

LATE TESTIMONY

Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary & Labor

February 15, 2011

S.B. 1165: Relating to Fines.

Senator Hee and Members of the Committee:

This bill proposes to add a new provision to HRS 706-640 to provide for imposition of a fine that is three times the "value of the pecuniary gain derived from the offense" when the defendant is an employee of the state or county and the offense is committed against the state or county. Imposition of the fine would remain discretionary with the sentencing judge.

Currently, a defendant can be ordered to pay restitution for the loss suffered by a victim, whether a person or an entity such as a private business or government office. In addition to restitution, defendants are regularly ordered to pay a crime victim compensation fee, a probation services fee and a drug demand reduction assessment fee.

A defendant can also be ordered to pay a fine which is calculated by the level of offense committed. For example, if a defendant steals property or services worth more than \$20,000.00, the defendant is guilty of a class "B" felony and may be fined \$25,000.00 in addition to restitution and other fees; theft of property or services worth from \$300.01 to \$20,000.00 is a class "C" felony and may result in a fine of \$10,000.00 in addition to restitution and fees; theft of property or services worth up to \$300.00 is a misdemeanor and carries a possible fine of \$2,000.00 in addition to restitution and other fees. There are also particular calculations of fines for certain offenses such as shoplifting (HRS 708-833.4) and agricultural items (HRS 708-831(c) and (d)).

This bill essentially provides for a fine equal to triple the amount of the "pecuniary gain" if that amount is greater than the statutory limit. For example, fines for Theft in the Second Degree (when the value taken falls between \$300.01 to \$20,000.00) could go as high as \$60,000.00., on top of restitution and fees. For the cases handled by our office, which only represents indigent defendants, there would likely be no ability to pay such a high amount on top of restitution and the other fees already assessed. We don't believe most of such fines, if assessed, would actually be collected.

More to the point, we question the public policy of providing such a severe penalty only for a governmental victim. Those in the private sector, whether they be individual victims or organizations, may feel every bit as aggrieved as a state office when property is stolen from them. They may wonder why their loss is not treated as seriously as that of the State's.

We don't believe the answer to this disparate treatment is to raise fines for every case. At some point, there has to be a reasonable approach to sentencing. If a defendant has stolen money or something of substantial value, the most important part of an appropriate sentence, financially, is to recover the loss to the victim. That is why restitution has a priority in the sentencing structure. It may take years, but it is the right thing to do.

Additionally, previous legislatures have determined that convicted defendants should also financially support the services of the criminal justice system through the fees noted above for crime victim compensation, probation services, and drug reduction assessments. Defendants may also be ordered to pay, in their individual cases, for substance abuse assessments and treatment, or anger management, or other services ordered by the court.

Defendants are required to pay toward these amounts. If they are allowed to remain in the community, they are required to work, if able, and to make payments toward restitution and any other assessed amounts. If they are in custody, they are expected to work within the institution and a percentage of those earnings is applied to restitution. An inmate's payments toward restitution and plans for work and continued payment, if paroled, is a factor that the Hawaii Paroling Authority takes into consideration in deciding whether or not to grant parole.

We do not see the need or the wisdom in placing such high additional financial obligations as this bill proposes on persons working to pay their debt to their victim and society.

For these reasons, we oppose this bill. Thank you for the opportunity to comment on this legislation.