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

15           (2) The income withholding order issued pursuant to  
16 subsection (1) 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 that is  
3 not required to be withheld by any other provision of federal or  
4 state law to the defendant from the employer 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 court of  
8 any change that would affect the income withholding order.

9       (3) Compliance by an employer with the income withholding  
10 order issued pursuant to subsection (1) 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 made  
22 pursuant to this section shall have priority as against any



1 garnishment, attachment, execution, or other income withholding  
2 order, or any other order, except for any order made pursuant to  
3 chapter 576E, which shall have first priority. Any income  
4 withholding made pursuant to this section shall not be subject  
5 to the exemptions or restrictions contained in part III of  
6 chapter 651 and in chapters 652 and 653.

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

21 An employer who is required to withhold amounts from the  
22 income of more than one employee may remit to the court a sum



1 total of all such amounts in one check with a listing of the  
2 amounts applicable to each employee. Within two business days  
3 after receipt of the amounts withheld by the employer, the clerk  
4 of the court shall disburse the amounts to the obligee.

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

8 (5) It shall be unlawful for any employer to refuse to  
9 hire a prospective employee, discharge an employee, or take any  
10 other disciplinary action against an employee based in whole or  
11 in part upon an order or notice to withhold income pursuant to  
12 this section. Any employer violating this section shall be  
13 guilty of a misdemeanor and shall be punished under section 710-  
14 1077(1)(g).

15 (6) Notwithstanding any other provision of law, for the  
16 purposes of this section, the term "income" shall include,  
17 without limitation, salaries, wages, earnings, workers'  
18 compensation, commissions, fees, bonuses, independent contractor  
19 income, and any other entitlement to money, including moneys  
20 payable as a pension or as an annuity, retirement, disability,  
21 death, or other benefit, or from the State or a political



1 subdivision thereof, or from any retirement, disability, or  
2 annuity system established by any of them under law.

3 (7) 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 (8) If a defendant changes employer when an income  
12 withholding order is in effect, the defendant shall notify and  
13 provide the clerk of the court with the new employer's contact  
14 information within five business days of the change. The clerk  
15 of the court shall notify the defendant's new employer of the  
16 defendant's obligation in accordance with subsections (2) to  
17 (6). The new employer shall be bound by the income withholding  
18 order until further court order.

19 (9) For purposes of this section, "employer" means any  
20 individual; partnership; association; joint stock company;  
21 trust; corporation; personal representative of the estate of a  
22 deceased individual; or receiver, trustee, or successor of any



1 of the same, employing any individual, including the United  
2 States government, State, and any political subdivision thereof,  
3 who is or shall become obligated for payment of income."

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

6 ""Debt" includes:

- 7 (1) Any delinquency in periodic court-ordered or  
8 administrative-ordered payments for child support  
9 pursuant to section 576D-1, in an amount equal to or  
10 exceeding the sum of payments which would become due  
11 over a one-month period;
- 12 (2) Any liquidated sum exceeding \$25 which is due and  
13 owing any claimant agency, regardless of whether there  
14 is an outstanding judgment for that sum, and whether  
15 the sum has accrued through contract, subrogation,  
16 tort, operation of law, or judicial or administrative  
17 judgment or order;
- 18 (3) Any defaulted education loan note held by the United  
19 Student Aid Funds, Inc. incurred under the federal  
20 Higher Education Act of 1965 (Public Law 89-329, 79  
21 Stat. 1219), as amended;



- 1 (4) Any federal income taxes due and owing to the United
- 2 States Treasurer; [~~or~~]
- 3 (5) Any medicaid overpayment under section 346-59.6[-]; or
- 4 (6) Any unpaid court-ordered restitution pursuant to
- 5 section 706-647."

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

8 "**§706-645 Revocation of fine [~~or restitution~~]**. (1) A  
9 defendant who has been sentenced to pay a fine [~~or restitution~~]  
10 and who is not in contumacious default in the payment thereof  
11 may at any time petition the court which sentenced the defendant  
12 for a revocation of the fine [~~or restitution~~] or of any unpaid  
13 portion thereof.

14 (2) If it appears to the satisfaction of the court that  
15 the circumstances which warranted the imposition of the fine [~~or~~  
16 ~~restitution~~] have changed, or that it would otherwise be unjust  
17 to require payment, the court may revoke the fine [~~or~~  
18 ~~restitution~~] or the unpaid portion thereof in whole or in part.  
19 Prior to revocation, the court shall afford the prosecuting  
20 attorney an opportunity to be heard."

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



1           "§706-646 Victim restitution. (1) As used in this

2 section, "victim" includes any of the following:

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

5           (b) If the victim dies as a result of the crime, a  
6           surviving relative of the victim as defined in chapter  
7           351; or

8           (c) A governmental entity that has reimbursed the victim  
9           for losses arising as a result of the crime or paid  
10          for medical care provided to the victim as a result of  
11          the crime.

