



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

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**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 873, S.D. 1, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Thursday, February 21, 2013

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 211

WRITTEN COMMENTS ONLY. For more information, call  
Garry L. Kemp, Administrator, Child Support Enforcement Agency,  
Phone number: 692-7000

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Chair Ige and Members of the Committee:

The Department of the Attorney General wishes to provide comments on this bill.

The provisions of this bill seek to address court-ordered restitution and the civil enforcement of such orders.

Prior to its amendment, this bill provided that income withholding orders for restitution have priority over any other orders. In testimony presented to the Senate Committee on Judiciary and Labor, it was explained that currently, the State of Hawaii is in compliance with section 466(b)(7) of the Social Security Act (42 U.S.C. §666(b)(7)) that specifically requires withholding for support collection be given priority over any other legal process under state law against the same income. The provision giving income withholding orders for court-ordered restitution priority over other income withholding orders conflicts with sections 571-52(b), 571-52.2(f), 571-52.3, 576D-14(i), and 576E-16(c), Hawaii Revised Statutes (HRS), and would cause the State to be out of compliance with existing federal law. If the State is found to be out of compliance, it will jeopardize federal welfare funding and federal funding of the child support enforcement programs.

In passing Senate Draft 1, the Senate Committee on Judiciary and Labor amended the sentence beginning on page 2, line 21, and ending on page 3, line 3 to give orders made pursuant to chapter 576E, HRS, priority over income withholding for court-ordered restitution. Although this amendment is a step in the right direction, it does not address the orders issued under chapters 571 and 576D, HRS, and would give income withholding for court-ordered restitution

priority over orders issued under these chapters. This measure would still cause the State to be out of compliance with existing federal law and jeopardize federal welfare funding and federal funding of the child support enforcement programs.

We respectfully request that the Committee amend the sentence beginning on page 2, line 21, and ending on page 3, line 3, to also include orders made pursuant to chapters 571 and 576D, HRS, as having priority over income withholding orders for court-ordered restitution. The sentence should be amended to read, “Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, except for any order made pursuant to chapters 571, 576D, and 576E, which shall have first priority.”

We respectfully request that the members of the Committee consider the above-proposed amendment if this bill is to be passed.

**LATE**

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**THE HONORABLE DAVID Y. IGE, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2013**  
**State of Hawai'i**

February 21, 2013

**RE: S.B. 873, S.D. 1; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.**

Chair Ige, Vice-Chair Kidani and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 873, S.D. 1.

The purpose of this bill is to support, encourage and facilitate payment of restitution to victims of crime. Victim restitution is perhaps the *only* core victims' right that addresses such a wide range of the, what are often devastating, effects of crime – the physical, emotional, psychological, financial *and* social impacts. In Hawai'i, the role of restitution can be traced to the enactment of Section 706-605, Hawaii Revised Statutes, in 1975. In its Standing Committee Report on the bill, the House Judiciary Committee stated, in relevant parts:

*Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play. The penal system should not be excluded from this concept. Your Committee believes that by imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed.*

Although restitution was established in Hawaii law in 1975, the promise of justice for victims, which was envisioned by this provision, has not been fully realized. While restitution is ordered by courts in many criminal cases today, it is not strictly enforced, and victims are often left to "fend for themselves" via private civil action against a defendant. Not only does this greatly decrease the chances that a victim will ever receive the restitution payments that they were

promised, but it further demoralizes and "re-victimizes" these victims of crime, completely discounting any and all benefits that the restitution was intended to provide.

The consistent, collaborative and comprehensive enforcement of restitution has—or would have—far-reaching benefits for the convicted offender, the victim, and for society as a whole, as:

- Collaborative efforts to insure that restitution is ordered, collected, and distributed to the victim send the message that restitution is a community expectation and an obligation that must be honored;
- Each time a convicted offender makes a restitution payment, he/she is reminded that somebody was hurt by the crime they committed and he/she is held personally and *financially* accountable for the harm that they have caused their victim(s);
- Restitution provides a direct and tangible link between an offender and the harm caused to their victim(s);
- Restitution represents the price that offenders must pay for being restored as full members of the community, and acts as the glue to mend the social contract that binds all of us together, which is damaged or broken every time a crime occurs;
- True "*Restorative Justice*" never occurs unless, and until, restitution is paid;
- Each time a victim receives a restitution payment, it greatly increases their sense of justice and their overall satisfaction with the criminal justice system; and
- When convicted offenders are held financially responsible for their criminal actions and victims are compensated for the harm they endured, society's faith in the justice system – *criminal justice, victim justice* and *community justice* - is enhanced.

To more effectively facilitate and enforce payment of restitution by offenders, S.B. 873, S.D. 1, provides for the following methods:

1. Create standards and procedures for income-withholding, similar to those used for outstanding child support payments;
2. Include unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support payments or judgments owed to State agencies);
3. Remove a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect the ability to appeal and/or reverse a conviction);
4. Require that any money deposited by way of bail or bond be applied to any restitution, fines, or fees ordered by the court; and
5. Extend victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders civilly.

These measures represent a meaningful effort provide a more comprehensive approach to restitution collection to insure that restitution is not a hollow promise to victims and instead becomes an effective tool for victim restoration

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 873, S.D. 1. Thank you for this opportunity to comment.