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Subject: Submitted testimony for HB2654 on Mar 28, 2014 09:20AM
Date: Thursday, March 27, 2014 2:29:22 PM

HB2654

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:20AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Justin F. Kollar	County of Kauai Office of the Prosecuting Attorney	Support	No

Comments: We adopt the position and reasoning submitted by Pamela Ferguson-Brey of the Crime Victim Compensation Commission.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 2654, H.D. 1, S.D. 1, RELATING TO VICTIM RESTITUTION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

LATE

DATE: Friday, March 28, 2014

TIME: 9:20 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): David M. Louie, Attorney General, or
Renee R. Sonobe Hong

Chair Ige and Members of the Committee:

The Department of the Attorney General opposes this bill in its present form.

This bill attempts to require a blanket and retroactive application of section 353-22.6, Hawaii Revised Statutes (HRS), on all victim restitution orders for inmates while incarcerated. Regardless of any other law or court order to the contrary, and regardless of whether the judgment and order was issued prior to, on, or after July 1, 2012, the effective date of section 353-22.6, HRS, this bill directs the Department of Public Safety to deduct 25 percent of the total moneys earned, new deposits, and credits from an inmate's individual account. Further, this bill requires the court to comply with the requirements of section 353-22.6, HRS, in establishing time and manner of payment after considering the defendant's financial ability.

We oppose this bill to the extent that it conflicts with the current statutory authority of the courts to establish the time and manner of payment of restitution. Section 706-646(3), HRS, provides in relevant part:

- (3) In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. **The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid.** [Emphases added.]

This bill further provides that the "director of public safety shall enforce victim restitution orders" – specifically, the Director of the Department of Public Safety shall enforce the victim

restitution orders that were imposed by the court pursuant to section 706-646(3), HRS, above. This potentially conflicts with the directive that the director deduct the 25 percent provided for on page 3, lines 7-14 of this measure to the extent that the ordered time and manner might, in some instances, conflict with the 25 percent requirement.

The proposed amendment to section 706-646, HRS, in section 3, on page 4, lines 5-6, directs the court to comply with requirements imposed upon the Department of Public Safety to deduct 25 percent of an inmate's total moneys earned, new deposits, and credits to the inmate's individual account. Rather than tying the court to the requirements imposed on the Department, we suggest that the statute more directly set forth the 25 percent limit:

The court shall specify time and manner in which restitution is to be paid[-]; provided that such payment schedule must be at least twenty five percent of an inmate's total moneys earned, new deposits, and credits to the inmate's individual account.

Additionally, we oppose this measure because it proposes to change prior orders of judges en masse, without a hearing or notice, and in disregard of any judicial consideration that may have existed regarding the defendant's financial ability to pay. This triggers due process concerns. Further, if this bill applies retroactively, all final restitution orders, even those imposed at the previously imposed rate of 10 percent of a prisoner's annual earnings under section 353-22.6, HRS, will be legislatively amended. For these reasons, we suggest that the bill be amended to clearly allow for only prospective application by deleting the wording "[n]otwithstanding any other law or court order to the contrary" on page 3, lines 11-12, of this bill.

For these reasons, we respectfully request that, if this measure is passed, it be passed with amendments as suggested.