routinely updates its restitution data dashboard and distributes it to leaders in PSD and HPA who use the data to monitor progress and track outcomes (see Figure 3).

Three steps states can take to improve data collection and analysis

1. Require agencies responsible for the collection, tracking, and disbursement of restitution to establish baseline data for current practices. Examples of basic data metrics include the number of people making restitution payments, the amount of restitution collected, the number of people receiving restitution payments, and the amount of restitution disbursed on both a monthly and an annual basis.
2. Upgrade data systems to effectively manage the collection of restitution and to capture restitution data.
3. Require responsible agencies to measure performance, track trends over time, and regularly report to policymakers and/or the public on performance measures. Such performance measures might include collections by county, by court of jurisdiction, and by supervising officer or prison/jail facility responsible for collecting the restitution. Identifying gaps in the collections process throughout the year will help increase the number of collections overall.

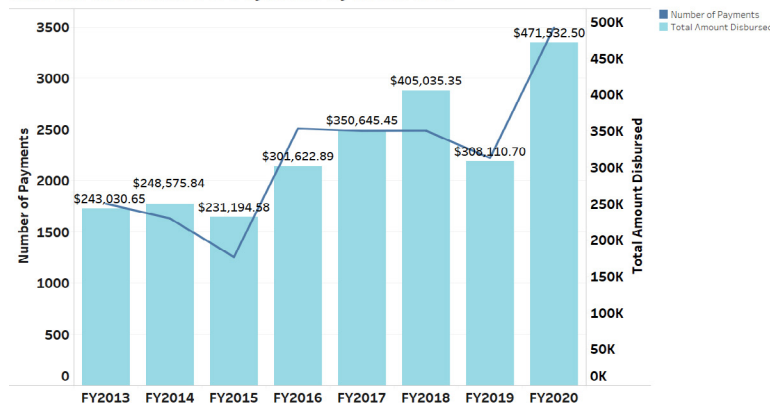
Figure 3. Sample of Hawai’i’s Restitution Dashboard

Overall Restitution Collections from Inmates and Parolees



Victim Disbursements

Amount and Number of Payments by Fiscal Year



“PSD is committed to holding people accountable for their crimes and ensuring that incarcerated people who owe restitution pay it. Our decision to require incarcerated people on work furlough to pay restitution has led to a significant increase in the amount of restitution collected.” —Nolan Espinda, Former Director of Hawai‘i’s Department of Public Safety

4. Assess and improve statutory and administrative restitution policies and practices.

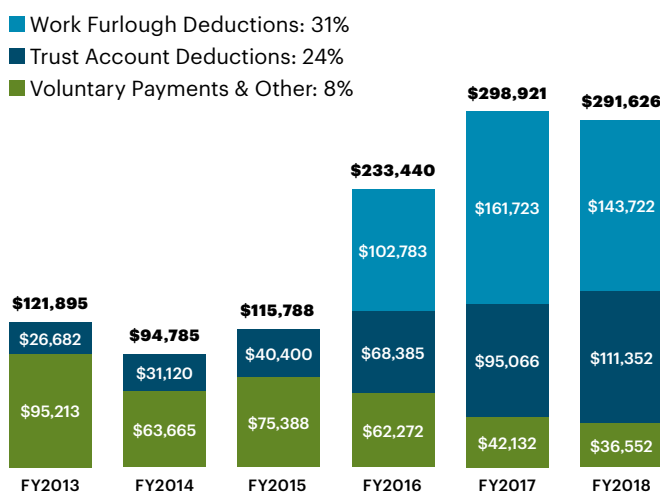
Statutory and administrative policies are the foundation to ensuring that restitution is ordered, collected, tracked, and disbursed. States and public safety agencies can evaluate their policies to determine whether there are mandates to ordering restitution; if they require a minimum percentage or amount of restitution collected; how restitution is prioritized relative to LFOs; what sources are covered by required minimums (e.g., wages, deposits into incarcerated people’s accounts); and the frequency of collections and disbursements. States and public safety agencies can ensure that policies prioritize and incentivize restitution collection and disbursement.

