

JAN 21 2016

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:



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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."



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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



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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 finances, 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;



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- 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[~~7~~
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



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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)



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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: *M.M. W.*
BY REQUEST



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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.

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