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## A BILL FOR AN ACT

RELATING TO THE 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  
5 restitution. (1) Whenever a judgment or order is entered  
6 establishing, modifying, or enforcing restitution, the court  
7 shall allow ninety days for a defendant to make payment in  
8 full. If the judgment or order is not satisfied after ninety  
9 days, the court shall issue an income withholding order that  
10 shall operate as an assignment to the clerk of the court in  
11 which the order is entered, of amounts that are due at times  
12 that may be specified in the judgment or order, but no less than  
13 \$30 per month, from the defendant's income due or to become due  
14 in the future from the defendant's employer or successor  
15 employers. A copy of the income withholding order shall be  
16 filed in the office of the clerk of the court in which the  
17 income withholding order was issued.



1       (2) The income withholding order issued pursuant to  
2 subsection (1) shall be effective immediately after service upon  
3 an employer of a copy of the income withholding order, which  
4 service may be effected only by the department of the  
5 prosecuting attorney of the county where the offense occurred,  
6 by regular mail, by personal delivery, or by transmission  
7 through electronic means. Thereafter, for each pay period, the  
8 employer shall withhold from the income that is due to the  
9 defendant from the employer and that is not required to be  
10 withheld by any other provision of federal or state law, and  
11 transmit to the clerk of the court in which the order is  
12 entered, as much as may remain payable for the pay period up to  
13 the amount specified in the order. The employer shall  
14 immediately inform the court of any change that would affect the  
15 income withholding order.

16       (3) Compliance by an employer with the income withholding  
17 order shall operate as a discharge of the employer's liability  
18 to the defendant for that portion of the defendant's earnings  
19 withheld and transmitted to the clerk of the court from which  
20 the order is issued, whether or not the employer has withheld  
21 the correct amount. For each payment made pursuant to an income



1 withholding order, the employer may deduct and retain as an  
2 administrative fee an additional amount of \$2 from the income  
3 owed to the defendant. The total amount withheld from the  
4 defendant's income, including the administrative fee, may not  
5 exceed the maximum amounts permitted under section 303(b) of the  
6 Consumer Credit Protection Act (15 U.S.C. §1673(b)).

7 (4) Any income withholding order made pursuant to this  
8 section shall:

9 (a) Have priority as against any garnishment, attachment,  
10 execution, or other income withholding order, or any  
11 other order, except for any order made pursuant to  
12 chapters 571, 576B, 576D, and 576E; and

13 (b) Not be subject to the exemptions or restrictions  
14 contained in part III of chapter 651 and in chapters  
15 652 and 653.

16 (5) An employer who fails to comply with an income  
17 withholding order under this section shall be liable to the  
18 obligee for the full amount of all sums not withheld and  
19 transmitted as ordered. An employer receiving an income  
20 withholding order shall:



- 1        (a) Transmit amounts withheld to the clerk of the court  
2        within five business days after the defendant is paid;  
3        and  
4        (b) Begin withholding no later than the first pay period  
5        commencing within seven business days following the  
6        date a copy of the income withholding order is served  
7        upon the employer by regular mail, personal delivery,  
8        or electronic means.

9        As used in this subsection, the term "business day" means a day  
10       on which the employer's office is open for regular business.

11       (6) An employer who:

12       (a) Complies with an income withholding order that is  
13       valid on its face shall not be subject to civil  
14       liability to any person, entity, or agency for conduct  
15       in compliance with the order; and

16       (b) Is required to withhold amounts from the income of  
17       more than one employee may remit to the clerk of the  
18       court a sum total of all amounts in one check with a  
19       listing of the amounts applicable to each employee.  
20       Within ten business days after receipt of the amounts



1           withheld by the employer, the clerk of the court shall  
2           disburse the amounts to the obligee.