Prior to making statutory changes in 2012, Hawai‘i required PSD to deduct 10 percent of incarcerated people’s wages to pay restitution. In practice, this money was deducted inconsistently, creating uncertainty among victims about if or when they would receive restitution. In 2012, Hawai‘i enacted legislation increasing the amount of money deducted from incarcerated people’s accounts to 25 percent of all wage earnings and cash deposits. The legislation also improved the regularity of those deductions by requiring PSD to deduct the funds on a monthly basis. CVCC is required to distribute payments to victims once a restitution account accrues \$25 or on an annual basis, whichever occurs first. With regular deductions, payments to victims became more consistent and certain.

In 2016, state statute was further amended to clarify that all restitution orders are subject to the 25-percent deduction even if the courts ordered a lesser payment. PSD also updated its policy to clarify that the wages earned by people who are housed in community correctional centers and are allowed to work outside of the facility through the state’s work furlough program are also subject to a 25-percent deduction. Permitting deductions from furlough wages led to a significant increase in the

amount collected and helps people leave prison with lower amounts of restitution owed. As a result of these changes to policy and practice, the amount of money deducted from incarcerated people’s accounts more than doubled between FY2013 and FY2018 (see Figure 4).

Figure 4. Restitution Collections in Hawai‘i Correctional Facilities and Work Furlough, FY2013–FY2018*⁹



*Not included in the amount collected are the large single payments totalling \$1.1 million.

Three steps states can take to assess and improve policy and practice

1. Examine and strengthen statutory and departmental policies governing restitution management and prioritize restitution above LFOs.
2. Provide statewide guidance to agencies on interpreting and implementing laws and policies related to victim restitution to improve consistency.
3. Require regular deductions of restitution payments from incarcerated people’s accounts and regular disbursements to victims to promote accountability, predictability, and consistency for both victims and people convicted of crime.

“One more link of my chain is cut. I am still tethered to what I did. But there is one less link on my chain.”
 —Person convicted of a crime who fully paid restitution, Hawai'i

Conclusion

Each of these four actions was critical to increasing the amount of restitution collected and disbursed to victims in Hawai'i. Now, as Hawai'i continues to improve practices, significantly more victims are receiving their full restitution within three years, and victims are receiving greater amounts of restitution more frequently (see Figures 5 and 6). Having data on restitution dispels the misperception that people who are convicted of a crime cannot afford to pay court-ordered restitution to crime victims. However, more work needs to be done to ensure that restitution is prioritized over LFOs. Increasing the amount paid and the speed with which restitution is paid off holds people who have committed crimes accountable for their actions and provides financial justice for crime victims.

Figure 5. Percent of CVCC Cases Paid in Full Within Three Years of Being Opened, FY2011–FY2018¹⁰

