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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 part III to be appropriately  
3 designated and to read as follows:  
4           "§706-     Income withholding for payment of restitution.  
5 (1) Whenever a person is sentenced to supervision under adult  
6 client services and a judgment or order is entered establishing,  
7 modifying, or enforcing restitution, the court shall allow  
8 ninety days for a defendant to make payment in full. If the  
9 judgment or order is not satisfied after ninety days, the court  
10 shall issue an income withholding order that shall operate as an  
11 assignment to the clerk of the court in which the order is  
12 entered, of amounts that are due at times that may be specified  
13 in the judgment or order, but no less than \$30 per month, from  
14 the defendant's income due or to become due in the future from  
15 the defendant's employer or successor employers. A copy of the  
16 income withholding order shall be filed in the office of the



1 clerk of the court in which the income withholding order was  
2 issued.

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

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



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

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

10 (a) Have priority as against any garnishment, attachment,  
11 execution, or other income withholding order, or any  
12 other order, except for any order made pursuant to  
13 chapters 571, 576B, 576D, 576E, 580, and 584; and

14 (b) Not be subject to the exemptions or restrictions  
15 contained in part III of chapter 651 and in chapters  
16 652 and 653.

17 (5) An employer who fails to comply with an income  
18 withholding order under this section shall be liable to the  
19 obligee for the full amount of all sums not withheld and  
20 transmitted as ordered. An employer receiving an income  
21 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                either by cash, cashier's check, money order, or
- 4                commercial check; and
- 5        (b) Begin withholding no later than the first pay period
- 6                commencing within seven business days following the
- 7                date a copy of the income withholding order is served
- 8                upon the employer by regular mail, personal delivery,
- 9                or electronic means.

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

- 12        (6) An employer who:
- 13                (a) Complies with an income withholding order that is
- 14                valid on its face shall not be subject to civil
- 15                liability to any person, entity, or agency for conduct
- 16                in compliance with the order; and
- 17                (b) Is required to withhold amounts from the income of
- 18                more than one employee may remit to the clerk of the
- 19                court a sum total of all amounts in one lump sum via
- 20                cash, cashier's check, money order, or commercial
- 21                check, with a listing of the amounts applicable to



1           each employee. Within twenty-one business days after  
2           receipt of the amounts withheld by the employer, the  
3           clerk of the court shall disburse the amounts to the  
4           obligee.

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

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

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



1 defendant's and the new employer's respective obligations under  
2 this section. The new employer shall be bound by the income  
3 withholding order until further court order.

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

6 "Employer" means any individual, partnership, association,  
7 joint stock company, trust, corporation, personal representative  
8 of the estate of a deceased individual, or receiver, trustee, or  
9 successor of any of the same, employing any individual,  
10 including the United States government, State, and any political  
11 subdivision thereof, who is or shall become obligated for  
12 payment of income, but this meaning shall not apply if the  
13 employed individual is incarcerated in a correctional facility  
14 or engaged in an inmate work furlough program within the State.

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



- 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                   without the assessment of a filing fee or
- 6                   surcharge;
- 7           (5) Upon written request, the victim, or the parent or
- 8           guardian of a minor victim or incapacitated victim, of
- 9           a defendant who has been placed on probation for an
- 10           offense under section 580-10(d)(1), 586-4(e),
- 11           586-11(a), or 709-906 may be notified by the
- 12           defendant's probation officer when the probation
- 13           officer has any information relating to the safety and
- 14           welfare of the victim;
- 15           (6) Notwithstanding paragraph (3) and upon notice to the
- 16           defendant, records and information relating to the
- 17           defendant's risk assessment and need for treatment
- 18           services; information related to the defendant's past
- 19           treatment and assessments, with the prior written
- 20           consent of the defendant for information from a
- 21           treatment service provider; provided that for any



1 substance abuse records such release shall be subject  
2 to title 42 Code of Federal Regulations part 2,  
3 relating to the confidentiality of alcohol and drug  
4 abuse patient records; and information that has  
5 therapeutic or rehabilitative benefit, may be provided  
6 to:

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

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

16 (C) In accordance with applicable law, persons or  
17 entities doing research;

18 (7) Probation drug test results may be released with prior  
19 written consent of a defendant to the defendant's  
20 treating physician when test results indicate



1 substance use which may be compromising the  
 2 defendant's medical care or treatment;

3 (8) Any person, agency, or entity receiving records, or  
 4 contents of records, pursuant to this subsection shall  
 5 be subject to the same restrictions on disclosure of  
 6 the records as Hawaii state adult probation offices;  
 7 and

8 (9) Any person who uses the information covered by this  
 9 subsection for purposes inconsistent with the intent  
 10 of this subsection or outside of the scope of the  
 11 person's official duties shall be fined no more than  
 12 \$500."

