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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 for payment of restitution.

5           (1) Whenever a judgment or order is entered establishing,  
6 modifying, or enforcing restitution, the court shall allow  
7 thirty days for a defendant to make payment in full.  
8 Thereafter, if the judgment or order is not satisfied, the court  
9 shall issue an income withholding order that shall operate as an  
10 assignment to the clerk of the court in which the order is  
11 entered, of such amounts that are due at such times as may be  
12 specified in the judgment or order, but no less than \$50 per  
13 month, from the defendant's income due or to become due in the  
14 future from the defendant's employer or successor employers. A  
15 copy of the income withholding order shall be filed in the  
16 office of the clerk of the circuit court in the circuit from  
17 which the income withholding order was issued.



1       (2) The income withholding order issued pursuant to  
2 subsection (1) shall be effective immediately after service upon  
3 an employer of a copy of the income withholding order, which  
4 service may be effected by regular mail, by personal delivery,  
5 or by transmission through electronic means. Thereafter, for  
6 each pay period, the employer shall:

7       (1) Withhold from the income that is due to the defendant  
8 from the employer and that is not required to be  
9 withheld by any other provision of federal or state  
10 law; and

11       (2) Transmit to the clerk of the court in which the order  
12 is entered, as much as may remain payable for the pay  
13 period up to the amount specified in the order.

14       The employer shall immediately inform the court of any  
15 change that would affect the income withholding order.

16       (3) Compliance by an employer with the income withholding  
17 order issued pursuant to subsection (1) shall operate as a  
18 discharge of the employer's liability to the defendant for that  
19 portion of the defendant's earnings withheld and transmitted to  
20 the clerk of the court from which the order is issued, whether  
21 or not the employer has withheld the correct amount. For each  
22 payment made pursuant to an income withholding order, the



1 employer may deduct and retain as an administrative fee an  
2 additional amount of \$2 from the income owed to the defendant.  
3 The total amount withheld from the defendant's income, including  
4 the administrative fee, may not exceed the maximum amounts  
5 permitted under section 303(b) of the Consumer Credit Protection  
6 Act (15 U.S.C. §1673(b)). Any income withholding order made  
7 pursuant to this section shall have priority as against any  
8 garnishment, attachment, execution, or other income withholding  
9 order, or any other order, except for any order made pursuant to  
10 chapters 571, 576B, 576D, and 576E, which shall have first  
11 priority. Any income withholding order made pursuant to this  
12 section shall not be subject to the exemptions or restrictions  
13 contained in part III of chapter 651 and in chapters 652 and  
14 653.

15 An employer who fails to comply with an income withholding  
16 order under this section shall be liable to the obligee for the  
17 full amount of all sums not withheld and transmitted as ordered.  
18 An employer receiving an income withholding order shall transmit  
19 amounts withheld to the clerk of the court within five business  
20 days after the defendant is paid. The employer shall begin  
21 withholding no later than the first pay period commencing within  
22 seven business days following the date a copy of the income



1 withholding order is served upon the employer by regular mail,  
2 personal delivery, or electronic means. As used in this  
3 subsection, the term "business day" means a day on which the  
4 employer's office is open for regular business. An employer who  
5 complies with an income withholding order that is valid on its  
6 face shall not be subject to civil liability to any person,  
7 entity, or agency for conduct in compliance with the order.

8 An employer who is required to withhold amounts from the  
9 income of more than one employee may remit to the court a sum  
10 total of all amounts in one check with a listing of the amounts  
11 applicable to each employee. Within two business days after  
12 receipt of the amounts withheld by the employer, the clerk of  
13 the court shall disburse the amounts to the obligee.

14 (4) An income withholding order shall be terminated by a  
15 court order when appropriate. The court shall promptly refund  
16 any amount withheld in error to the defendant.

17 (5) It shall be unlawful for any employer to refuse to  
18 hire a prospective employee, discharge an employee, or take any  
19 other disciplinary action against an employee based in whole or  
20 in part upon an order or notice to withhold income pursuant to  
21 this section. Any employer violating this subsection shall be  
22 guilty of a misdemeanor.



1       (6) Notwithstanding any other provision of law, for the  
2 purposes of this section, the term "income" shall include,  
3 without limitation, salaries, wages, earnings, workers'  
4 compensation, commissions, fees, bonuses, independent contractor  
5 income, and any other entitlement to money, including moneys  
6 payable as a pension or as an annuity, retirement, disability,  
7 death, or other benefit, or from the State or a political  
8 subdivision thereof, or from any retirement, disability, or  
9 annuity system established by the State or any political  
10 subdivision thereof under law.

