



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL (HB) 2654, HOUSE DRAFT (HD) 1, SENATE DRAFT (SD) 1
RELATING TO VICTIM RESTITUTION

by

Ted Sakai, Director
Department of Public Safety

Senate Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair

Friday, March 28, 2014, 9:20 AM
State Capitol, Room 211

Chair Ige, Vice Chair Kidani, and Members of the Committee:

The Department of Public Safety (PSD) **offers comments in opposition** to HB 2654, HD 1, SD 1. This bill does three things. First, it would require PSD to extract restitution payments from inmates in accordance with HRS 353-22.6, regardless of what a court order may say. Second, it would require that court orders for restitution comply with HRS 353-22.6. And third, it would apply these requirements to all orders imposed on inmates in our system. This means that the requirement would apply to orders issued prior to the enactment of this law.

We are fully in support of the concept of restitution, and are fully committed to the collection of restitution from inmates. However, we are opposed to this bill for the following reasons:

1. This bill will place us in a position where we may have to ignore legal orders. HRS 353-22.6 was last amended by Act 139, SLH 2012. Many

inmates in our custody were ordered to pay restitution prior to the enactment of Act 139, and we have been collecting restitution in accordance with those legal orders. This bill will require us to collect a different amount despite the legal court order.

2. We simply do not have the resources to sift through hundreds, if not thousands, of courts orders and determine what needs to be collected because the law changed and the basis on which to calculate the new amount owed. For example, prior to Act 139, HRS 353-22.6 required the collection of 10% of inmate earnings. This bill would require us to collect 25% of all deposits in the inmate's account, including earnings. We would have to determine retroactively, not only what the inmate paid, but the amount of total deposits made to determine what now needs to be collected. In order to do this, we will need additional staff, at least temporarily. An alternative would be for us to contract for services to get this done. Unfortunately, we do not have the resources to do this.
3. This bill is not needed. We acknowledge that we have received restitution orders that do not comply with HRS 353-22.6, even after the enactment of Act 139. However, we are working with the Judiciary to rectify this. We believe that the problem will be resolved in a short time.

Thank you for your consideration.

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE DAVID Y. IGE, CHAIR
THE HONORABLE MICHELLE N. KIDANI, VICE CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

SENATOR CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

March 28, 2014

RE: HB 2654, H.D.1, S.D.1, RELATING TO VICTIM RESTITUTION

Chair Ige, Vice Chair Kidani, and members of the Senate Committee Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 2654, H.D. 1, S.D. 1.

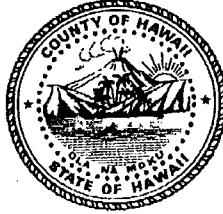
The purpose of H.B. 2654 is to amend section 353-22.6, Hawaii Revised Statutes, to ensure that the provisions of Act 139, Hawaii Sessions Law of 2012, relating to the collection of 25% of inmate's earnings to satisfy restitution orders, are properly enforced. Contrary to the Legislature's intent in enacting this measure in 2012, both the Courts and the Department of Public Safety have failed to fully implement the 25% assessment. Instead we see many judges ordering that percentages as low as 5% of inmates wages to be assessed to cover their restitution obligations. The Department of Public Safety, in part due to advice from the Department of the Attorney General, has also provided only spotty enforcement of the 25 % assessment requirement. To insure that there are no legal obstacles to implementing the Legislature's original intent we strongly recommend the provisions of HB 2654, which explicitly state that regardless of faulty court orders to the contrary that the Department of Public Safety is required to apply a 25% assessment to all inmate wages where there is a restitution order in effect.

The Attorney General has expressed concerns regarding the retroactive aspects of Act 139 of 2012 suggesting that changing the rate of payment of restitution may amount to an impermissible ex post facto change in a convicted person's sentence. Hawaii's restitution statute, HRS 706-646, references the fact that courts may need to adjust the payment amount according to the changing ability to pay. It makes little sense to believe that payments can not be adjusted to meet the changing financial status of sentenced defendants. A prison inmate whose room and board are being paid for by the taxpayers certainly can afford to pay 25% of their earnings to satisfy their restitution obligation regardless of what their financial circumstances may have been when they were out in the community paying their own basic expenses. To believe otherwise flies in the face of common sense and reason. We note that Restitution is not a punishment and adjusting the rate of payment does not change the original sentence. The Legislature was faced with similar questions of critical public policy regarding the collection of DNA sample from convicted felons and requiring all serious sex offenders to be included on the Sex Offender Registry regardless of when their conviction occurred. The Legislature chose to come down on the side of public safety and crime victims. We believe that this is a similar question that can and should be resolved in the same manner.

