

JAN 18 2013

S.B. NO. 415

A BILL FOR AN ACT

RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§706- Income withholding. (a) Whenever a judgment or
5 order is entered establishing, modifying, or enforcing
6 restitution, there shall concurrently be issued an order that
7 shall operate as an assignment to the clerk of the court where
8 the order is entered, of such amounts at such times as may be
9 specified in the judgment or order but no less than \$50 per
10 month, from the defendant's income due or to become due in the
11 future from the defendant's employer, or successor employers. A
12 copy of the income withholding order shall be filed in the
13 office of the clerk of the circuit court in the circuit where
14 the order was issued.

15 (b) The income withholding order issued pursuant to
16 subsection (a) shall be effective immediately after service upon
17 an employer of a copy of the order, which service may be
18 effected by regular mail, by personal delivery, or by



1 transmission through electronic means. Thereafter, for each pay
2 period, the employer shall withhold from the income due to
3 defendant from the employer, and not required to be withheld by
4 any other provision of federal or state law, and transmit to the
5 clerk of the court where the order is entered, as much as may
6 remain payable for the pay period up to the amount specified in
7 the order. The employer shall immediately inform the agency of
8 any change that would affect the income withholding order.

9 (c) Compliance by an employer with the income withholding
10 order issued pursuant to subsection (a) shall operate as a
11 discharge of the employer's liability to the defendant for that
12 portion of the defendant's earnings withheld and transmitted to
13 the clerk of the court where the order is issued, whether or not
14 the employer has withheld the correct amount. For each payment
15 made pursuant to an income withholding order, the employer may
16 deduct and retain as an administrative fee an additional amount
17 of \$2 from the income owed to the defendant. The total amount
18 withheld from the defendant's income, including the
19 administrative fee, may not be in excess of the maximum amounts
20 permitted under section 303(b) of the Consumer Credit Protection
21 Act (15 U.S.C. § 1673(b)). Any income withholding order shall
22 have priority as against any garnishment, attachment, execution,



1 or other income withholding order, or any other order, and shall
2 not be subject to the exemptions or restrictions contained in
3 part III of chapter 651 and in chapters 652 and 653.

4 An employer who fails to comply with an income withholding
5 order under this section shall be liable to the obligee for the
6 full amount of all sums ordered to be withheld and transmitted.

7 An employer receiving an income withholding order shall transmit
8 amounts withheld to the clerk of the court within five working
9 days after the defendant is paid. The employer shall begin
10 withholding no later than the first pay period commencing within
11 seven business days following the date a copy of the order is
12 delivered, mailed, or transmitted to the employer. As used in
13 this subsection, the term "business day" means a day on which
14 the employer's office is open for regular business. An employer
15 who complies with an income withholding order that is regular on
16 its face shall not be subject to civil liability to any person
17 or agency for conduct in compliance with the order.

18 An employer who is required to withhold amounts from the
19 income of more than one employee may remit to the agency a sum
20 total of all such amounts in one check with a listing of the
21 amounts applicable to each employee. Within two working days



1 after receipt of the amounts withheld by the employer, the clerk
2 of the court shall disburse the amounts to the obligee.

3 (d) An income withholding order shall be terminated when
4 appropriate by court order. The agency shall promptly refund
5 any amount withheld in error to the defendant.

6 (e) It shall be unlawful for any employer to refuse to
7 hire a prospective employee, to discharge an employee, or to
8 take any other disciplinary action against an employee, based in
9 whole or in part upon an order or notice to withhold income
10 pursuant to this section. Any employer violating this section
11 shall be guilty of a misdemeanor and shall be punished under
12 section 710-1077(1)(g).

13 (f) Notwithstanding any other provision of law, for the
14 purposes of this section, the term "income" shall include,
15 without limitation, salaries, wages, earnings, workers'
16 compensation, unemployment compensation, disability benefits,
17 commissions, independent contractor income, and any other
18 entitlement to money including moneys payable as a pension or as
19 an annuity or retirement or disability or death or other
20 benefit, or as a return of contributions and interest thereon
21 from the United States government, or from the State or a
22 political subdivision thereof, or from any retirement,



1 disability, or annuity system established by any of them
2 pursuant to statute.

3 (g) If there is more than one restitution judgment or
4 order, the amounts withheld from the income of a defendant shall
5 be allocated among the restitution judgments or orders. If
6 concurrent assignment orders would cause the amounts withheld
7 from the defendant's income to exceed applicable wage
8 withholding limitations, the amount withheld shall be allocated
9 so that in no case shall the allocation result in a withholding
10 for one of the restitution obligations not being implemented.