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





1           (3) In ordering restitution, the court shall not consider  
2 the defendant's financial ability to make restitution in  
3 determining the amount of restitution to order. The court,  
4 however, shall consider the defendant's financial ability to  
5 make restitution for the purpose of establishing the time and  
6 manner of payment. The court shall specify the time and manner  
7 in which restitution is to be paid. Restitution shall be a  
8 dollar amount that is sufficient to reimburse any victim fully  
9 for losses, including but not limited to:

10           (a) Full value of stolen or damaged property, as  
11               determined by replacement costs of like property, or  
12               the actual or estimated cost of repair, if repair is  
13               possible;

14           (b) Medical expenses; and

15           (c) Funeral and burial expenses incurred as a result of  
16               the crime.

17           (4) All money deposited by way of bail or bond, in any  
18 criminal proceeding before any court, that has not been declared  
19 forfeited shall be applied toward payment of any restitution,  
20 finances, or fees ordered by the court in the same case, consistent  
21 with the priorities stated in subsection (2).



1            [~~4~~] (5) The restitution ordered shall not affect the  
2 right of a victim to recover under section 351-33 or in any  
3 manner provided by law; provided that any amount of restitution  
4 actually recovered by the victim under this section shall be  
5 deducted from any award under section 351-33."

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

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

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

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



- 1 (B) A state or federal criminal justice agency, or  
2 state or federal court program that:
- 3 (i) Is providing supervision of a defendant or  
4 offender convicted and sentenced by the  
5 courts of Hawaii; or
- 6 (ii) Is responsible for the preparation of a  
7 report for a court;
- 8 (2) The residence address, work address, home telephone  
9 number, or work telephone number of a current or  
10 former defendant shall be provided only to:
- 11 (A) A law enforcement officer as defined in section  
12 710-1000(13) to locate the probationer for the  
13 purpose of serving a summons or bench warrant in  
14 a civil, criminal, or deportation hearing, or for  
15 the purpose of a criminal investigation; or
- 16 (B) A collection agency or licensed attorney  
17 contracted by the judiciary to collect any  
18 delinquent court-ordered penalties, fines,  
19 restitution, sanctions, and court costs pursuant  
20 to section 601-17.5;
- 21 (3) A copy of a presentence report or investigative report  
22 shall be provided only to:



- 1 (A) The persons or entities named in section 706-604;
- 2 (B) The Hawaii paroling authority;
- 3 (C) Any psychiatrist, psychologist, or other
- 4 treatment practitioner who is treating the
- 5 defendant pursuant to a court order or parole
- 6 order for that treatment;
- 7 (D) The intake service centers;
- 8 (E) In accordance with applicable law, persons or
- 9 entities doing research; and
- 10 (F) Any Hawaii state adult probation officer or adult
- 11 probation officer of another state or federal
- 12 jurisdiction who:
  - 13 (i) Is engaged in the supervision of a defendant
  - 14 or offender convicted and sentenced in the
  - 15 courts of Hawaii; or
  - 16 (ii) Is engaged in the preparation of a report
  - 17 for a court regarding a defendant or
  - 18 offender convicted and sentenced in the
  - 19 courts of Hawaii;
- 20 (4) Access to adult probation records by a victim, as
- 21 defined in section 706-646 to enforce an order filed
- 22 pursuant to section 706-647, shall be limited to the



1 name and contact information of the defendant's adult  
2 probation officer[+], the compliance record of the  
3 defendant with court-ordered payments, the amounts  
4 paid by the defendant, the dates of the payments made  
5 by the defendant, the payee of payments made by the  
6 defendant, and the balance unpaid;

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

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



1 to Title 42 Code of Federal Regulations Part 2,  
2 relating to the confidentiality of alcohol and drug  
3 abuse patient records; and information that has  
4 therapeutic or rehabilitative benefit, may be provided  
5 to:

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

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

15 (C) In accordance with applicable law, persons or  
16 entities doing research;

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



- 1           (8) Any person, agency, or entity receiving records, or  
2           contents of records, pursuant to this subsection shall  
3           be subject to the same restrictions on disclosure of  
4           the records as Hawaii state adult probation offices;  
5           and  
6           (9) Any person who uses the information covered by this  
7           subsection for purposes inconsistent with the intent  
8           of this subsection or outside of the scope of the  
9           person's official duties shall be fined no more than  
10          \$500."

11          SECTION 6. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$            or so  
13 much thereof as may be necessary for fiscal year 2013-2014 and  
14 the same sum or so much thereof as may be necessary for fiscal  
15 year 2014-2015 for the purpose of enhancing restitution  
16 collection pursuant to this Act and the hiring of any necessary  
17 staff to implement this Act.

18          The sums appropriated shall be expended by the judiciary  
19 for the purposes of this Act.

20          SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22          SECTION 8. 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. Removes court's authority to revoke restitution once ordered. 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. Makes an unspecified appropriation to the judiciary for the purpose of enhancing restitution collection. (SD1)

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

