

**Testimony of the Office of the Public Defender,
State of Hawaii,
to the House Committee on Judiciary**

January 31, 2013

**H.B. NO. 239 RELATING TO THE PAYMENT OF RESTITUTION BY
MINORS.**

Representative Rhoads and Members of the Committee:

H. B. 229 would eliminate the current discretion of the Family Court to order restitution from an adjudicated minor as appropriate and instead mandate restitution upon the claim of a victim. It would also mandate collection of any balance of restitution unpaid by the minor to be paid by the parents, again leaving no discretion with the Court.

We oppose removing the discretion of the Family Court as proposed in this bill. It is important to note that this bill deals with adjudicated juveniles, not convicted defendants. Family Court is specifically designed to deal with juveniles with an emphasis on rehabilitation. One of the results is that juveniles are not accorded the same rights as a defendant in the criminal courts. Most notably, they have no right to a jury trial. It is not appropriate to treat juveniles equally to or more harshly than adults when they are not afforded the same rights.

Adults are subject to court-ordered restitution to the victim for “reasonable and verifiable losses suffered by the victim” pursuant to HRS 706-646. This bill doesn’t even have that qualifying language, but makes restitution mandatory merely “when requested by the victim”. What about a situation where a minor is provoking another minor, by saying disparaging racial, and offensive remarks, such that the second minor responds by destroying property, or, with one punch, causing a need for stitches or a broken bone? No matter how obnoxious another person may be behaving, our law does not allow for a violent response to person or property. However, in such an instance, the Family Court may currently weigh the actions of the victim as well as the adjudicated minor in determining how much restitution to order. This bill would eliminate that decision-making authority.

We also oppose the mandatory order for the balance of restitution to be paid by parents. Again, it is appropriate that the Court know the circumstances of the parents, whether one or more may be deployed in the military, whether they may be incarcerated, etc. It is not appropriate to take away that discretion.

We don’t believe that our current system is flawed and believe this proposal is unnecessary. Thank you for the opportunity to comment on this bill.

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TESTIMONY ON HOUSE BILL 239
RELATING TO THE PAYMENT OF RESTITUTION BY MINORS

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, January 31, 2013; 2:05 PM
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify before you today. The Commission supports the passage of House Bill 239, Relating to the Payment of Restitution by Minors, with proposed amendments. House Bill 239 amends Hawai'i Revised Statutes ("HRS") § 571-48(11) to require adjudicated juvenile offenders and their parents to pay restitution to the crime victim when requested by the crime victim.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by crime victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available.

The Commission supports House Bill 239 in its effort to make restitution payments by adjudicated juvenile offenders mandatory. Restitution for a crime victim's financial loss from a crime is crucial to repairing the damage caused by the offender. Restitution also demonstrates that the offender and the state recognize the harm that the crime victim suffered and the offender's obligation to make amends.

When an offender is ordered to pay restitution, "[t]he victim of the crime not only receives reparation and restitution but the [offender] should develop or regain a degree of self respect and pride knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed." House Standing Committee Report No. 425 (1975). True "Restorative Justice" demands accountability from offenders for righting the wrongs that have occurred when a crime is committed. Government and the crime victim both have a crucial role in this process, but the ultimate financial burden through restitution (directly to the victim, or to others covering criminal losses, such as the Commission and the Department of Health) should rest on the offenders. Offenders who are truly accountable to the crime victim and the community are individuals who have taken the first step towards rehabilitation. Without financial accountability for the offender, terms like rehabilitation and restorative justice are but meaningless catch phrases.

In addition, studies have shown that the ordering of restitution has the positive effect of lower recidivism rates. Butts, Jeffrey A. & Snyder, Howard "Restitution and Juvenile Recidivism" Juvenile Justice Bulletin (September 1992); Zehr, Howard "Restitution Reduces Recidivism", Crime and Justice Network Newsletter (Oct. 1990-March 1991); Ruback, R. Barry "Restitution in Pennsylvania: A Multimethod Investigation" Final Grant Report Submitted to Pennsylvania Commission on Crime and Delinquency (August 2002).

The Commission is concerned that House Bill 239 requires a crime victim to affirmatively request restitution and only allows crime victims to request and receive restitution. The bill does not allow the court to order restitution to survivors of deceased crime victims or to the Commission and other appropriate governmental agencies such as the Department of Health that paid the crime victim for incurred losses. The Commission proposes that that the bill be

amended so that the juvenile offender restitution provisions mirror the adult offender restitution provisions set forth in HRS § 706-646. HRS § 706-646 defines, for purposes of that section only, “victim” to include the crime victim, survivors of deceased crime victims, the Commission and other appropriate governmental agencies. HRS § 706-646 also makes restitution mandatory, without request, for verifiable losses and provides that the Commission be awarded restitution in cases in which it made an award.

Thank you for providing the Commission with the opportunity to testify in strong support of House Bill 239 with proposed amendments.