For the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 2654, H.D., S.D.1. Thank you for the opportunity to testify on this matter.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII UNIT
81-980 HALEKI'I ST, SUITE 150
KEALAKEKUA, HAWAII 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 2654 HD1 SD1

A BILL FOR AN ACT RELATING TO VICTIM RESTITUTION

COMMITTEE ON WAYS AND MEANS

Rep. Sylvia Luke, Chair

Rep. Scott Y. Nishimoto, Vice Chair

Rep. Aaron Ling Johanson, Vice Chair

Friday, March 28, 2014, 9:25 AM
State Capitol, Conference Room 211

Honorable Chair Luke, Vice Chairs Nishimoto & Johanson, and Members of the Committee on Finance, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 2654 HD1 SD1.

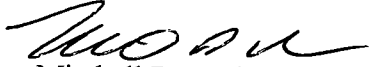
The purpose of this measure is to clarify the Director of Public Safety's authority to deduct 25% of all moneys earned, new deposits, and credits to an inmate's individual account for restitution. Applies to orders for restitution in effect on and entered after the effective date of this Act.

Studies have shown that when a defendant is held fully accountable to their crime victims, the recidivism rate is actually lower than those defendants who are not. Section 353-22.6, Hawaii Revised Statutes was amended to increase the amount of restitution collected from inmates from 10% to 25% of all inmate earnings, deposits, and credits; however, this collection has not been uniformly applied to all inmates at all correctional facilities.

This Act will also ensure that the 25% of inmate earnings, deposits, and credits shall be deducted to satisfy victim restitution orders and that amount shall not be lowered by any other existing statute or court order. Additionally, this Act will make certain that victims of crimes will actually receive their restitution payments.

The Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of House Bill No. 2654 HD1 SD1. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Roth", written in a cursive style.

Mitchell D. Roth
Prosecuting Attorney
County of Hawai'i

NEIL ABERCROMBIE
GOVERNOR



MARI MCCAIG
Chair

THOMAS T. WATTS
Commissioner

ABELINA SHAW
Commissioner

PAMELA FERGUSON-BREY
Executive Director

LATE

STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

TESTIMONY ON HOUSE BILL 2654 HD1 SD1
RELATING TO VICTIM RESTITUTION

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair

Friday, March 28, 2014; 9:20 AM
State Capitol, Conference Room 211

Chair Ige, Vice Chair Kidani, Members of the Committee on Ways and Means:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify before you today. The Commission strongly supports this bill with amendment to the effective date of the bill. House Bill 2654, HD1, SD1, implements the intent of the legislature in passing the Justice Reinvestment Initiative Act to ensure offender accountability and to provide financial justice for their victims by amending Hawai'i Revised Statutes (hereafter "HRS") § 353-22.6 to increase the amount of restitution collected from inmates from 10% of inmate earnings to 25% of all earnings, deposits and credits.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. The Commission undertook the Restitution Recovery Project in 2003 to disburse restitution payments collected from inmates and parolees, and to disburse those funds to their crime victims, or disburse to the Commission in cases where the Commission has previously paid a compensation award to the crime victim.

In 2011, the Commission was appointed to serve as a member of the Justice Reinvestment Initiative (JRI) Working Group. The JRI Working Group was comprised of leading state and local officials who worked with the Council of State Governments Justice Center to develop a policy framework to address identified areas of concern within Hawai`i's criminal justice system. The Commission's role as a member of the JRI Working Group was to represent and engage crime victims, survivors, and victim services providers and advocates in identifying key issues and concerns specific to the JRI initiative. The Working Group's policy framework became the basis for the JRI legislation.

When the Justice Reinvestment Act (Act 139) passed during the 2012 legislative session, it became landmark legislation designed to increase public safety and increase offender accountability and included the first comprehensive victim services component in the nation. To meet victim needs and to improve offender accountability, the JRI Act amended HRS § 353-22.6 to increase the amount of restitution to be paid by inmates from ten percent (10%) of inmate earnings to twenty-five percent (25%) of all inmate earnings, deposits and credits. The clear intent behind the amendment to HRS § 353-22.6, as passed, is plain and simple: all inmates are to pay 25% of all of the inmate's earnings, deposits and credits to satisfy their outstanding restitution obligations to their crime victims regardless of when their judgments were imposed.