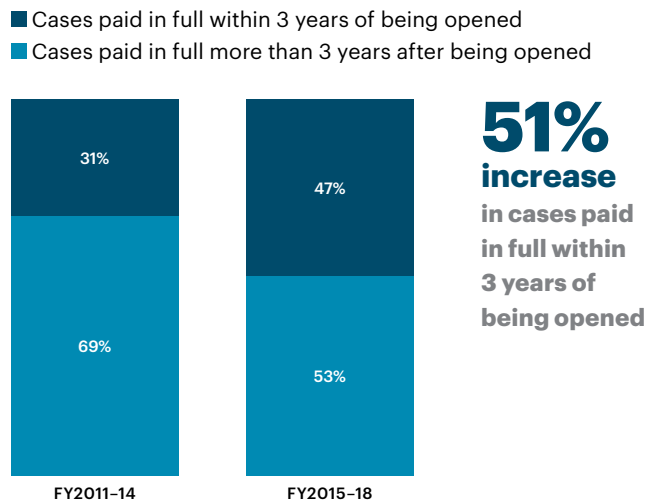
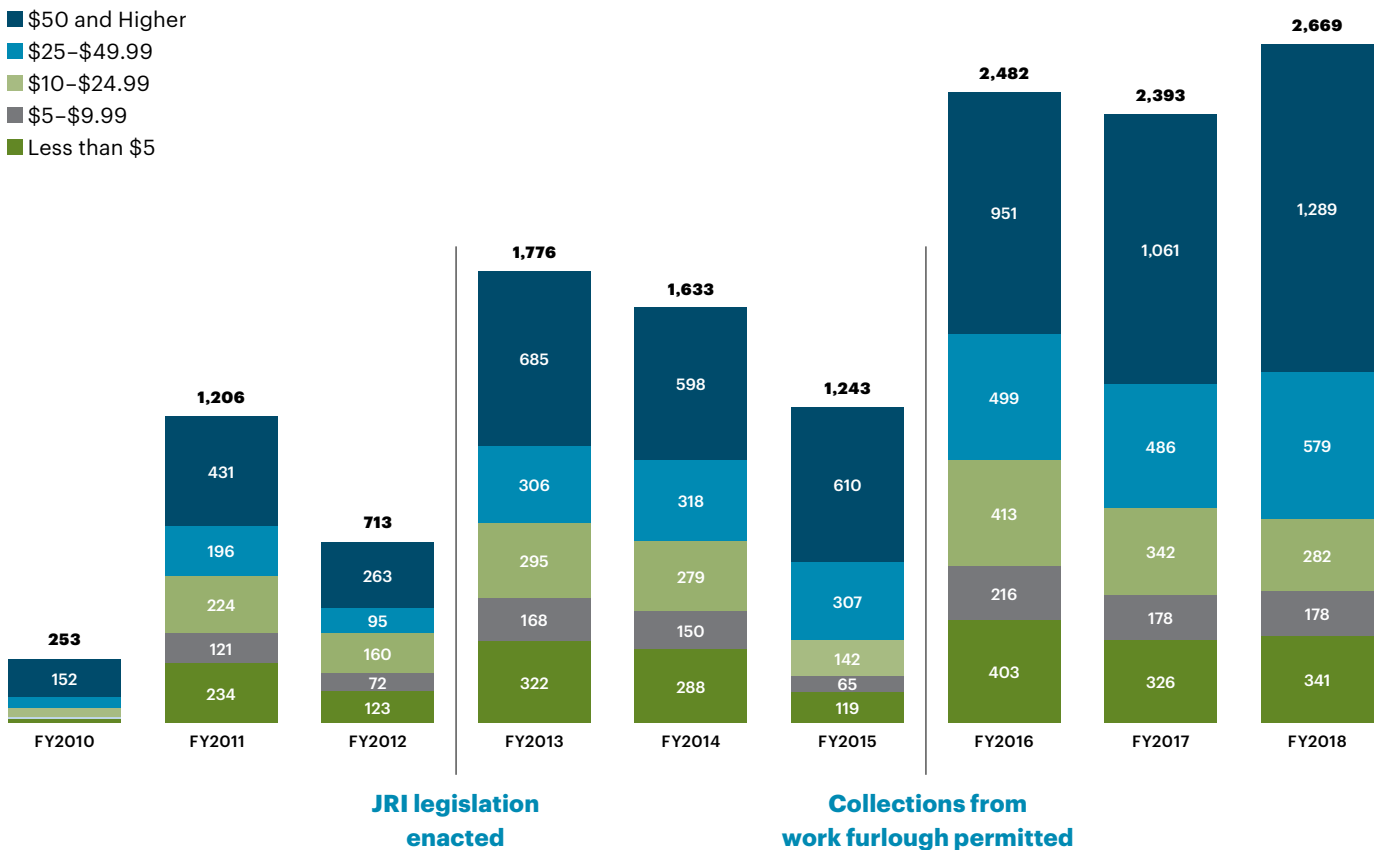


Figure 6. Number and Amount of Restitution Payments to Hawai'i Victims, FY2010–FY2018¹¹



Timeline of Hawai'i's Actions

2011

Hawai'i began pursuing a Justice Reinvestment approach. State law only required 10 percent of an incarcerated person's earned wages to be set aside for restitution.

