

JAN 22 2016

A BILL FOR AN ACT

RELATING TO RESTITUTION FOR VICTIMS OF CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Due to the recent holding in *State v. DeMello*,
2 310 P.3d 1033 (Haw. Ct. App. 2013), which denied restitution for
3 a crime victim's wage loss on the basis that "[t]here is no
4 explicit provision in HRS § 706-646 for the award of lost wages
5 as part of restitution", the legislature finds that crime
6 victims who miss work due to injuries or impairment suffered as
7 a result of a defendant's offense are currently being denied
8 restitution for those lost earnings. Similarly, based on the
9 *DeMello* analysis and holding, it appears that courts would
10 similarly deny "therapy" expenses.

11 The legislature further finds that the additional language
12 in this Act will clarify that the intent of section 706-646,
13 Hawaii Revised Statutes, is to reimburse crime victims fully for
14 all reasonable and verified losses resulting from a defendant's
15 offense. Nevertheless, as signaled by the use of the phrase,
16 "including but not limited to", the losses enumerated in
17 subsection (3) of section 706-646, Hawaii Revised Statutes, are



1 intended to be illustrative, not exhaustive, for purposes of
2 restitution.

3 SECTION 2. Section 706-646, Hawaii Revised Statutes, is
4 amended by amending subsection (3) to read as follows:

5 "(3) In ordering restitution, the court shall not consider
6 the defendant's financial ability to make restitution in
7 determining the amount of restitution to order. The court,
8 however, shall consider the defendant's financial ability to
9 make restitution for the purpose of establishing the time and
10 manner of payment. The court shall specify the time and manner
11 in which restitution is to be paid[-]; provided that while the
12 defendant is in the custody of the director of public safety,
13 restitution payments shall be as set forth in section 353-22.6.
14 Restitution shall be a dollar amount that is sufficient to
15 reimburse any victim fully for losses, including but not limited
16 to:

17 (a) Full value of stolen or damaged property, as
18 determined by replacement costs of like property, or
19 the actual or estimated cost of repair, if repair is
20 possible;



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- 1 (b) Medical expenses [~~and~~], which include mental health
- 2 treatment, counseling, and therapy;
- 3 (c) Funeral and burial expenses [~~incurred as a result of~~
- 4 ~~the crime.~~]; and
- 5 (d) Lost earnings, which include paid leave."

6 SECTION 3. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun before its effective date.

9 SECTION 4. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2016.

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Report Title:

Crime Victim Restitution; Lost Wages; Mental Health Treatment; Therapy

Description:

Clarifies that reimbursement to crime victims includes lost wages, mental health treatment, counseling, and therapy.

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