11       (7) If there is more than one restitution judgment or  
12 order, the amounts withheld from the income of a defendant shall  
13 be allocated among the different restitution judgments or  
14 orders. If the multiple income withholding orders would cause  
15 the amounts withheld from the defendant's income to exceed wage  
16 withholding limitations established under this section, the  
17 amount withheld shall be allocated so that in no case shall the  
18 allocation result in a withholding for any of the restitution  
19 obligations not being implemented.

20       (8) If a defendant changes employment while an income  
21 withholding order is in effect, the defendant shall notify and  
22 provide the clerk of the court with the new employer's contact



1 information within five business days of the change. The clerk  
2 of the court shall notify the defendant's new employer of the  
3 defendant's and the new employer's respective obligations under  
4 this section. The new employer shall be bound by the income  
5 withholding order until further court order.

6 (9) For purposes of this section, "employer" means any  
7 individual; partnership; association; joint stock company;  
8 trust; corporation; personal representative of the estate of a  
9 deceased individual; or receiver, trustee, or successor of any  
10 of the same, employing any individual, including the United  
11 States government, State, and any political subdivision thereof,  
12 who is or shall become obligated for payment of income."

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

15 "Debt" includes:

16 (1) Any delinquency in periodic court-ordered or  
17 administrative-ordered payments for child support  
18 pursuant to section 576D-1, in an amount equal to or  
19 exceeding the sum of payments which would become due  
20 over a one-month period;

21 (2) Any liquidated sum exceeding \$25 which is due and  
22 owing any claimant agency, regardless of whether there



1 is an outstanding judgment for that sum, and whether  
2 the sum has accrued through contract, subrogation,  
3 tort, operation of law, or judicial or administrative  
4 judgment or order;

5 (3) Any defaulted education loan note held by the United  
6 Student Aid Funds, Inc. incurred under the federal  
7 Higher Education Act of 1965 (Public Law 89-329, 79  
8 Stat. 1219), as amended;

9 (4) Any federal income taxes due and owing to the United  
10 States Treasurer; [~~or~~].

11 (5) Any medicaid overpayment under section 346-59.6[-]; or

12 (6) Any unpaid court-ordered restitution enforceable as a  
13 civil judgment pursuant to section 706-647."

14 SECTION 3. Section 706-646, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§706-646 Victim restitution.** (1) As used in this  
17 section, "victim" includes any of the following:

18 (a) The direct victim of a crime including a business  
19 entity, trust, or governmental entity;

20 (b) If the victim dies as a result of the crime, a  
21 surviving relative of the victim as defined in chapter  
22 351; or



1 (c) A governmental entity that has reimbursed the victim  
2 for losses arising as a result of the crime or paid  
3 for medical care provided to the victim as a result of  
4 the crime.

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

16 (3) In ordering restitution, the court shall not consider  
17 the defendant's financial ability to make restitution in  
18 determining the amount of restitution to order. The court,  
19 however, shall consider the defendant's financial ability to  
20 make restitution for the purpose of establishing the time and  
21 manner of payment. The court shall specify the time and manner  
22 in which restitution is to be paid. Restitution shall be a





1 dollar amount that is sufficient to reimburse any victim fully  
2 for losses, including but not limited to:

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

7 (b) Medical expenses; and

8 (c) Funeral and burial expenses incurred as a result of  
9 the crime.

10 (4) All money deposited by the defendant as bail, in any  
11 criminal proceeding before any court, that has not been declared  
12 forfeited shall be applied toward payment of any restitution,  
13 finances, or fees ordered by the court in the same case, consistent  
14 with the priorities stated in subsection (2); provided that only  
15 the portion of the monies deposited by the defendant as bail  
16 that was the defendant's own money, if any, shall be applied  
17 toward payment of such restitution, fines, or fees; provided  
18 further that the burden to prove the source of the money by a  
19 preponderance of the evidence shall be on the State.

20 [~~4~~] (5) The restitution ordered shall not affect the  
21 right of a victim to recover under section 351-33 or in any  
22 manner provided by law; provided that any amount of restitution



1 actually recovered by the victim under this section shall be  
2 deducted from any award under section 351-33."

3 SECTION 4. Section 806-73, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) All adult probation records shall be confidential and  
6 shall not be deemed to be public records. As used in this  
7 section, the term "records" includes but is not limited to all  
8 records made by any adult probation officer in the course of  
9 performing the probation officer's official duties. The  
10 records, or the content of the records, shall be divulged only  
11 as follows:

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

15 (A) An adult probation officer, court officer, social  
16 worker of a Hawaii state adult probation unit, or  
17 a family court officer who is preparing a report  
18 for the courts; or

19 (B) A state or federal criminal justice agency, or  
20 state or federal court program that:



1 (i) Is providing supervision of a defendant or  
2 offender convicted and sentenced by the  
3 courts of Hawaii; or

4 (ii) Is responsible for the preparation of a  
5 report for a court;

