

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, January 30, 2013; 9:30 AM
State Capitol, Conference Room 016

Chair Hee, Vice Chair Shimabukuro, and Member of the Senate Committee on Judiciary and Labor:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support, with amendment, of House Bill 234 Relating to Collection of Restitution for Crime Victims. House Bill 234 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) Eliminates the court's authority to revoke restitution; 4) Allows money deposited for bail or bond to be used to satisfy restitution, fines, or fees; and 5) 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”.

PREVENTING THE REVOCATION OF RESTITUTION

The amendment to HRS § 706-645 is necessary to eliminate confusion and conflict in the statutes and to reiterate the importance of restitution. Currently, HRS § 706-645 allows the court to revoke restitution if the circumstances that warranted ordering restitution change. HRS § 706-644(4) allows a court to revoke fines or fees but specifically states that restitution must be paid in full. HRS § 706-646 makes restitution mandatory regardless of ability to pay. Both HRS § 706-644(4) and HRS § 706-646 reflect that crime victims deserve to have restitution in the full amount.

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.

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 with the proposed amendment because the bill is necessary to ensure that crime victims receive court-ordered restitution.

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TESTIMONY IN SUPPORT OF
S.B. NO. 873
A BILL FOR AN ACT RELATING TO COLLECTION OF RESTITUTION FOR CRIME
VICTIMS

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i
Wednesday, January 30, 2013, 9:30 a.m., Room 016
Senate Committee on Judiciary and Labor

Honorable Chair Hee, Vice-Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 873.

The purpose of Senate Bill No. 873 is to add a Section to Chapter 706 designated as "Income withholding," and to amend Sections 231-52, 706-645, 706-646, and 806-73 of the Hawai'i Revised Statutes as it relates to the collection of restitution for crime victims.

The proposed addition of Section "Income withholding" effectively outlines policy and procedure directed at the Court in order to assure the enforcement and collection of restitution orders; this allows for a clearly defined process to include specific deadlines of restitution payment the Clerk of the Court will be responsible for maintaining.

Further proposed amendments address the following: the addition to the definition of "debt" to which "unpaid court-ordered restitution" is included; removal of the Court's authority to revoke restitution; money deposited by way of bail or bond shall be applied toward payment of restitution; and, extended access to probation records including restitution payment compliance records for the victim.

The proposed measures provide for punctual enforcement and collection of restitution for the victim, as well as assuring that the income withholding rights for the defendant, and the defendant's employer are also protected.

For these reasons, we strongly support Senate Bill No. 873. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", written in a cursive style.

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i