

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2013**  
**State of Hawai'i**

January 31, 2013

**RE: H.B. 239; RELATING TO THE PAYMENT OF RESTITUTION BY MINORS.**

Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of City and County of Honolulu, submits the following testimony in support of H.B. 239, and kindly requests the passage of our proposed H.D. 1. H.B. 239 is part of the 2013 Honolulu Prosecuting Attorney Legislative Package.

Our proposed H.D. 1 for H.B. 239 amends section 574-48, Hawaii Revised Statutes (HRS), to require the court to order restitution, upon request, to any victim, party or person who suffers loss as a result of actions taken by a minor adjudicated pursuant to section 571-11(1) HRS<sup>1</sup>; such restitution shall be paid in whole or part by the minor, and payments shall continue even after the minor becomes an adult, as needed to satisfy the order; if the minor is ordered to pay only part of the restitution, the court shall order the parents of the adjudicated minor to pay the remainder of the restitution.

In our proposed H.D. 1, we removed language "When requested by the victim" to be simply "When requested" because requests can be made by an attorney representing the victim. Further, the proposed amendment states that restitution can be ordered to not just the victim, but a party or person who suffered losses as a result of actions taken by a minor adjudicated pursuant to section 571-11(1), thus, retaining language that is already in section 574-48, HRS. The other amendments in the proposed H.D. 1 are technical and non-substantive.

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<sup>1</sup> The court shall have exclusive original jurisdiction in proceedings concerning any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.

The Department of the Prosecuting Attorney of City and County of Honolulu believes that minors must take responsibility for their criminal acts. With this bill, the court must order the minor to pay something for the losses they caused on others, even if it is a small amount. While the minor is working to pay the restitution, it is our hope that they learn from their wrongful actions.

It is for the reasons mentioned that we support our proposed H.D. 1 for H.B. 239. Thank for you the opportunity to testify on this matter.

**Report Title:**

Relating to the Payment of Restitution by Minors.

**Description:**

Amends section 574-48, Hawaii Revised Statutes, to require the court to order restitution, upon request, to any victim, party or person who suffers loss as a result of actions taken by a minor adjudicated pursuant to section 571-11(1); such restitution shall be paid in whole or part by the minor, and payments shall continue even after the minor becomes an adult, as needed to satisfy the order; if the minor is ordered to pay only part of the restitution, the court shall order the parents of the adjudicated minor to pay the remainder of the restitution.

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# A BILL FOR AN ACT

RELATING TO THE PAYMENT OF RESTITUTION BY MINORS.

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

1           SECTION 1. Section 571-48, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§571-48 Decree, if informal adjustment or diversion to a  
4 private or community agency or program has not been effected.

5 When a minor is found by the court to come within section  
6 571-11, the court shall so decree and in its decree shall make a  
7 finding of the facts upon which the court exercises its  
8 jurisdiction over the minor. Upon the decree the court, by  
9 order duly entered, shall proceed as follows:

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

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

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

13                   (ii) In the custody of a suitable person or  
14                   facility elsewhere, upon conditions determined  
15                   by the court.

16           When conditions of probation include custody in a  
17           youth correctional facility, the custody shall be

1 for a term not to exceed one year, after which time  
2 the person shall be allowed to reside in the  
3 community subject to additional conditions as may  
4 be imposed by the court;

5 (B) The court may vest legal custody of the child,  
6 after prior consultation with the agency or  
7 institution, in a Hawaii youth correctional  
8 facility, in a local public agency or institution,  
9 or in any private institution or agency authorized  
10 by the court to care for children; or place the  
11 child in a private home. If legal custody of the  
12 child is vested in a private agency or institution  
13 in another state, the court shall select one that  
14 is approved by the family or juvenile court of the  
15 other state or by that state's department of social  
16 services or other appropriate department; or

17 (C) The court may fine the child for a violation which  
18 would be theft in the third degree by shoplifting  
19 if committed by an adult. The court may require  
20 the child to perform public services in lieu of the  
21 fine;

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

1 (A) The court may place the child under protective  
2 supervision, as hereinabove defined, in the  
3 child's own home, or in the custody of a suitable  
4 person or agency elsewhere, upon conditions  
5 determined by the court; or

6 (B) The court may vest legal custody of the child,  
7 after prior consultation with the agency or  
8 institution, in a local governmental agency or  
9 institution licensed or approved by the State to  
10 care for children, with the exception of an  
11 institution authorized by the court to care for  
12 children. If legal custody of the child is  
13 vested in a private agency or institution in  
14 another state, the court shall select one that is  
15 approved by the family or juvenile court of the  
16 other state or by that state's department of  
17 social services or other appropriate department;  
18 provided that the child may not be committed to a  
19 public or private institution operated solely for  
20 the treatment of law violators;