11 (h) If a defendant changes employment when an income
12 withholding order is in effect, the clerk of the court shall
13 notify the defendant's new employer of the defendant's
14 obligation in accordance with subsections (b) to (f). The new
15 employer shall be bound by the income withholding order until
16 further court order."

17 SECTION 2. Section 231-52, Hawaii Revised Statutes, is
18 amended by amending the definition of "debt" to read as follows:

19 ""Debt" includes:

- 20 (1) Any delinquency in periodic court-ordered or
21 administrative-ordered payments for child support
22 pursuant to section 576D-1, in an amount equal to or



- 1 exceeding the sum of payments which would become due
2 over a one-month period;
- 3 (2) Any liquidated sum exceeding \$25 which is due and
4 owing any claimant agency, regardless of whether there
5 is an outstanding judgment for that sum, and whether
6 the sum has accrued through contract, subrogation,
7 tort, operation of law, or judicial or administrative
8 judgment or order;
- 9 (3) Any defaulted education loan note held by the United
10 Student Aid Funds, Inc. incurred under the federal
11 Higher Education Act of 1965 (Public Law 89-329, 79
12 Stat. 1219), as amended;
- 13 (4) Any federal income taxes due and owing to the United
14 States Treasurer; [~~or~~]
- 15 (5) Any medicaid overpayment under section 346-59.6[~~-~~]; or
16 (6) Any unpaid court-ordered restitution pursuant to
17 section 706-647."

18 SECTION 3. Section 706-645, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§706-645 Revocation of fine [~~or restitution~~]**. (1) A
21 defendant who has been sentenced to pay a fine [~~or restitution~~]
22 and who is not in contumacious default in the payment thereof



1 may at any time petition the court which sentenced the defendant
2 for a revocation of the fine [~~or restitution~~] or of any unpaid
3 portion thereof.

4 (2) If it appears to the satisfaction of the court that
5 the circumstances which warranted the imposition of the fine [~~or~~
6 ~~restitution~~] have changed, or that it would otherwise be unjust
7 to require payment, the court may revoke the fine [~~or~~
8 ~~restitution~~] or the unpaid portion thereof in whole or in part.
9 Prior to revocation, the court shall afford the prosecuting
10 attorney an opportunity to be heard."

11 SECTION 4. Section 706-646, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§706-646 Victim restitution.** (1) As used in this
14 section, "victim" includes any of the following:

- 15 (a) The direct victim of a crime including a business
16 entity, trust, or governmental entity;
- 17 (b) If the victim dies as a result of the crime, a
18 surviving relative of the victim as defined in chapter
19 351; or
- 20 (c) A governmental entity that has reimbursed the victim
21 for losses arising as a result of the crime or paid



1 for medical care provided to the victim as a result of
2 the crime.

3 (2) The court shall order the defendant to make
4 restitution for reasonable and verified losses suffered by the
5 victim or victims as a result of the defendant's offense when
6 requested by the victim. The court shall order restitution to
7 be paid to the crime victim compensation commission in the event
8 that the victim has been given an award for compensation under
9 chapter 351. If the court orders payment of a fine in addition
10 to restitution or a compensation fee, or both, the payment of
11 restitution and compensation fee shall have priority over the
12 payment of the fine, and payment of restitution shall have
13 priority over payment of a compensation fee.

14 (3) In ordering restitution, the court shall not consider
15 the defendant's financial ability to make restitution in
16 determining the amount of restitution to order. The court,
17 however, shall consider the defendant's financial ability to
18 make restitution for the purpose of establishing the time and
19 manner of payment. The court shall specify the time and manner
20 in which restitution is to be paid. Restitution shall be a
21 dollar amount that is sufficient to reimburse any victim fully
22 for losses, including but not limited to:



1 (a) Full value of stolen or damaged property, as
2 determined by replacement costs of like property, or
3 the actual or estimated cost of repair, if repair is
4 possible;

5 (b) Medical expenses; and

6 (c) Funeral and burial expenses incurred as a result of
7 the crime.

8 (4) All money deposited by way of bail or bond, in any
9 criminal proceeding before any court, that has not been declared
10 forfeited, shall be applied toward payment of any restitution,
11 finer, or fees ordered by the court in the same case, consistent
12 with the priorities stated in subsection (2).

13 [~~4~~] (5) The restitution ordered shall not affect the
14 right of a victim to recover under section 351-33 or in any
15 manner provided by law; provided that any amount of restitution
16 actually recovered by the victim under this section shall be
17 deducted from any award under section 351-33."

