

Honolulu, Hawaii

FEB 15 2013

RE: S.B. No. 873
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 873 entitled:

"A BILL FOR AN ACT RELATING TO COLLECTION OF RESTITUTION FOR
CRIME VICTIMS,"

begs leave to report as follows:

The purpose and intent of this measure is to enhance
collection of payments pursuant to a court order of judgment for
restitution in a criminal matter. Specifically, this measure:

- (1) Creates standards and procedures for income withholding for purposes of enforcing restitution orders to ensure that an offender pays restitution;
- (2) Amends the definition of "debt" under the laws relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement;
- (3) Removes the court's authority to revoke restitution once ordered to ensure that the crime victim is paid restitution in full;
- (4) Requires that any bail posted by a defendant is applied toward payment of any court-ordered restitution in the same case; and
- (5) Extends victims' access to adult probation records for crime victims to track restitution payments, outstanding



balances, and dates of compliance for the purpose of enforcing restitution orders.

Your Committee received testimony in support of this measure from the Crime Victim Compensation Commission; Department of the Prosecuting Attorney, City and County of Honolulu; and Office of the Prosecuting Attorney, County of Kaua'i. Testimony in opposition to this measure was submitted by the Judiciary, Department of the Attorney General, and Office of the Public Defender.

Your Committee finds that victim restitution is a crime victim's right that is intended to address the physical, emotional, psychological, social, and financial impacts of a crime. According to the written testimony submitted by the Crime Victim Compensation Commission, the failure to collect court-ordered restitution while an offender is "on status" (incarcerated, on parole, or on probation) is a long standing problem and that crime victims often lack the effective means to collect restitution once the offender is "off status" (no longer incarcerated, on parole, or on probation). The Commission noted that once an offender is "off status", the only tool available to a crime victim is civil enforcement, but only if the offender has significant assets and the crime victim has the financial resources to hire an attorney. This measure facilitates the payment of restitution to crime victims.

Your Committee notes the concerns raised in the written testimony submitted by the Judiciary and Department of the Attorney General. The Judiciary indicated that this measure will result in a significant increase in workload for the court's programs and without appropriate resources the Judiciary will be unable to carry out this measure. Furthermore, the Department of the Attorney General indicated that this measure could potentially conflict with the federal requirement under the Social Security Act that withholding for support collection is given priority over any other legal process under state law against the same income. The Department warned that noncompliance with the federal law could jeopardize federal welfare funding and the federal funding of the child support enforcement programs for the State.

Your Committee further notes that this measure is similar to H.B. No. 234 (Regular Session of 2013) and that the Department of the Prosecuting Attorney of the City and County of Honolulu



prefers the amendments made under H.B. No. 234, H.D. 1, with additional amendments.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggested language from the Department of the Prosecuting Attorney of the City and County of Honolulu to:
 - (A) Clarify in the title of the new section that creates standards and procedures for income withholding for purposes of enforcing restitution orders that income withholding is for payment of restitution;
 - (B) Make conforming amendments for the purposes of consistency that change references from "working days" to "business days" and change references from "agency" to "court";
 - (C) Clarify that any order made pursuant to chapter 576E, Hawaii Revised Statutes, has first priority over an income withholding order for payment of restitution;
 - (D) Amend the definition of "income" to delete unemployment compensation, disability benefits, or return of contributions and interest on any entitlement to money from the United States government and add fees and bonuses as sources of qualified income;
 - (E) Require a defendant who changes employer when an income withholding order is in effect to notify and provide the clerk of the court with the new employer's contact information within five business days of the change;
 - (F) Add the definition of "employer"; and
 - (G) Appropriate an unspecified amount for fiscal years 2013-2014 and 2014-2015 to the Judiciary for the purpose of enhancing restitution collection and the hiring of any necessary staff to implement this measure; and



- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 873, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 873, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON FEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 873	Committee Referral: JDL, WAM	Date: 2/12/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les		✓		
SLOM, Sam				✓
TOTAL	3	1		1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

***Only one measure per Record of Votes**