



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2654, HD 1, RELATING TO VICTIM RESTITUTION.

BEFORE THE:

**SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL AND
MILITARY AFFAIRS AND ON JUDICIARY AND LABOR**

DATE: Monday, March 17, 2014 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chairs Espero and Hee and Members of the Committees:

The Department of the Attorney General supports this bill with proposed amendments for clarification.

This measure assures that court orders regarding victim restitution are more uniformly issued and administered.

The proposed amendment to section 706-646, Hawaii Revised Statutes, in section 3, on page 3, lines 21-22, directs the court to comply with requirements imposed upon the Department of Public Safety (the Department) to deduct 25 percent of an inmate's total moneys earned, new deposits, and credits to the inmate's individual account for victim restitution. 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.

Because this measure provides for only prospective application, and earlier provisions apply for previous restitution orders, the words "[n]otwithstanding any other law or court order to the contrary" on page 3, lines 4-5, of this bill should be deleted.

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

LATE TESTIMONY

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFIARS

SENATOR CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

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

March 17, 2014

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

Chair Espero and Chair Hee, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs and Senate Committee on Judiciary, 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, with amendments.

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.

Unfortunately this bill was amended to take away the retroactive aspects of Act 139 of 2012 due the mistaken belief that changing the rate of payment of restitution amounts 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. Please return this measure to its original language to insure consistency and certainty to the critical process of collecting victim restitution.

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