18 SECTION 5. Section 806-73, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) All adult probation records shall be confidential and
21 shall not be deemed to be public records. As used in this
22 section, the term "records" includes but is not limited to all



1 records made by any adult probation officer in the course of
2 performing the probation officer's official duties. The
3 records, or the content of the records, shall be divulged only
4 as follows:

5 (1) A copy of any adult probation case record or of a
6 portion of it, or the case record itself, upon
7 request, may be provided to:

8 (A) An adult probation officer, court officer, social
9 worker of a Hawaii state adult probation unit, or
10 a family court officer who is preparing a report
11 for the courts; or

12 (B) A state or federal criminal justice agency, or
13 state or federal court program that:

14 (i) Is providing supervision of a defendant or
15 offender convicted and sentenced by the
16 courts of Hawaii; or

17 (ii) Is responsible for the preparation of a
18 report for a court;

19 (2) The residence address, work address, home telephone
20 number, or work telephone number of a current or
21 former defendant shall be provided only to:



- 1 (A) A law enforcement officer as defined in section
- 2 710-1000(13) to locate the probationer for the
- 3 purpose of serving a summons or bench warrant in
- 4 a civil, criminal, or deportation hearing, or for
- 5 the purpose of a criminal investigation; or
- 6 (B) A collection agency or licensed attorney
- 7 contracted by the judiciary to collect any
- 8 delinquent court-ordered penalties, fines,
- 9 restitution, sanctions, and court costs pursuant
- 10 to section 601-17.5;
- 11 (3) A copy of a presentence report or investigative report
- 12 shall be provided only to:
- 13 (A) The persons or entities named in section 706-604;
- 14 (B) The Hawaii paroling authority;
- 15 (C) Any psychiatrist, psychologist, or other
- 16 treatment practitioner who is treating the
- 17 defendant pursuant to a court order or parole
- 18 order for that treatment;
- 19 (D) The intake service centers;
- 20 (E) In accordance with applicable law, persons or
- 21 entities doing research; and



1 (F) Any Hawaii state adult probation officer or adult
2 probation officer of another state or federal
3 jurisdiction who:

4 (i) Is engaged in the supervision of a defendant
5 or offender convicted and sentenced in the
6 courts of Hawaii; or

7 (ii) Is engaged in the preparation of a report
8 for a court regarding a defendant or
9 offender convicted and sentenced in the
10 courts of Hawaii;

11 (4) Access to adult probation records by a victim, as
12 defined in section 706-646 to enforce an order filed
13 pursuant to section 706-647, shall be limited to the
14 name and contact information of the defendant's adult
15 probation officer[+], the compliance record of the
16 defendant with court-ordered payments, the amounts
17 paid by the defendant, the dates of the payments made
18 by the defendant, the payee of payments made by the
19 defendant, and the balance unpaid;

20 (5) Upon written request, the victim, or the parent or
21 guardian of a minor victim or incapacitated victim, of
22 a defendant who has been placed on probation for an



1 offense under section 580-10(d)(1), 586-4(e), 586-
2 11(a), or 709-906 may be notified by the defendant's
3 probation officer when the probation officer has any
4 information relating to the safety and welfare of the
5 victim;

6 (6) Notwithstanding paragraph (3) and upon notice to the
7 defendant, records and information relating to the
8 defendant's risk assessment and need for treatment
9 services; information related to the defendant's past
10 treatment and assessments, with the prior written
11 consent of the defendant for information from a
12 treatment service provider; provided that for any
13 substance abuse records such release shall be subject
14 to Title 42 Code of Federal Regulations Part 2,
15 relating to the confidentiality of alcohol and drug
16 abuse patient records; and information that has
17 therapeutic or rehabilitative benefit, may be provided
18 to:

19 (A) A case management, assessment, or treatment
20 service provider assigned by adult probation to
21 service the defendant; provided that the
22 information shall be given only upon the



1 screening for admission, acceptance, or
2 admittance of the defendant into a program;
3 (B) Correctional case manager, correctional unit
4 manager, and parole officers involved with the
5 defendant's treatment or supervision; and
6 (C) In accordance with applicable law, persons or
7 entities doing research;
8 (7) Probation drug test results may be released with prior
9 written consent of a defendant to the defendant's
10 treating physician when test results indicate
11 substance use which may be compromising the
12 defendant's medical care or treatment;
13 (8) Any person, agency, or entity receiving records, or
14 contents of records, pursuant to this subsection shall
15 be subject to the same restrictions on disclosure of
16 the records as Hawaii state adult probation offices;
17 and
18 (9) Any person who uses the information covered by this
19 subsection for purposes inconsistent with the intent
20 of this subsection or outside of the scope of the
21 person's official duties shall be fined no more than
22 \$500."



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2013.

4

INTRODUCED BY: *Amor Mercedes*

By Request



S.B. NO. 415

Report Title:

Honolulu Prosecuting Attorney Package; Collection of Restitution for Crime Victims

Description:

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.

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