

JAN 18 2007

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# A BILL FOR AN ACT

RELATING TO COMMUNITY RESTITUTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to substitute the  
2 term "community restitution" for the term "community service"  
3 wherever that term appears as it relates to punishment,  
4 sanction, or sentencing. The intent of the legislature is to  
5 impart a sense that a person performing "community restitution"  
6 is rehabilitating their status as a member of the community in  
7 good standing. This Act is not intended to change the present  
8 nature or practice of community service.

9           SECTION 2. Section 183D-5, Hawaii Revised Statutes, is  
10 amended by amending subsection (f) to read as follows:

11           "(f) The court, in lieu of the actual cash payment of any  
12 mandatory fine, may allow the defendant to perform such  
13 community [~~service~~] restitution as directed by the department of  
14 land and natural resources at the rate of one hour of service  
15 for every \$10 of mandatory fine imposed."

16           SECTION 3. Section 291C-95, Hawaii Revised Statutes, is  
17 amended by amending subsection (h) to read as follows:



1           "(h) Any person who violates this section shall be fined  
2 not more than \$500 or sentenced to perform community [~~service,~~  
3 restitution, or both."

4           SECTION 4. Section 291C-103, Hawaii Revised Statutes, is  
5 amended by amending subsection (e) to read as follows:

6           "(e) Any person who violates this section, except  
7 subsection (d), shall be fined not more than \$500 or imprisoned  
8 not more than six months, or both. Any person who violates  
9 subsection (d) shall be fined not more than \$500 or be sentenced  
10 to perform community [~~service,~~ restitution, or both."

11           SECTION 5. Section 291C-132, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

13           "(c) The court shall sentence any person convicted of the  
14 offense of littering from vehicles as follows:

15           (1) For the first offense, defendant shall spend four  
16 hours of either picking up litter on public property  
17 or performing community [~~service,~~ restitution.

18           (2) For any subsequent offense, defendant shall spend  
19 eight hours of either picking up litter on public  
20 property or performing community [~~service,~~  
21 restitution."



1 SECTION 6. Section 291D-9, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3 "(d) The court may grant to a person claiming inability to  
4 pay, an extension of the period in which the monetary assessment  
5 shall be paid or may impose community [~~service~~] restitution in  
6 lieu thereof. If the assessment is not paid or the community  
7 service is not performed on or before the date established and  
8 the court has not extended the time, the court shall take action  
9 as provided in section 291D-10."

10 SECTION 7. Section 291D-12, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§291D-12 Powers of the district court judge sitting in**  
13 **the traffic division.** A district court judge sitting in the  
14 traffic division and hearing cases pursuant to this chapter  
15 shall have all the powers of a district court judge under  
16 chapter 604, including the following powers:

- 17 (1) To conduct traffic infraction hearings and to impose  
18 monetary assessments;
- 19 (2) To permit deferral of monetary assessment or impose  
20 community [~~service~~] restitution in lieu thereof;
- 21 (3) To dismiss a notice of traffic infraction or to set  
22 aside a judgment for the State;



- 1           (4) To order temporary driver's license suspension or  
2           license reinstatement;
- 3           (5) To order the director of finance not to issue or renew  
4           the driver's license or to register, renew the  
5           registration of, or issue title to a motor vehicle of  
6           any person who has not paid a monetary assessment or  
7           performed community [~~service~~] restitution in lieu  
8           thereof;
- 9           (6) To approve the issuance or renewal of a driver's  
10          license or instruction permit pursuant to section 286-  
11          109(c);
- 12          (7) To issue penal summonses and bench warrants and  
13          initiate contempt of court proceedings in proceedings  
14          conducted pursuant to section 291D-13; and
- 15          (8) To exercise other powers the court finds necessary and  
16          appropriate to carry out the purposes of this  
17          chapter."