The JRI Act and the HRS § 353-22.6 amendment became effective on July 1, 2012. After July 1, 2012, the Commission, as the clearinghouse for restitution payments collected from inmates, received court judgments containing restitution orders that were inconsistent with HRS § 353-22.6. Various court judgments stated that the defendant did not need to make any restitution payments while the inmate was incarcerated, or stated that the inmate pay less than 25% of all earnings, deposits and credits. The Office of the Attorney General advised the Department of Public Safety (PSD) that PSD must comply with the court orders instead of complying with the provisions of HRS § 353-22.6.

In a survey of all Halawa Correctional Facility inmates incarcerated on August 19, 2013, 136 inmates had restitution orders imposed on or after July 1, 2012. Of those 136 inmates, 29.8% of

the inmates' restitution orders had court ordered restitution payments that were for amounts less than the required 25% provided for in HRS § 353-22.6.¹

The following table illustrates the effect that court orders which preempt HRS § 353-22.6 have had on crime victims. The following are ten criminal court judgments in which the court ordered 10% of inmate earnings or deferred restitution payments until after an inmate's release instead of the required 25% of earnings, deposits and credits. As a result of the courts ordering 10% of inmate earnings or deferring payments until release instead of ordering 25% of earnings, deposits and credits, the victims in the ten example cases were collectively not paid \$3,728.67.

Circuit	Sentence Date	Restitution Ordered	Total Inmate Deposits (as of 1/10/2014)		Court-Ordered Deduction (Earnings Only)		Deductions Authorized by HRS§353-22.6 (25% of Total Deposits)	Total Loss to Crime Victims
			Earnings	Cash Deposits				
1	7/17/2012	\$150,542.45	\$80.32	\$939.87	10%	\$8.03	\$255.05	\$247.02
1	10/30/2012	\$3,925.43	\$201.75	\$2,325.00	10%	\$20.18	\$631.69	\$611.51
3	11/2/2012	\$1,084.00	\$0.00	\$1,565.00	10%	\$0.00	\$391.25	\$391.25
3	11/29/2012	\$440.00	\$0.00	\$1,005.00	10%	\$0.00	\$251.25	\$251.25
1	1/28/2013	\$1,845.00	\$0.00	\$1,000.00	10%	\$0.00	\$250.00	\$250.00
1	3/12/2013	\$309.19	\$92.75	\$1,650.00	10%	\$9.28	\$309.19	\$299.92
1	4/23/2013	\$6,660.00	\$166.50	\$3,411.00	10%	\$16.65	\$894.38	\$877.73
5	7/31/2013	\$14,874.28	\$0.00	\$1,500.00	Payment ordered to start after release	\$0.00	\$375.00	\$375.00
2	8/2/2013	\$2,925.22	\$0.00	\$1,010.00	10%	\$0.00	\$252.50	\$252.50
1	8/6/2013	\$36,450.25	\$0.00	\$690.00	10%	\$0.00	\$172.50	\$172.50
Actual Collection:						\$54.13	Total loss to victims:	\$3,728.67

The dates of the sentences in these examples also illustrates that the courts are continuing to order restitution payments that preempt HRS § 353-22.6. Crime victims are being denied the restitution payments from offenders that the JRI Act promised them.

The Attorney General also advised PSD that the 25% deduction set forth in the amended HRS § 353-22.6 could only be applied to judgments/sentences imposed on or after July 1, 2012. As the preamble to this bill points out, due process should not be offended as HRS § 353-22.6

¹The Commission reviewed the files of 1,054 inmates who were serving sentences on August 19, 2013 at Halawa Correctional Facility for more than 1,378 criminal cases. Of those inmates, there were 136 Halawa Correctional Facility inmates who had at least one restitution order that was imposed on or after July 1, 2012. The 136 inmates had a total of 168 restitution orders imposed on or after July 1, 2012 (some inmates were serving sentences for more than one criminal case/crime). Of the 168 restitution orders, 50, or 29.8%, of those orders contradicted the required 25% deduction of inmate earnings, deposits, and credits provided for in HRS § 353-22.6. Of those 50 orders, 43 ordered restitution to be paid at a rate less than 25% of inmate earnings, deposits, and credits.

merely modifies the rate of payment, and in no way affects the amount of restitution originally ordered by the court. Quarles v. Kane, 482 F.3d 1154 (9th Cir. 2007) (ex post facto prohibition is not implicated when the rate of payment, and not the amount of restitution, is modified). Retroactive application of the 25% deduction is consistent with the original intent of the JRI act.

Thank you for providing the Commission with the opportunity to testify in strong support of this bill with an amendment to make the bill effective upon signing.

The remaining 7 orders deferred restitution payments until after the inmate was released (effectively prohibiting collection of any money pursuant to HRS § 353-222.6).