21 (3) An order vesting legal custody of a minor in an  
22 individual, agency, or institution under section

1           571-11(2) shall be for an indeterminate period but  
2           shall not remain in force or effect beyond three years  
3           from the date entered, except that the individual,  
4           institution, or agency may file with the court a  
5           petition for renewal of the order and the court may  
6           renew the order if it finds such renewal necessary to  
7           safeguard the welfare of the child or the public  
8           interest. The court, after notice to the parties, may  
9           conduct a hearing on the petition. Renewal may be  
10          periodic during minority, but no order shall have any  
11          force or effect beyond the period authorized by  
12          section 571-13. An agency granted legal custody shall  
13          be subject to prior approval of the court in any case  
14          in which the child is to reside without the  
15          territorial jurisdiction of the court and may be  
16          subject to prior approval in other cases. An  
17          individual granted legal custody shall exercise the  
18          rights and responsibilities personally unless  
19          otherwise authorized by the court;

- 20          (4) Whenever the court commits a child to the care of the  
21          director of human services or executive director of  
22          the office of youth services, or vests legal custody

1 of a child in an institution or agency, it shall  
2 transmit with the order copies of the clinical  
3 reports, social study, and other information pertinent  
4 to the care and treatment of the child, and the  
5 institution or agency shall give to the court any  
6 information concerning the child that the court may at  
7 any time require. An institution or agency receiving  
8 a child under this paragraph shall inform the court  
9 whenever the status of the child is affected through  
10 temporary or permanent release, discharge, or transfer  
11 to other custody. An institution to which a child is  
12 committed under section 571-11(1) or (2) shall not  
13 transfer custody of the child to an institution for  
14 the correction of adult offenders, except as  
15 authorized in this chapter and under chapter 352;

16 (5) The court may order, for any child within its  
17 jurisdiction, whatever care or treatment is authorized  
18 by law;

19 (6) In placing a child under the guardianship or custody  
20 of an individual or of a private agency or private  
21 institution, the court shall give primary  
22 consideration to the welfare of the child;



1           (7) In support of any order or decree under section  
2           571-11(1) or (2), the court may require the parents or  
3           other persons having custody of the child, or any  
4           other person who has been found by the court to be  
5           encouraging, causing, or contributing to the acts or  
6           conditions which bring the child within the purview of  
7           this chapter and who are parties to the proceeding, to  
8           do or to omit doing any acts required or forbidden by  
9           law, when the judge deems this requirement necessary  
10          for the welfare of the child. The court may also make  
11          appropriate orders concerning the parents or other  
12          persons having custody of the child and who are  
13          parties to the proceeding. If such persons fail to  
14          comply with the requirement or with the court order,  
15          the court may proceed against them for contempt of  
16          court;

17          (8) In support of any order or decree for custody or  
18          support, the court may make an order of protection  
19          setting forth reasonable conditions of behavior to be  
20          observed for a specified time, binding upon both  
21          parents or either of them. This order may require  
22          either parent to stay away from the home or from the

1 other parent or children, may permit the other to  
2 visit the children at stated periods, or may require a  
3 parent to abstain from offensive conduct against the  
4 children or each other;

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

7 (10) In any other case of which the court has jurisdiction,  
8 the court may make any order or judgment authorized by  
9 law;

10 (11) When requested, [F]the court [may] shall order [any  
11 person adjudicated pursuant to section 571-11(1) to  
12 make] restitution of money or services to any victim,  
13 person, or party who suffers loss as a result of [the  
14 child's action,] actions taken by a minor adjudicated  
15 pursuant to section 571-11(1); such restitution shall  
16 be paid in whole or part by the adjudicated minor, and  
17 such payments shall continue even after the minor  
18 becomes an adult, as needed to satisfy the order. If  
19 the adjudicated minor is ordered to pay only part of  
20 the restitution, the court shall specify the amount to  
21 the paid by the minor, and shall order the parents of  
22 the adjudicated minor to pay the remainder of the

1           restitution. The court may further order any minor  
 2           adjudicated pursuant section 571-11(1) [or] to render  
 3           community service; and

4           (12) The court may order any person adjudicated pursuant to  
 5           section 571-11(2) to participate in community service  
 6           [; and] .

7           ~~[(13) The court may order the parents of an adjudicated~~  
 8           ~~minor to make restitution of money or services to any~~  
 9           ~~victim, person, or party who has incurred a loss or~~  
 10           ~~damages as a result of the child's action.] "~~

11           SECTION 2. This Act does not affect rights and duties that  
 12           matured, penalties that were incurred, and proceedings that were  
 13           begun before its effective date.

14           SECTION 3. Statutory material to be repealed is bracketed  
 15           and stricken. New statutory material is underscored.

16           SECTION 4. This Act shall take effect on July 1, 2013.

INTRODUCED BY: \_\_\_\_\_