18          SECTION 8. Section 291E-61, Hawaii Revised Statutes, is  
19          amended by amending subsection (b) to read as follows:

20          "(b) A person committing the offense of operating a  
21          vehicle under the influence of an intoxicant shall be sentenced



1 as follows without possibility of probation or suspension of  
2 sentence:

3 (1) For the first offense, or any offense not preceded  
4 within a five-year period by a conviction for an  
5 offense under this section or section 291E-4(a):

6 (A) A fourteen-hour minimum substance abuse  
7 rehabilitation program, including education and  
8 counseling, or other comparable program deemed  
9 appropriate by the court;

10 (B) Ninety-day prompt suspension of license and  
11 privilege to operate a vehicle during the  
12 suspension period, or the court may impose, in  
13 lieu of the ninety-day prompt suspension of  
14 license, a minimum thirty-day prompt suspension  
15 of license with absolute prohibition from  
16 operating a vehicle and, for the remainder of the  
17 ninety-day period, a restriction on the license  
18 that allows the person to drive for limited  
19 work-related purposes and to participate in  
20 substance abuse treatment programs;

21 (C) Any one or more of the following:



- 1           (i) Seventy-two hours of community [~~service~~  
2           ~~work~~] restitution;
- 3           (ii) Not less than forty-eight hours and not more  
4           than five days of imprisonment; or
- 5           (iii) A fine of not less than \$150 but not more  
6           than \$1,000; and
- 7           (D) A surcharge of \$25 to be deposited into the  
8           neurotrauma special fund;
- 9       (2) For an offense committed by a highly intoxicated  
10       driver, prompt suspension of license and privilege to  
11       operate a vehicle for a period of six months with an  
12       absolute prohibition from operating a vehicle during  
13       the suspension period;
- 14       (3) For an offense that occurs within five years of a  
15       prior conviction for an offense under this section or  
16       section 291E-4(a) by:
- 17           (A) Prompt suspension of license and privilege to  
18           operate a vehicle for a period of one year with  
19           an absolute prohibition from operating a vehicle  
20           during the suspension period;
- 21           (B) Either one of the following:



- 1 (i) Not less than two hundred forty hours of  
2 community [~~service work~~] restitution; or  
3 (ii) Not less than five days but not more than  
4 fourteen days of imprisonment of which at  
5 least forty-eight hours shall be served  
6 consecutively;
- 7 (C) A fine of not less than \$500 but not more than  
8 \$1,500; and
- 9 (D) A surcharge of \$25 to be deposited into the  
10 neurotrauma special fund;
- 11 (4) For an offense that occurs within five years of two  
12 prior convictions for offenses under this section or  
13 section 291E-4(a):
- 14 (A) A fine of not less than \$500 but not more than  
15 \$2,500;
- 16 (B) Revocation of license and privilege to operate a  
17 vehicle for a period not less than one year but  
18 not more than five years;
- 19 (C) Not less than ten days but not more than thirty  
20 days imprisonment of which at least forty-eight  
21 hours shall be served consecutively;



1 (D) A surcharge of \$25 to be deposited into the  
2 neurotrauma special fund; and  
3 (E) Forfeiture under chapter 712A of the vehicle  
4 owned and operated by the person committing the  
5 offense; provided that the department of  
6 transportation shall provide storage for vehicles  
7 forfeited under this subsection; and

8 (5) Any person eighteen years of age or older who is  
9 convicted under this section and who operated a  
10 vehicle with a passenger, in or on the vehicle, who  
11 was younger than fifteen years of age, shall be  
12 sentenced to an additional mandatory fine of \$500 and  
13 an additional mandatory term of imprisonment of  
14 forty-eight hours; provided that the total term of  
15 imprisonment for a person convicted under this  
16 paragraph shall not exceed the maximum term of  
17 imprisonment provided in paragraph (1), [+] (3) [+], or  
18 [+] (4) [+]."