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

6           (8) If there is more than one restitution judgment or  
7           order, the amounts withheld from the income of a defendant shall  
8           be allocated among the different restitution judgments or  
9           orders. If the multiple income withholding orders would cause  
10          the amounts withheld from the defendant's income to exceed wage  
11          withholding limitations established under this section, the  
12          amount withheld shall be allocated so that in no case shall the  
13          allocation result in a withholding for any of the restitution  
14          obligations not being implemented.

15          (9) If a defendant changes employment while an income  
16          withholding order is in effect, the defendant shall notify and  
17          provide the clerk of the court with the new employer's contact  
18          information within five business days of the change. The clerk  
19          of the court shall notify the defendant's new employer of the  
20          defendant's and the new employer's respective obligations under



1 this section. The new employer shall be bound by the income  
2 withholding order until further court order.

3 (10) As used in this section, and notwithstanding any  
4 other provision of law:

5 (a) "Employer" means any individual, partnership,  
6 association, joint stock company, trust, corporation,  
7 personal representative of the estate of a deceased  
8 individual, or receiver, trustee, or successor of any  
9 of the same, employing any individual, including the  
10 United States government, State, and any political  
11 subdivision thereof, who is or shall become obligated  
12 for payment of income; and

13 (b) "Income" includes, without limitation, salaries,  
14 wages, earnings, workers' compensation, commissions,  
15 fees, bonuses, independent contractor income, and any  
16 other entitlement to money, including moneys payable  
17 as a disability, death, or other benefit, or moneys  
18 from the State or a political subdivision thereof, or  
19 from any disability system established by the State or  
20 any political subdivision thereof under law."



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

3 ""Debt" includes:

- 4 (1) Any delinquency in periodic court-ordered or  
5 administrative-ordered payments for child support  
6 pursuant to section 576D-1, in an amount equal to or  
7 exceeding the sum of payments which would become due  
8 over a one-month period;
- 9 (2) Any liquidated sum exceeding \$25 which is due and  
10 owing any claimant agency, regardless of whether there  
11 is an outstanding judgment for that sum, and whether  
12 the sum has accrued through contract, subrogation,  
13 tort, operation of law, or judicial or administrative  
14 judgment or order;
- 15 (3) Any defaulted education loan note held by the United  
16 Student Aid Funds, Inc. incurred under the federal  
17 Higher Education Act of 1965 (Public Law 89-329, 79  
18 Stat. 1219), as amended;
- 19 (4) Any federal income taxes due and owing to the United  
20 States Treasurer; [~~or~~]
- 21 (5) Any medicaid overpayment under section 346-59.6 ~~[ ]~~; or



1       (6) Any unpaid court-ordered restitution enforceable as a  
2       civil judgment pursuant to section 706-647."

3       SECTION 3. Section 706-646, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "§706-646 Victim restitution. (1) As used in this  
6 section, "victim" includes any of the following:

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

9       (b) If the victim dies as a result of the crime, a  
10       surviving relative of the victim as defined in chapter  
11       351;

12       (c) A governmental entity that has reimbursed the victim  
13       for losses arising as a result of the crime or paid  
14       for medical care provided to the victim as a result of  
15       the crime; or

16       (d) Any duly incorporated humane society or duly  
17       incorporated society for the prevention of cruelty to  
18       animals, contracted with the county or State to  
19       enforce animal-related statutes or ordinances, that  
20       impounds, holds, or receives custody of a pet animal  
21       pursuant to section 711-1109.1, 711-1109.2, or





1           711-1110.5; provided that this section does not apply  
2           to costs that have already been contracted and  
3           provided for by the counties or State.

4           (2) The court shall order the defendant to make  
5           restitution for reasonable and verified losses suffered by the  
6           victim or victims as a result of the defendant's offense when  
7           requested by the victim. The court shall order restitution to  
8           be paid to the crime victim compensation commission in the event  
9           that the victim has been given an award for compensation under  
10          chapter 351. If the court orders payment of a fine in addition  
11          to restitution or a compensation fee, or both, the payment of  
12          restitution and compensation fee shall have priority over the  
13          payment of the fine, and payment of restitution shall have  
14          priority over payment of a compensation fee.