6 (2) The residence address, work address, home telephone  
7 number, or work telephone number of a current or  
8 former defendant shall be provided only to:

9 (A) A law enforcement officer as defined in section  
10 710-1000(13) to locate the probationer for the  
11 purpose of serving a summons or bench warrant in  
12 a civil, criminal, or deportation hearing, or for  
13 the purpose of a criminal investigation; or

14 (B) A collection agency or licensed attorney  
15 contracted by the judiciary to collect any  
16 delinquent court-ordered penalties, fines,  
17 restitution, sanctions, and court costs pursuant  
18 to section 601-17.5;

19 (3) A copy of a presentence report or investigative report  
20 shall be provided only to:

21 (A) The persons or entities named in section 706-604;

22 (B) The Hawaii paroling authority;



- 1 (C) Any psychiatrist, psychologist, or other  
2 treatment practitioner who is treating the  
3 defendant pursuant to a court order or parole  
4 order for that treatment;
- 5 (D) The intake service centers;
- 6 (E) In accordance with applicable law, persons or  
7 entities doing research; and
- 8 (F) Any Hawaii state adult probation officer or adult  
9 probation officer of another state or federal  
10 jurisdiction who:
- 11 (i) Is engaged in the supervision of a defendant  
12 or offender convicted and sentenced in the  
13 courts of Hawaii; or
- 14 (ii) Is engaged in the preparation of a report  
15 for a court regarding a defendant or  
16 offender convicted and sentenced in the  
17 courts of Hawaii;
- 18 (4) Access to adult probation records by a victim, as  
19 defined in section 706-646 to enforce an order filed  
20 pursuant to section 706-647, shall be limited to the  
21 name and contact information of the defendant's adult  
22 probation officer[+], the compliance record of the



1 defendant with court-ordered payments, the amounts  
2 paid by the defendant, the dates of the payments made  
3 by the defendant, the payee of payments made by the  
4 defendant, and the remaining unpaid balance;

5 (5) Upon written request, the victim, or the parent or  
6 guardian of a minor victim or incapacitated victim, of  
7 a defendant who has been placed on probation for an  
8 offense under section 580-10(d)(1), 586-4(e), 586-  
9 11(a), or 709-906 may be notified by the defendant's  
10 probation officer when the probation officer has any  
11 information relating to the safety and welfare of the  
12 victim;

13 (6) Notwithstanding paragraph (3) and upon notice to the  
14 defendant, records and information relating to the  
15 defendant's risk assessment and need for treatment  
16 services; information related to the defendant's past  
17 treatment and assessments, with the prior written  
18 consent of the defendant for information from a  
19 treatment service provider; provided that for any  
20 substance abuse records such release shall be subject  
21 to Title 42 Code of Federal Regulations Part 2,  
22 relating to the confidentiality of alcohol and drug



1 abuse patient records; and information that has  
2 therapeutic or rehabilitative benefit, may be provided  
3 to:

4 (A) A case management, assessment, or treatment  
5 service provider assigned by adult probation to  
6 service the defendant; provided that the  
7 information shall be given only upon the  
8 screening for admission, acceptance, or  
9 admittance of the defendant into a program;

10 (B) Correctional case manager, correctional unit  
11 manager, and parole officers involved with the  
12 defendant's treatment or supervision; and

13 (C) In accordance with applicable law, persons or  
14 entities doing research;

15 (7) Probation drug test results may be released with prior  
16 written consent of a defendant to the defendant's  
17 treating physician when test results indicate  
18 substance use which may be compromising the  
19 defendant's medical care or treatment;

20 (8) Any person, agency, or entity receiving records, or  
21 contents of records, pursuant to this subsection shall  
22 be subject to the same restrictions on disclosure of



1 the records as Hawaii state adult probation offices;  
2 and

3 (9) Any person who uses the information covered by this  
4 subsection for purposes inconsistent with the intent  
5 of this subsection or outside of the scope of the  
6 person's official duties shall be fined no more than  
7 \$500."

8 SECTION 5. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so  
10 much thereof as may be necessary for fiscal year 2013-2014 and  
11 the same sum or so much thereof as may be necessary for fiscal  
12 year 2014-2015 for the purpose of enhancing restitution  
13 collection pursuant to this Act and the hiring of any necessary  
14 staff to implement this Act.

15 The sums appropriated shall be expended by the judiciary  
16 for the purposes of this Act.

17 SECTION 6. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

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



**Report Title:**

Collection of Restitution for Crime Victims; Appropriation

**Description:**

Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Amends the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement. Provides priority of income withholding orders. Extends victims' access to adult probation records to include access to payment compliance records. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Makes an unspecified appropriation to the Judiciary. Effective July 1, 2013. (SB873 HD1)

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