19 SECTION 9. Section 339-8, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§339-8 Penalties.** (a) Except as otherwise provided by  
22 this chapter, any person violating any provision of this chapter





1 or any rule adopted under this chapter shall be guilty of a  
2 violation, and shall be fined not less than \$100, and not more  
3 than \$500 for each offense, and ordered to pick up and remove  
4 litter from a public place under the supervision of the director  
5 as follows:

6 (1) For the first offense, the violator shall spend four  
7 hours of either picking up litter or performing  
8 community [~~service,~~] restitution; and

9 (2) For any subsequent offense, the violator shall spend  
10 eight hours of either picking up litter or performing  
11 community [~~service,~~] restitution.

12 (b) If the court judges the violator to be incapable of  
13 litter removal and pick up, the court may provide some other  
14 community [~~work~~] restitution as it deems appropriate. All  
15 persons who are caught littering shall be required to remove the  
16 litter that they caused or shall be liable for the costs of  
17 removing that litter."

18 SECTION 10. Section 431:10C-117, Hawaii Revised Statutes,  
19 is amended by amending subsection (a) to read as follows:

20 "(a) (1) Any person subject to this article in the capacity  
21 of the operator, owner, or registrant of a motor  
22 vehicle operated in this State, or registered in this



1 State, who violates any applicable provision of this  
2 article, shall be subject to citation for the  
3 violation by any county police department in a form  
4 and manner approved by the traffic violations bureau  
5 of the district court of the first circuit;

6 (2) Notwithstanding any provision of the Hawaii Penal  
7 Code:

8 (A) Each violation shall be deemed a separate offense  
9 and shall be subject to a fine of not less than  
10 \$100 nor more than \$5,000 which shall not be  
11 suspended except as provided in subparagraph (B);  
12 and

13 (B) If the person is convicted of not having had a  
14 motor vehicle insurance policy in effect at the  
15 time the citation was issued, the fine shall be  
16 \$500 for the first offense and a minimum of  
17 \$1,500 for each subsequent offense that occurs  
18 within a five-year period from any prior offense;  
19 provided that the judge:

20 (i) Shall have the discretion to suspend all or  
21 any portion of the fine if the defendant  
22 provides proof of having a current motor



1           vehicle insurance policy; provided further  
2           that upon the defendant's request, the judge  
3           may grant community [~~service~~] restitution in  
4           lieu of the fine, of not less than seventy-  
5           five hours and not more than one hundred  
6           hours for the first offense, and not less  
7           than two hundred hours nor more than two  
8           hundred seventy-five hours for the second  
9           offense; and

10           (ii) May grant community [~~service~~] restitution in  
11           lieu of the fine for subsequent offenses at  
12           the judge's discretion;

13       (3) In addition to the fine in paragraph (2), the court  
14       shall either:

15           (A) Suspend the driver's license of the driver or of  
16           the registered owner for:

17           (i) Three months for the first conviction; and

18           (ii) One year for any subsequent offense within a  
19           five-year period from a previous offense;

20           provided that the driver or the registered owner  
21           shall not be required to obtain proof of



1 financial responsibility pursuant to section 287-  
2 20; or

3 (B) Require the driver or the registered owner to  
4 keep a nonrefundable motor vehicle insurance  
5 policy in force for six months;

6 (4) Any person cited under this section shall have an  
7 opportunity to present a good faith defense, including  
8 but not limited to lack of knowledge or proof of  
9 insurance. The general penalty provision of this  
10 section shall not apply to:

11 (A) Any operator of a motor vehicle owned by another  
12 person if the operator's own insurance covers  
13 such driving;

14 (B) Any operator of a motor vehicle owned by that  
15 person's employer during the normal scope of that  
16 person's employment; or

17 (C) Any operator of a borrowed motor vehicle if the  
18 operator holds a reasonable belief that the  
19 subject vehicle is insured;

20 (5) In the case of multiple convictions for driving  
21 without a valid motor vehicle insurance policy within  
22 a five-year period from any prior offense, the court,



1 in addition to any other penalty, shall impose the  
2 following penalties:

- 3 (A) Imprisonment of not more than thirty days;
- 4 (B) Suspension or revocation of the motor vehicle  
5 registration plates of the vehicle involved;
- 6 (C) Impoundment, or impoundment and sale, of the  
7 motor vehicle for the costs of storage and other  
8 charges incident to seizure of the vehicle, or  
9 any other cost involved pursuant to section  
10 431:10C-301; or

- 11 (D) Any combination of those penalties; and
- 12 (6) Any violation as provided in subsection (a) (2) (B)  
13 shall not be deemed to be a traffic infraction as  
14 defined by chapter 291D."