15          (3) In ordering restitution, the court shall not consider  
16          the defendant's financial ability to make restitution in  
17          determining the amount of restitution to order. The court,  
18          however, shall consider the defendant's financial ability to  
19          make restitution for the purpose of establishing the time and  
20          manner of payment. The court shall specify the time and manner  
21          in which restitution is to be paid. Restitution shall be a



1 dollar amount that is sufficient to reimburse any victim fully  
2 for losses, including but not limited to:

3 (a) Full value of stolen or damaged property, as  
4 determined by replacement costs of like property, or  
5 the actual or estimated cost of repair, if repair is  
6 possible;

7 (b) Medical expenses; and

8 (c) Funeral and burial expenses incurred as a result of  
9 the crime.

10 (4) All money deposited by the defendant as bail, in any  
11 criminal proceeding before any court, that has not been declared  
12 forfeited, shall be applied toward payment of any restitution,  
13 finer, or fees ordered by the court in the same case, consistent  
14 with the priorities in subsection (2).

15 [~~4~~] (5) The restitution ordered shall not affect the  
16 right of a victim to recover under section 351-33 or in any  
17 manner provided by law; provided that any amount of restitution  
18 actually recovered by the victim under this section shall be  
19 deducted from any award under section 351-33."

20 SECTION 4. Section 806-73, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) All adult probation records shall be confidential and  
2 shall not be deemed to be public records. As used in this  
3 section, the term "records" includes but is not limited to all  
4 records made by any adult probation officer in the course of  
5 performing the probation officer's official duties. The  
6 records, or the content of the records, shall be divulged only  
7 as follows:

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

11          (A) An adult probation officer, court officer, social  
12             worker of a Hawaii state adult probation unit, or  
13             a family court officer who is preparing a report  
14             for the courts; or

15          (B) A state or federal criminal justice agency, or  
16             state or federal court program that:

17             (i) Is providing supervision of a defendant or  
18             offender convicted and sentenced by the  
19             courts of Hawaii; or

20             (ii) Is responsible for the preparation of a  
21             report for a court;



- 1           (2) The residence address, work address, home telephone  
2                   number, or work telephone number of a current or  
3                   former defendant shall be provided only to:
- 4           (A) A law enforcement officer as defined in section  
5                   [+]710-1000[+] to locate the probationer for the  
6                   purpose of serving a summons or bench warrant in  
7                   a civil, criminal, or deportation hearing, or for  
8                   the purpose of a criminal investigation; or
- 9           (B) A collection agency or licensed attorney  
10                   contracted by the judiciary to collect any  
11                   delinquent court-ordered penalties, fines,  
12                   restitution, sanctions, and court costs pursuant  
13                   to section 601-17.5;
- 14          (3) A copy of a presentence report or investigative report  
15                   shall be provided only to:
- 16           (A) The persons or entities named in section 706-604;
- 17           (B) The Hawaii paroling authority;
- 18           (C) Any psychiatrist, psychologist, or other  
19                   treatment practitioner who is treating the  
20                   defendant pursuant to a court order or parole  
21                   order for that treatment;



- 1 (D) The intake service centers;
- 2 (E) In accordance with applicable law, persons or
- 3 entities doing research; and
- 4 (F) Any Hawaii state adult probation officer or adult
- 5 probation officer of another state or federal
- 6 jurisdiction who:
  - 7 (i) Is engaged in the supervision of a defendant
  - 8 or offender convicted and sentenced in the
  - 9 courts of Hawaii; or
  - 10 (ii) Is engaged in the preparation of a report
  - 11 for a court regarding a defendant or
  - 12 offender convicted and sentenced in the
  - 13 courts of Hawaii;
- 14 (4) Access to adult probation records by a victim, as
- 15 defined in section 706-646 to enforce an order filed
- 16 pursuant to section 706-647, shall be limited to the
- 17 [name]:
- 18 (A) Name and contact information of the defendant's
- 19 adult probation officer;
- 20 (B) Compliance record of the defendant with court-
- 21 ordered payments;



