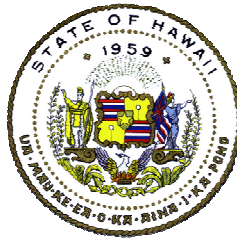


NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

TED SAKAI
INTERIM DIRECTOR

MARTHA TORNEY
Deputy Director of
Administration

Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 1197
A BILL FOR AN ACT RELATING TO
VICTIM RESTITUTION

By

Ted Sakai, Interim Director
Department of Public Safety

House Committee on Public Safety
Representative Henry J.C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, February 7, 2013, 9:00 a.m.
State Capitol, Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

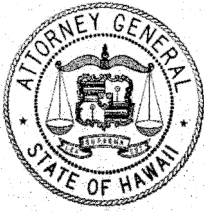
The Department of Public Safety (PSD) **opposes** House Bill 1197 that requires PSD's Director to enforce victim restitution orders notwithstanding any other law or court order to the contrary.

This bill is designed to require PSD to collect restitution despite the judge's express order. This bill, if enacted, will require the Department to make an awkward choice: to follow the deduction schedule in HRS 353-22.6 or to respect the court order.

The judges are authorized by law to set payment schedules when they impose restitution orders. Some judges order that restitution payment be made after release from incarceration. PSD's position is to honor the court order. In those cases where payment is ordered after release from prison, the Department of the Attorney General has advised PSD that there is no effective restitution order until the inmate is released.

A better approach is to work with the judges. PSD, including the Crime Victim Compensation Commission, has entered into discussions with the Judiciary to talk about this.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1197, RELATING TO VICTIM RESTITUTION.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 7, 2013 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Renee R. Sonobe Hong, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General opposes this bill in its present form.

This bill requires a blanket retroactive application of section 353-22.6, Hawaii Revised Statutes (HRS), to all victim restitution orders for inmates while incarcerated. Regardless of any other law or court order to the contrary, and regardless of whether the restitution was ordered prior to, on, or after June 20, 2012, this bill would direct the Department of Public Safety to deduct 25 percent of the total moneys earned, new deposits, and credits from an inmate's individual account.

We oppose this bill because it is contrary to the statutory authority of the courts to establish the time and manner of payment of restitution. Section 706-646(3), HRS, provides in relevant part:

- (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.** [Emphasis added.]

This bill further provides that the “director of public safety *shall enforce* victim restitution orders” – specifically, the director of public safety shall enforce the victim restitution orders which were imposed by the court pursuant to section 706-646(3), HRS, above.

Additionally, we oppose this measure because it proposes to change prior orders of judges en masse, without a hearing or notice, and in disregard of any judicial consideration that may have existed regarding the defendant’s financial ability to pay. This triggers due process concerns. Further, if this bill applies retroactively, all final restitution orders, even those imposed at the previously imposed rate of 10 percent of a prisoner’s annual earnings under section 353-22.6, HRS, will be legislatively amended.

For these reasons, we respectfully request that this measure be held.