15 SECTION 11. Section 445-121, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17 "(b) In addition to subsection (a), any person acting  
18 knowingly, who is either:

- 19 (1) Responsible for posting material in violation of  
20 section 445-114; or

1           (2) The person organizing the event or the owner or  
2                   operator of the business advertised on the posted  
3                   material,  
4 shall remove the material within seventy-two hours after receipt  
5 of written notice of the posting or seventy-two hours after the  
6 date of the event advertised on the posted material, whichever  
7 occurs first. Failure to remove the posted material within the  
8 time specified shall be punishable by an additional fine of not  
9 less than \$100 nor more than \$200 per posted material, or  
10 community [~~service~~] restitution of not less than ten hours nor  
11 more than twenty hours, or both. [~~Such~~] The additional  
12 penalties shall not be imposed unless the person received  
13 written notice of the posting or was responsible for posting  
14 material in violation of section 445-114."

15           SECTION 12. Section 571-48, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           "**§571-48 Decree, if informal adjustment or diversion to a**  
18 **private or community agency or program has not been effected.**

19 When a minor is found by the court to come within section  
20 571-11, the court shall so decree and in its decree shall make a  
21 finding of the facts upon which the court exercises its



1 jurisdiction over the minor. Upon the decree the court, by  
2 order duly entered, shall proceed as follows:

3 (1) As to a child adjudicated under section 571-11(1):

4 (A) The court may place the child on probation:

5 (i) In the child's own home; or

6 (ii) In the custody of a suitable person or  
7 facility elsewhere, upon conditions  
8 determined by the court.

9 When conditions of probation include  
10 incarceration in a youth correctional facility,  
11 the incarceration shall be for a term not to  
12 exceed one year, after which time the person  
13 shall be allowed to reside in the community  
14 subject to additional conditions as may be  
15 imposed by the court;

16 (B) The court may vest legal custody of the child,  
17 after prior consultation with the agency or  
18 institution, in a Hawaii youth correctional  
19 facility, in a local public agency or  
20 institution, or in any private institution or  
21 agency authorized by the court to care for  
22 children; or place the child in a private home.



1           If legal custody of the child is vested in a  
2           private agency or institution in another state,  
3           the court shall select one that is approved by  
4           the family or juvenile court of the other state  
5           or by that state's department of social services  
6           or other appropriate department; or

7           (C) The court may fine the child for a violation  
8           which would be theft in the third degree by  
9           shoplifting if committed by an adult. The court  
10          may require the child to perform public services  
11          in lieu of the fine;

12          (2) As to a child adjudicated under section 571-11(2):

13          (A) The court may place the child under protective  
14          supervision, as hereinabove defined, in the  
15          child's own home, or in the custody of a suitable  
16          person or agency elsewhere, upon conditions  
17          determined by the court; or

18          (B) The court may vest legal custody of the child,  
19          after prior consultation with the agency or  
20          institution, in a local governmental agency or  
21          institution licensed or approved by the State to  
22          care for children, with the exception of an





1 institution authorized by the court to care for  
2 children. If legal custody of the child is  
3 vested in a private agency or institution in  
4 another state, the court shall select one that is  
5 approved by the family or juvenile court of the  
6 other state or by that state's department of  
7 social services or other appropriate department;  
8 provided that the child may not be committed to a  
9 public or private institution operated solely for  
10 the treatment of law violators;