- 1           (C) Amounts paid by the defendant;  
2           (D) Dates of the payments made by the defendant;  
3           (E) Payee of payments made by the defendant; and  
4           (F) Remaining unpaid balance;
- 5           (5) Upon written request, the victim, or the parent or  
6           guardian of a minor victim or incapacitated victim, of  
7           a defendant who has been placed on probation for an  
8           offense under section 580-10(d)(1), 586-4(e), 586-  
9           11(a), or 709-906 may be notified by the defendant's  
10          probation officer when the probation officer has any  
11          information relating to the safety and welfare of the  
12          victim;
- 13          (6) Notwithstanding paragraph (3) and upon notice to the  
14          defendant, records and information relating to the  
15          defendant's risk assessment and need for treatment  
16          services; information related to the defendant's past  
17          treatment and assessments, with the prior written  
18          consent of the defendant for information from a  
19          treatment service provider; provided that for any  
20          substance abuse records such release shall be subject  
21          to title 42 Code of Federal Regulations part 2,



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

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

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

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

16 (7) Probation drug test results may be released with prior  
17 written consent of a defendant to the defendant's  
18 treating physician when test results indicate  
19 substance use which may be compromising the  
20 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 5. Act 119, Session Laws of Hawaii 2011, is  
12          amended by amending section 4 to read as follows:

13          "SECTION 4. This Act shall take effect on July 1, 2011[  
14          ~~and shall be repealed on July 1, 2016; provided that section~~  
15          ~~806-73(b), Hawaii Revised Statutes, shall be reenacted in the~~  
16          ~~form in which it read on the day before the effected date of~~  
17          ~~this Act]."~~

18          SECTION 6. There is appropriated out of the general  
19          revenues of the State of Hawaii the sum of \$                    or so much  
20          thereof as may be necessary for fiscal year 2016-2017 for the  
21          purpose of enhancing restitution collection pursuant to section





1 1 of this Act, including the hiring of any necessary staff to  
2 implement section 1 of this Act as follows:

3 (1) For first circuit (JUD 310), the judiciary may  
4 establish two full-time equivalent (2.0 FTE) permanent  
5 social worker IV positions, two full-time equivalent  
6 (2.0 FTE) judicial clerk III positions, and one full-  
7 time equivalent (1.0 FTE) accountant I position;

8 (2) For second circuit (JUD 320), the judiciary may  
9 establish one full-time equivalent (1.0 FTE) permanent  
10 social worker IV position, one full-time equivalent  
11 (1.0 FTE) judicial clerk III position, and one full-  
12 time equivalent (1.0 FTE) accountant I position;

13 (3) For third circuit (JUD 330), the judiciary may  
14 establish two full-time equivalent (2.0 FTE) social  
15 worker IV positions, two full-time equivalent (2.0  
16 FTE) judicial clerk III positions, and one full-time  
17 equivalent (1.0 FTE) accountant I position; and

18 (4) For fifth circuit (JUD 350), the judiciary may  
19 establish one full-time equivalent (1.0 FTE) social  
20 worker IV position, one full-time equivalent (1.0 FTE)



1           judicial clerk III position, and one full-time  
2           equivalent (1.0 FTE) accountant I position.

3           The sum appropriated shall be expended by the judiciary for  
4 the purposes of section 1 of this Act.

5           SECTION 7. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8           SECTION 8. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 9. This Act shall take effect on June 30, 2016.

11

INTRODUCED BY:



BY REQUEST

JAN 20 2016



# H.B. NO. 1660

**Report Title:**

Honolulu Prosecuting Attorney Package; Crime Victims;  
Restitution; Collection; 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. Provides priority of income withholding orders. Extends victims' access to adult probation records to include access to payment compliance records. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Appropriates funds.

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

