

JAN 18 2013

S.B. NO. 873

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## 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 finances, 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."





# S.B. NO. 873

**Report Title:**

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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

