



## *The Judiciary, State of Hawaii*

### **Testimony to the Senate Committee on Judiciary and Labor**

Senator Clayton Hee, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair

Wednesday, January 30, 2013, 9:30 a.m.  
State Capitol, Conference Room 016

By  
Janice Yamada  
Deputy Chief Court Administrator  
First Circuit

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**Bill No. and Title:** Senate Bill No. 873, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS

**Purpose:** Amends the definition of "debt" in section 231-52, HRS, to include court-ordered restitution subject to civil enforcement. Removes court's authority to revoke restitution once ordered. Creates standards and procedures for income-withholding, for purposes of enforcing restitution orders. Extends victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case.

### **Judiciary's Position:**

The Judiciary supports the underlying intent of this bill which is to improve the collection of restitution for crime victims, however, the Judiciary has concerns that this bill would have potentially adverse impact on Judiciary operations and personnel.

By design, the bill is certainly to help to ensure that the offender satisfies his restitution obligations to his/her victims in that it requires employers to withhold income for the restitution which the Judiciary supports. In addition, the Judiciary also supports increased access by the victims to compliance information regarding the restitution orders. With this provision however, comes several challenges regarding resources to carry these recommendations forward.



Senate Bill No. 873, Relating to Collection of Restitution for Crime Victims  
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It appears that this provision applies to all offenders who have received a judgment/order of a restitution obligation. There are many cases in which restitution will be ordered for a defendant who is not on probation and may not be under the supervision of any criminal justice entity. In these situations, the court will not have a means of obtaining the necessary information as to the defendants' current and future employers. It is also unclear who would be responsible to ensure service of the initial order upon the employer. It would be impractical and unrealistic for the "clerk of the court" to be responsible to notify new employers should the defendant change jobs without additional staffing and without access to the necessary information regarding the defendants' employment status.

The bill requires stringent deadlines by which the employer must remit the amounts withheld to the clerk of the court and by which the fiscal office must disburse the amount to the victim. This would place a strain on the Judiciary's fiscal operations.

The mandatory minimum of \$50 per month in restitution payment plus the \$2 per month administrative fee may be prohibitive for some defendants and there is no flexibility in the bill for the minimum amount to be withheld.

Although the bill determines that discrimination in the hiring or retention of a defendant based on the income withholding order to be a misdemeanor offense, this may make employers reluctant in hiring offenders which could adversely effect offender from obtaining employment and adversely contributing to their ability to pay restitution.

As a final point, some defendants have a tax clearance and operate on a cash basis. The bill does not address this situation.

In conclusion, the collection of restitution for crime victims is a priority of the Judiciary, however, the enactment of Senate Bill No. 873 will result in a significant increase in workload for the court's programs. Without the appropriate resources, it would be impossible to carry out this measure.

Thank you for the opportunity to testify on Senate Bill No. 873.

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the Senate Committee on Judiciary and Labor**

**January 30, 2013**

**S.B. NO. 873      RELATING TO COLLECTION OF RESTITUTION FOR  
CRIME VICTIMS.**

Senator Hee and Members of the Committee:

S. B. 873 essentially mandates garnishment of income at the rate of no less than \$50 per month toward the payment of court-ordered restitution. It would also remove the ability of the Court to revoke the order for restitution under circumstances deemed appropriate by the Court. Finally, it would apply any bail or bond deposited with the Court to restitution.

The “income” that would be the mandatory subject of withholding would include “salaries, wages, earnings, workers’ compensation, unemployment compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the State or a political subdivision thereof, or from any retirement”.

It is a sad fact in Hawaii that we have a very high cost of living and we have people barely able to get by. Some of those folks are clients of our Office as they do not have the means to pay an attorney. It is simply unrealistic to expect that all such persons could pay to shelter, feed and clothe their families and still have \$50 left over. Because that is often not the case, defendants or their families may go without food or other necessities month after month because \$50 would be deducted from their income under this bill.