11 (3) An order vesting legal custody of a minor in an  
12 individual, agency, or institution under section 571-  
13 11(2) shall be for an indeterminate period but shall  
14 not remain in force or effect beyond three years from  
15 the date entered, except that the individual,  
16 institution, or agency may file with the court a  
17 petition for renewal of the order and the court may  
18 renew the order if it finds such renewal necessary to  
19 safeguard the welfare of the child or the public  
20 interest. The court, after notice to the parties, may  
21 conduct a hearing on the petition. Renewal may be  
22 periodic during minority, but no order shall have any



1 force or effect beyond the period authorized by  
2 section 571-13. An agency granted legal custody shall  
3 be subject to prior approval of the court in any case  
4 in which the child is to reside without the  
5 territorial jurisdiction of the court and may be  
6 subject to prior approval in other cases. An  
7 individual granted legal custody shall exercise the  
8 rights and responsibilities personally unless  
9 otherwise authorized by the court;

10 (4) Whenever the court commits a child to the care of the  
11 director of human services or executive director of  
12 the office of youth services, or vests legal custody  
13 of a child in an institution or agency it shall  
14 transmit with the order copies of the clinical  
15 reports, social study, and other information pertinent  
16 to the care and treatment of the child, and the  
17 institution or agency shall give to the court any  
18 information concerning the child that the court may at  
19 any time require. An institution or agency receiving  
20 a child under this paragraph shall inform the court  
21 whenever the status of the child is affected through  
22 temporary or permanent release, discharge, or transfer



1 to other custody. An institution to which a child is  
2 committed under section 571-11(1) or (2) shall not  
3 transfer custody of the child to an institution for  
4 the correction of adult offenders, except as  
5 authorized in this chapter and under chapter 352;

6 (5) The court may order, for any child within its  
7 jurisdiction, whatever care or treatment is authorized  
8 by law;

9 (6) In placing a child under the guardianship or custody  
10 of an individual or of a private agency or private  
11 institution, the court shall give primary  
12 consideration to the welfare of the child;

13 (7) In support of any order or decree under section 571-  
14 11(1) or (2), the court may require the parents or  
15 other persons having custody of the child, or any  
16 other person who has been found by the court to be  
17 encouraging, causing, or contributing to the acts or  
18 conditions which bring the child within the purview of  
19 this chapter and who are parties to the proceeding, to  
20 do or to omit doing any acts required or forbidden by  
21 law, when the judge deems this requirement necessary  
22 for the welfare of the child. The court may also make



1 appropriate orders concerning the parents or other  
2 persons having custody of the child and who are  
3 parties to the proceeding. If such persons fail to  
4 comply with the requirement or with the court order,  
5 the court may proceed against them for contempt of  
6 court;

7 (8) In support of any order or decree for custody or  
8 support, the court may make an order of protection  
9 setting forth reasonable conditions of behavior to be  
10 observed for a specified time, binding upon both  
11 parents or either of them. This order may require  
12 either parent to stay away from the home or from the  
13 other parent or children, may permit the other to  
14 visit the children at stated periods, or may require a  
15 parent to abstain from offensive conduct against the  
16 children or each other;

17 (9) The court may dismiss the petition or otherwise  
18 terminate its jurisdiction at any time;

19 (10) In any other case of which the court has jurisdiction,  
20 the court may make any order or judgment authorized by  
21 law;



- 1           (11) The court may order any person adjudicated pursuant to  
2           section 571-11(1) to make restitution of money or  
3           services to any victim who suffers loss as a result of  
4           the child's action, or to render community [~~service,~~  
5           restitution;
- 6           (12) The court may order any person adjudicated pursuant to  
7           section 571-11(2) to participate in community  
8           [~~service,~~ restitution; and
- 9           (13) The court may order the parents of an adjudicated  
10          minor to make restitution of money or services to any  
11          victim, person, or party who has incurred a loss or  
12          damages as a result of the child's action."

