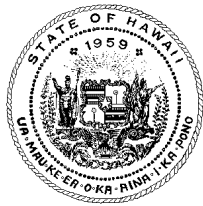


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Commissioner

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STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY IN SUPPORT OF SENATE BILL 873, SD2, HD1
A BILL FOR AN ACT RELATING TO
COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Ling Johanson, vice Chair

Wednesday, March 27, 2013; 4:45 PM
State Capitol, Conference Room 308

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Members of the House Committee on Finance:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support of Senate Bill 873, SD2, HD1, Relating to Collection of Restitution for Crime Victims. Senate Bill 873, SD2, HD1, creates a number of tools to enhance restitution collection: 1) Requires orders of income withholding for the collection of restitution; 2) Allows tax refund intercepts for the collection of restitution; 3) Allows money deposited for bail or bond to be used to satisfy restitution, fines, or fees; and 4) Provides crime victims with limited access to Adult Probation records for information relating to court-ordered payments.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. In 2003, the Commission began a pilot project to distribute restitution payments collected from inmates to their crime victims. Since the inception of the project, the Commission has opened over 4,000 restitution files. Through the project, the Commission identified a number of challenges in the collection of restitution.

While there has been progress in addressing some of the issues that prevent Hawai'i crime victims in recovering their crime-related losses from court-ordered restitution, significant problems remain. Some of the institutional barriers are highlighted in a series of articles published in the Honolulu Star-Advertiser in June 2011. The failure to collect court-ordered

restitution while an offender is “on status” (incarcerated, on parole or on probation) was recognized as a long-standing problem that hurt crime victims, and tools such as tax refund intercepts were identified as possible solutions. Through its own project and through discussion with Victim Witness Counselors throughout the State, the Commission found that crime victims have no effective means to collect restitution once the offender is “off status” (no longer incarcerated, on parole or on probation). Once an offender is “off status,” the crime victim must pursue enforcement of the free-standing restitution order through the civil courts. The only tool currently available to crime victims is civil enforcement. Such enforcement is only possible if the offender has significant assets and the crime victim has the money to hire an attorney. The tools set forth in House Bill 234 are necessary to increase collection of court-ordered restitution.

ORDERS OF INCOME WITHHOLDING

Orders of Income Withholding are an effective tool for collecting restitution payments from working offenders. The Order of Income Withholding directs an employer to withhold a set amount from an offender’s wages. The amount is set by the court who can adjust the amount based on the offender’s ability to pay. This ensures that the offender pays his restitution. The Order of Income Withholding remains in place until the restitution is paid in full.

This bill mirrors Hawai‘i Revised Statute (HRS) § 571-52 which provides for orders of income withholding for the collection of child support. Orders of income withholding are well-established means for the collection of child support.

TAX REFUND INTERCEPTS

Likewise, the use of tax refund intercepts, which is also used in the collection of child support, will also be an effective means to collect restitution for offenders who are both “on status” and “off status”.

ACCESS TO ADULT PROBATION RECORDS

The Commission supports providing crime victims with access to Adult Probation records. Crime victims should be able to track restitution payments, outstanding balances, and dates of compliance. Such information is currently unavailable to crime victims.

PROPOSED AMENDMENT TO ALLOW THE COMMISSION ACCESS TO ADULT PROBATION RECORDS

The Commission requests that HRS §806-73(4) be amended to allow the Commission to access the Adult Probation Records for the limited purpose of facilitating the monitoring and payment of restitution. This will allow the Commission to fulfill its obligation to efficiently distribute restitution collected by inmates.

The Commission disburses restitution collected from inmates and parolees to their crime victims. To do this, the Commission must determine who the restitution is to be paid to, whether a restitution order is the responsibility of one or more person (joint and several liability), and whether the restitution order has been paid in full. The Adult Probation records are a definitive source of the necessary information.

The Commission is currently working with the Judiciary on a Memorandum of Understanding to provide for the release of restitution information to the Commission for the sole purpose of restitution enforcement.

Thank you for providing the Commission with an opportunity to testify in favor of this important measure. The Commission urges you to pass Senate Bill 873, SD2, HD1, because the bill is necessary to ensure that crime victims receive court-ordered restitution.

LATE

To: HOUSE Finance Committee
Sylvia Luke, Chair

Re: SB 873, SD 2, HD 1

Date: March 27, 2013, 4:45 p.m.

From: Richard Paul McClellan III

Honorable Representatives:

I am an [attorney](#) in local practice and routinely defend persons accused of tax crimes in our State and federal courts. I have written about tax and the criminal tax system ([articles here.](#))

SB 873 is a major reworking of the restorative aspects of Hawaii's criminal justice system. HD 1 reduced some of this proposed reworking; however, the merits of transforming the Judiciary into a debt collector are squarely before you.

SB 873 completely fails to address the particular problems incident to tax cases. My testimony on the potential negative impact on criminal tax cases can be found [here](#).

Philosophical And Constitutional Concerns:

In 2006, "restitution" was modified from the amount a defendant could afford to pay to the amount of reasonable and verified losses suffered by the victim, via Act 230 of 2006. In my view, this was a step back towards the notorious debtor's prisons of the 18th century.

SB 873 takes the further step of transforming our Judiciary into a debt collector and potentially removing incentives for convicted persons to seek gainful employment.

SB 873 proposes to set a minimum monthly payment without consideration of the resources of the defendant to maintain a law-abiding lifestyle. This poses serious Constitutional and moral questions. Is it appropriate for a person to not receive a paycheck, just a receipt showing that the wages they earned were remitted for tax withholding, FICA, child support, plus restitution? Would a person in such a situation be appropriately able to meet the requirements of a law abiding life, including transportation to and from work, and basic

living expenses? SB 873 does not provide a Court with the flexibility to address these matters.

SB 873 has extremely short deadlines that even the most efficient enterprise would be hard-pressed to comply with. For example, the proposed legislation gives the Judiciary two business days to remit a received payment to the obligee (victim).

Businesses that employ convicted criminals will also be faced with the chore of remitting payments to the Judiciary. It is unlikely the \$2 per month permitted will reimburse them for the time and effort of remitting the payments. Such businesses will also be subject to potential liability, as HD makes it illegal to take any adverse employment "in whole or in part" based upon an income assignment order. **This puts an employer who first learns of an employee's criminal offense through the receipt of an income assignment order in a very difficult legal position.**

The major proponent of SB 873 appears to be the City & County of Honolulu Prosecutor's Office. Tax cases are not prosecuted by this entity. Tax cases are prosecuted by the Attorney General's Office, which has submitted general testimony in opposition to this bill but has not identified the specific problems for tax cases.

Conclusion:

SB 873 should be held.

If modified, SB 873 should permit the Court to determine the minimum payments and to modify the income assignment order as appropriate.

Employer should only be subject to civil or criminal liability if their decision to take adverse employment action is *in whole* a response to the income assignment order.

The Legislature should exclude Chapter 14 (tax crimes) from the income assignment system, for reasons set forth [here](#). The Judiciary is unlikely to be able to more effectively collect restitution than the Department of Taxation's specialized collector.