It is also a fact that implementation of this law may adversely affect a person’s credit rating. Why is this necessary, with no showing that “income withholding” is required in an individual case? There are defendants who are employed and make their restitution payments. Why should withholding be mandated in such a case, risking their credit rating and causing expense to every business that employs such a defendant?

The provision that mandates that any bail amount deposited with the court be applied to restitution ignores the fact that the bail amount may not belong to the defendant. It is often posted by family members or friends, sometimes even by employers. What is the public policy in taking money that does not belong to a defendant in this way?

For these reasons, we oppose S.B. No. 873. Thank you for the opportunity to comment on this bill.

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

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**LATE TESTIMONY**

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE CLAYTON HEE, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai'i**

January 30, 2013

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

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 873.

The purpose of this bill is to support and encourage and facilitate payment of restitution to crime victims. Victim restitution is perhaps the *only* core victims' right that addresses the wide range of what are often devastating effects of crime – the physical, emotional, psychological, social *and* financial impact of crime. The consistent, collaborative and comprehensive enforcement of restitution laws has benefits for the convicted offender, the victim, and society as a whole because:

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 *financially* accountable for the harm they have caused their victims;

Restitution provides a direct and tangible link between an offender and the harm caused to their victim(s);

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;

Restitution represents the price that offenders must pay for being restored as full members of the community and acts as the glue that mends the social contract that binds all of us together, and that is damaged or broken every time a crime occurs;

True "*Restorative Justice*" never occur 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.

In Hawaii the criminal justice role of restitution can be traced to the enactment of the current provisions 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:

*"...The purpose of this bill is to empower the Courts, in sentencing any person convicted of criminal acts, to make restitution and reparation for loss to or damage inflicted upon the victims of their crimes, a part of such convicted person's sentence.*

*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 real promise of justice for victims envisioned by this provision has not been fully realized. Although the Legislature has already mandated that restitution be ordered in all criminal cases. This bill provides the following enhanced methods for collecting restitution from offenders:

1. Creates standards and procedures for income-withholding, similar to those used for outstanding child support payments;
2. Includes unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support 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 their abilities to appeal a conviction);
4. Requires that any money deposited by way of bail or bond be applied to restitution, fines, or fees ordered by the court
5. Extends 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

The Department of the Prosecuting Attorney strongly supports the passage of S.B. 873. Thank you for this opportunity to testify.



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

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**LATE TESTIMONY**

**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

**SENATE COMMITTEE ON JUDICIARY AND LABOR**

**DATE:** Wednesday, January 30, 2013 **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Garry L. Kemp, Administrator, Child Support Enforcement Agency

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Chair Hee and Members of the Committee:

Although the Department of the Attorney General does not oppose the intent of this bill, the Department is opposed to that part of this bill that seeks to give income withholding for court-ordered restitution priority over all other income withholding orders.

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

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 in section 1, on page 2, lines 21 and 22, and continues on page 3, lines 1 through 3 of this bill, will give income withholding orders for court-ordered restitution priority over other income withholding orders. This conflicts with sections 571-52(b), 571-52.2(f), 571-52.3, 576D-14(i), and 576E-16(c), Hawaii Revised Statutes, and may 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 addition, there are inconsistencies in the wording of the bill as there are references to "the agency" in section 1 but there is no definition for that term. We respectfully request that the Committee adopt the following amendments if the Committee is to pass this bill.

1. On page 2, line 7, the reference to "agency" should be removed and replaced with "clerk of the court" or the name of the entity that will be responsible for serving an employer with the income withholding order.

2. The sentence beginning on page 2, line 21, and ending on page 3, line 3, 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 income withholding orders and other orders relating to child support as defined in section 576D-1, and shall not be subject to the exemptions or restrictions contained in part II of chapter 651 and in chapters 652 and 653."

3. On page 3, line 19, the reference to "agency" should be removed and replaced with "clerk of the court".

4. On page 4, line 4, the reference to "agency" should be removed and replaced with "clerk of the court".

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