13          SECTION 13. Section 577-3.5, Hawaii Revised Statutes, is  
14          amended by amending subsection (b) to read as follows:

15          "(b) In addition to any other lawful orders, if a minor is  
16          found under chapter 571 to have committed an act constituting  
17          graffiti, the court may order the minor, the parents, or the  
18          legal guardians of the minor to pay the actual cost of having  
19          the damaged property repaired or replaced and may order the  
20          minor to perform community [~~service,~~ restitution. If the court  
21          orders payment for the actual cost of the damage, the court  
22          shall give due consideration to the financial resources of the



1 minor, the parents, or the legal guardians of the minor to  
2 ensure that they will be able to pay the costs of the damage.  
3 If the court determines that the minor, the parents, or the  
4 legal guardians of the minor are unable to pay the actual cost  
5 of the damage, the court may order payment in an amount for  
6 which they are able to pay or in a manner in which they are able  
7 to pay, and may order the minor to perform community service  
8 work in an amount commensurate with the costs of the damage for  
9 which they are unable to pay."

10 SECTION 14. Section 706-605, Hawaii Revised Statutes, is  
11 amended by amending subsection (1) to read as follows:

12 "(1) Except as provided in parts II and IV or in section  
13 706-647 and subsections (2), (6), and (7), and subject to the  
14 applicable provisions of this Code, the court may sentence a  
15 convicted defendant to one or more of the following  
16 dispositions:

17 (a) To be placed on probation as authorized by part II;

18 (b) To pay a fine as authorized by part III and section  
19 706-624;

20 (c) To be imprisoned for a term as authorized by part IV;

21 or



1 (d) To perform [~~services for the~~] community restitution  
2 under the supervision of a governmental agency or  
3 benevolent or charitable organization or other  
4 community service group or appropriate supervisor;  
5 provided that the convicted person who performs such  
6 services shall not be deemed to be an employee of the  
7 governmental agency or assigned work site for any  
8 purpose. All persons sentenced to perform community  
9 [~~service~~] restitution shall be screened and assessed  
10 for appropriate placement by a governmental agency  
11 coordinating public service work placement as a  
12 condition of sentence."

13 SECTION 15. Section 708-829, Hawaii Revised Statutes, is  
14 amended by amending subsection (4) to read as follows:

15 "(4) The court shall sentence any person convicted of  
16 committing the offense of criminal littering as follows:

17 (a) For the first offense, the person shall spend four  
18 hours of either picking up litter on public property  
19 or performing community [~~service~~] restitution;

20 (b) For any subsequent offense, the person shall spend  
21 eight hours of either picking up litter on public



1 property or performing community [~~service~~]

2 restitution; and

3 (c) The court shall fine the person convicted of  
4 committing the offense of criminal littering at least  
5 \$500, but not more than \$1,000."

6 SECTION 16. Section 709-908, Hawaii Revised Statutes, is  
7 amended by amending subsection (4) to read as follows:

8 "(4) Any person who violates subsection (1) or (2), or  
9 both, shall be fined \$500 for the first offense. Any subsequent  
10 offenses shall subject the person to a fine not less than \$500  
11 nor more than \$2,000. Any minor under eighteen years of age who  
12 violates subsection (3) shall be fined \$10 for the first  
13 offense. Any subsequent offense shall subject the violator to a  
14 fine of \$50, no part of which shall be suspended, or the person  
15 shall be required to perform not less than forty-eight hours nor  
16 more than seventy-two hours of community [~~service~~] restitution  
17 during hours when the person is not employed and is not  
18 attending school."

19 SECTION 17. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.





# S.B. NO. 105

1 SECTION 18. This Act shall take effect upon its approval;  
2 provided that section 8 shall take effect on July 1, 2007.

3

INTRODUCED BY:

Norman Sakomfo  
Shiranne Chun Caldwell

Jim



**Report Title:**

Penalties; Community Restitution

**Description:**

Substitute the term "community restitution" for the term "community service" wherever that term appears as it relates to punishment, sanction, or sentencing.