13 SECTION 5. Act 119, Session Laws of Hawaii 2011, is  
 14 amended by amending section 4 to read as follows:

15 "SECTION 4. This Act shall take effect on July 1, 2011[7  
 16 ~~and shall be repealed on July 1, 2016; provided that section~~  
 17 ~~806-73(b), Hawaii Revised Statutes, shall be reenacted in the~~  
 18 ~~form in which it read on the day before the effected date of~~  
 19 ~~this Act]."~~





1 SECTION 6. Act 139, Session Laws of Hawaii 2012, as  
2 amended by Act 67, Session Laws of Hawaii 2013, is amended by  
3 amending section 14 to read as follows:

4 "SECTION 14. This Act shall take effect on July 1, 2012;  
5 provided that:

- 6 (1) Section 3 shall take effect on January 1, 2013;
- 7 (2) Section 7 shall take effect on July 1, 2012, for any  
8 individual on parole supervision on or after July 1,  
9 2012;
- 10 (3) Section 8 shall take effect on July 1, 2012, and shall  
11 be applicable to individuals committing an offense on  
12 or after that date; ~~and~~
- 13 (4) Sections 3, 7, 8, ~~[10,]~~ and 11 shall be repealed on  
14 July 1, 2018, and sections 353-10, 353-66, 706-670(1),  
15 ~~[353-22.6,]~~ and 353-69, Hawaii Revised Statutes, shall  
16 be reenacted in the form on which they read on June  
17 30, 2012 ~~[,]~~ ; and
- 18 (5) Section 10 shall be repealed on July 1, 2020, and  
19 section 353-22.6, Hawaii Revised Statutes, shall be  
20 reenacted in the form in which it read on July 30,  
21 2012."



1 SECTION 7. There is appropriated out of the general  
 2 revenues of the State of Hawaii the sum of \$ or so much  
 3 thereof as may be necessary for fiscal year 2016-2017 for the  
 4 purpose of enhancing restitution collection pursuant to section  
 5 1 of this Act, including the hiring of any necessary staff to  
 6 implement section 1 of this Act as follows:

7 (1) For first circuit (JUD 310), the judiciary may  
 8 establish full-time equivalent ( FTE) permanent  
 9 social worker IV positions, full-time equivalent  
 10 ( FTE) judicial clerk III positions, and full-  
 11 time equivalent ( FTE) accountant I position;

12 (2) For second circuit (JUD 320), the judiciary may  
 13 establish full-time equivalent ( FTE) permanent  
 14 social worker IV position, full-time equivalent  
 15 ( FTE) judicial clerk III position, and full-  
 16 time equivalent ( FTE) accountant I position;

17 (3) For third circuit (JUD 330), the judiciary may  
 18 establish full-time equivalent ( FTE) social  
 19 worker IV positions, full-time equivalent (  
 20 FTE) judicial clerk III positions, and full-time  
 21 equivalent ( FTE) accountant I position;



1 (4) For fifth circuit (JUD 350), the judiciary may  
 2 establish full-time equivalent ( FTE) social  
 3 worker IV position, one full-time equivalent ( FTE)  
 4 judicial clerk III position, and full-time  
 5 equivalent ( FTE) accountant I position; and

6 (5) One-time equipment costs in the amount of \$ ,  
 7 to support the ( ) staffing positions listed  
 8 in paragraphs (1), (2), (3), and (4).

9 The sums appropriated shall be expended by the judiciary  
 10 for the purposes of section 1 of this Act.

11 SECTION 8. This Act does not affect rights and duties that  
 12 matured, penalties that were incurred, and proceedings that were  
 13 begun before its effective date.

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

16 SECTION 10. This Act shall take effect on July 1, 2076.



**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. Makes permanent Act 119, SLH 2011, which allows certain adult probation records to be provided to certain case management, assessment, or treatment service providers upon the screening for admission, acceptance, or admittance of the defendant into a treatment program. Extends for an additional two years the increase in percentage deducted from inmates' earnings for restitution payments pursuant to Act 139, SLH 2012. Appropriates funds. (SB2104 HD1)

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

