
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
17 clerk of the court in which the income withholding order was
18 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 prosecuting attorney of the
5 county where the offense occurred by regular mail, by personal
6 delivery, or by transmission through electronic means.
7 Thereafter, for each pay period, the employer shall withhold
8 from the income that is due to the defendant from the employer
9 and that is not required to be withheld by any other federal or
10 state law, and transmit to the clerk of the court in which the
11 order is entered as much as may remain payable for the pay
12 period up to the amount specified in the order. The employer
13 shall immediately inform the court of any change that would
14 affect the income withholding order.

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



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

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

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

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

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

20 (a) Transmit amounts withheld to the clerk of the court
21 within five business days after the defendant is paid,



1 either by cash, cashier's check, money order, or
2 commercial check; and

3 (b) Begin withholding no later than the first pay period
4 commencing within seven business days following the
5 date a copy of the income withholding order is served
6 upon the employer by regular mail, personal delivery,
7 or electronic means.

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

10 (6) An employer who:

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

15 (b) Is required to withhold amounts from the income of
16 more than one employee may remit to the clerk of the
17 court a sum total of all amounts in one lump sum via
18 cash, cashier's check, money order, or commercial
19 check, with a listing of the amounts applicable to
20 each employee. Within twenty-one business days after
21 receipt of the amounts withheld by the employer, the



1 clerk of the court shall disburse the amounts to the
2 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 other
4 provision of law:

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

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



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 without the assessment of a filing fee or surcharge;

6 (5) Upon written request, the victim, or the parent or
7 guardian of a minor victim or incapacitated victim, of
8 a defendant who has been placed on probation for an
9 offense under section 580-10(d)(1), 586-4(e),
10 586-11(a), or 709-906 may be notified by the
11 defendant's probation officer when the probation
12 officer has any information relating to the safety and
13 welfare of the victim;

14 (6) Notwithstanding paragraph (3) and upon notice to the
15 defendant, records and information relating to the
16 defendant's risk assessment and need for treatment
17 services; information related to the defendant's past
18 treatment and assessments, with the prior written
19 consent of the defendant for information from a
20 treatment service provider; provided that for any
21 substance abuse records such release shall be subject



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

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

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

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

17 (7) Probation drug test results may be released with prior
18 written consent of a defendant to the defendant's
19 treating physician when test results indicate
20 substance use which may be compromising the
21 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. Act 139, Session Laws of Hawaii 2012, as
19 amended by Act 67, Session Laws of Hawaii 2013, is amended by
20 amending section 14 to read as follows:



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

3 (1) Section 3 shall take effect on January 1, 2013;

4 (2) Section 7 shall take effect on July 1, 2012, for any
5 individual on parole supervision on or after July 1,
6 2012;

7 (3) Section 8 shall take effect on July 1, 2012, and shall
8 be applicable to individuals committing an offense on
9 or after that date; ~~and~~

10 (4) Sections 3, 7, 8, ~~[10,]~~ and 11 shall be repealed on
11 July 1, 2018, and sections 353-10, 353-66, 706-670(1),
12 ~~[353-22.6,]~~ and 353-69, Hawaii Revised Statutes, shall
13 be reenacted in the form on which they read on June
14 30, 2012~~[-]~~; and

15 (5) Section 10 shall be repealed on July 1, 2020, and
16 section 353-22.6, Hawaii Revised Statutes, shall be
17 reenacted in the form in which it read on July 30,
18 2012."

19 SECTION 7. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ or so
21 much thereof as may be necessary for fiscal year 2016-2017 for



1 the purpose of enhancing restitution collection pursuant to
2 section 1 of this Act, including the hiring of any necessary
3 staff to implement section 1 of this Act as follows:

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

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

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

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



1 judicial clerk III position, and full-time
2 equivalent (FTE) accountant I position; and
3 (5) One-time equipment costs in the amount of \$, to
4 support the () staffing positions listed in
5 paragraphs (1), (2), (3), and (4).

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

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

11 SECTION 9. If any provision of this Act, or the
12 application thereof to any person or circumstance, is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act that can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 10. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 11. 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. Takes effect on 7/1/2076. (SD2)

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