2012

Hawai'i enacted Justice Reinvestment legislation (Acts 130 and 190), which increased the amount of money deducted from incarcerated people's accounts to 25 percent of all wage earnings and cash deposits and improved the regularity of those deductions by requiring PSD to deduct the funds monthly.

Hawai'i appropriated funding for victim advocate positions and to improve restitution and victims' services.

To assist with implementing the 2012 legislation, the state created the Justice Reinvestment Initiative Victim Restitution Workgroup and the Justice Reinvestment Initiative Victim Services Workgroup.

HPA improved existing officer training that incorporated victims' perspectives on restitution; recognized officers who made restitution a priority; and authorized officers to use incentives and sanctions in response to compliance, or lack thereof, with the restitution payment plan.

2016

CVCC launched its restitution database and shared outcomes with PSD, HPA, and the Justice Reinvestment Initiative Restitution and Victim Service Workgroup members. HPA leadership began reviewing trends over time in the data dashboard to ensure that parole officers continued to collect restitution payments. PSD began using the data to monitor progress and track outcomes.

State statute was further amended to clarify that all restitution orders are subject to a 25-percent deduction even if the courts ordered a lesser payment.

PSD updated its policy to clarify that the wages earned by people who are housed in community correctional centers and are allowed to work outside of the facility through the state's work furlough program are also subject to a 25-percent deduction.

2018

After receiving approval for funding from the federal government through the Victims of Crime Act in 2017, PSD created and filled two positions to improve the consistency and accuracy of collecting restitution payments from incarcerated people.

2020-2021

CVCC is updating its data dashboard to streamline reporting and improve the efficiency of restitution collections.

Endnotes

1. Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2017" (Washington, DC: Federal Reserve Board, 2018).
2. People housed on the mainland were held in a correctional facility in Arizona.
3. CVCC Hawai'i Restitution dashboard provided to CSG Justice Center staff, "JRI Restitution Dashboard – thru 7.31.19.pdf."
4. The Council of State Governments Justice Center, "National Award Recognizes Justice Reinvestment Improvements to Victim Restitution in Hawai'i," (New York: The Council of State Governments Justice Center, 2013), <https://csgjusticecenter.org/national-award-recognizes-justice-reinvestment-improvements-to-victim-restitution-in-hawaii/>.
5. Hawai'i PSD December 2018 end-of-month report: "Pop-Reports-EOM-2019-12-31.pdf" available from <https://dps.hawaii.gov/about/divisions/corrections/>. The number of sentences including a restitution order has been consistent between 2010 and 2018. Therefore, the increase in number of people paying restitution is attributable to policy changes, not sentencing practices.
6. The Council of State Governments Justice Center analysis of CVCC's Hawai'i restitution database, May 17, 2019. Data in this presentation includes both data from CVCC's dashboard reports and analysis of case level data from the Restitution Manager database. Prior to February 2016 when the new database was launched, the case-level data did not consistently include values in certain fields identifying the payment source. Therefore, slight variations in the case level data and in the dashboard reports exist.
7. The JRI Victim Services Workgroup also includes representatives of the victim services community.
8. CVCC Hawai'i Restitution dashboard provided to CSG Justice Center staff, "JRI Restitution Dashboard – thru 7.31.19.pdf" and case level analysis of CVCC restitution collections. Large payment anomalies of \$25,000 or higher have been excluded to show upward trending regular collection patterns.
9. Ibid.
10. CSG Justice Center analysis of CVCC case level restitution data provided to CSG Justice Center staff on May 17, 2019.
11. CVCC restitution data for disbursements to victims provided to CSG Justice Center staff on May 17, 2019. Outliers, defined as single payments over \$10,000, are removed from the chart. The figures in this chart do not include accounting adjustments for amounts below \$0 and may differ slightly from CVCC's published figures.