

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: February 24, 2016

Time: 1:00 P.M.

Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2104, S.D. 1, Relating to the Collection of Restitution for Crime Victims.

The Department of Taxation (Department) appreciates the intent of S.B. 2104, S.D. 1 and offers the following comments for your consideration.

S.B. 2104, S.D. 1 amends several chapters of the Hawaii Revised Statutes (HRS) to effect the collection of money owed as restitution. The Department provides the following comments only with regard to the tax administration aspects of this bill; the Department defers to other state agencies regarding all other aspects of the bill. S.B. 2104, S.D. 1 amends the definition of "debt" to include an order for restitution, allowing state income tax refunds to be offset by any amount of outstanding restitution. The amendment becomes effective January 7, 2059.

The Department appreciates the intent of this bill to enable the recovery of restitution owed to the State's citizens. However, the Department is in the process of updating its core tax computer system and has concerns about its ability to implement the proposal. The new system is being implemented over the coming years, through a staggered schedule of rollouts. Individual income tax is part of a later phase of the process and will be implemented starting in late 2018.

As drafted, this proposal contains an effective date of January 7, 2059. The Department notes that the individual income tax phase of the Tax System Modernization project is scheduled to be completed by late 2018. If this proposal is passed and becomes effective before late 2018, it would require changes to our existing computer system. Given the substantial effort and staff resources focused on the transition to the new computer system, it would be very difficult and costly for the Department implement the requirements of this measure using the existing computer system. Therefore, the Department believes it would be more prudent to implement this proposal after the individual income tax phase of Tax System Modernization has been completed.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

MARI MCCAIG
Chair

ABELINA SHAW
Commissioner

MARTHA ROSS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON SENATE BILL 2104 SD 1
A BILL FOR AN ACT RELATING TO THE
COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016; 1:00 PM
State Capitol, Conference Room 211

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Senate Committee on Ways and Means,

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support, with proposed amendments, of Senate Bill 2104 SD 1 Relating to the Collection of Restitution for Crime Victims. Senate Bill 2104 SD 1 creates a number of tools to enhance restitution collection: 1) Requires orders of income withholding for the collection of restitution; 2) Allows tax refund intercepts for the collection of restitution; 3) Allows money deposited for bail or bond to be used to satisfy restitution, fines, or fees; 4) Provides crime victims with limited access to Adult Probation records for information relating to court-ordered payments; and 5) Removes the sunset provision of Act 119, Session Laws of Hawai'i 2011.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. In 2003, the Commission began a pilot project to distribute restitution payments collected from inmates to their crime victims. Since the inception of the project, the Commission has opened over 6,700 restitution cases. Through the project, the Commission identified a number of challenges in the collection of restitution.

While there has been significant progress in addressing some of the issues that prevent Hawai'i crime victims from recovering their crime-related losses from court-ordered restitution, problems remain. Some of the institutional barriers are highlighted in a series of articles published in the

Honolulu Star-Advertiser in June 2011. The failure to collect court-ordered restitution while an offender is “on status” (incarcerated, on parole or on probation) was recognized as a long-standing problem that hurts crime victims, and tools such as tax refund intercepts were identified as possible solutions. Through its own project and through discussion with Victim Witness Counselors throughout the State, the Commission found that crime victims have no effective means to collect restitution once the offender is “off status” (no longer incarcerated, on parole or on probation). Once an offender is “off status,” the crime victim must pursue enforcement of the free-standing restitution order through the civil courts. The only tool currently available to crime victims is civil enforcement. Such enforcement is only possible if the offender has significant assets and the crime victim has the money to hire an attorney. The tools set forth in Senate Bill 2104 SD 1 are necessary to increase collection of court-ordered restitution for victims.

ORDERS OF INCOME WITHHOLDING

Orders of Income Withholding are an effective tool for collecting restitution payments from working offenders. The Order of Income Withholding directs an employer to withhold a set amount from an offender’s wages. The amount is set by the court who can adjust the amount based on the offender’s ability to pay. This ensures that the offender pays his restitution. The Order of Income Withholding remains in place until the restitution is paid in full.

This bill mirrors Hawai‘i Revised Statute (HRS) § 571-52 which provides for orders of income withholding for the collection of child support. Orders of income withholding are a well-established means for the collection of child support.

TAX REFUND INTERCEPTS

Likewise, the use of tax refund intercepts, which is used in the collection of child support, will also be an effective means to collect restitution for offenders who are both “on status” and “off status”.

REMOVAL OF THE SUNSET PROVISION IN ACT 119, SESSION LAWS OF HAWAI‘I 2011

In 2011, a sunset provision was added to HRS § 806-73(b) which would re-enact HRS § 706-73(b) in its prior form on July 1, 2016. The Commission supports the housekeeping amendment that will allow the changes that are being made to HRS § 706-73(b) by this bill to continue to be in effect after July 1, 2016.

ACCESS TO ADULT PROBATION RECORDS

The Commission supports providing crime victims with access to Adult Probation records. Crime victims should be able to track restitution payments, outstanding balances, and dates of compliance. Such information is currently unavailable to crime victims.

PROPOSED AMENDMENTS

1. Allow The Commission Access To Adult Probation Records

The Commission requests that HRS § 806-73(4) be amended to allow the Commission to access the Adult Probation Records for the limited purpose of facilitating the monitoring and payment of restitution. This will allow the Commission to fulfill its obligation to efficiently distribute restitution collected from inmates and parolees and to provide the Commission with information necessary to determine compensation to the crime victims.

The Commission disburses restitution collected from inmates and parolees to their crime victims. To do this, the Commission must determine who the restitution is to be paid to, whether a restitution order is the responsibility of one or more person (joint and several liability), and whether the restitution order has been paid in full. The Adult Probation records are a definitive source of the necessary information.

In making awards to crime victims, the Commission, as a payor of last resort, must be able to determine how much a defendant has paid in restitution and for what expenses the restitution was for. Without this information, a crime victim may not receive the correct amount of compensation.

2. Remove The Sunset Provision For HRS §353-22.6

Act 139 Session Laws of Hawai'i 2012, as part of the Justice Reinvestment Initiative, amended HRS § 353-22.6 to increase the amount deducted from inmates for restitution payments from 10% of earnings to 25% of all earnings, deductions, and credits. As the clearinghouse of the restitution payments made by inmates and parolees, the Commission has seen the meaningful increase in restitution payments for crime victims that the amendment to 25% has caused. The sunset provision in Act 139, provided that HRS § 353-22.6 would be repealed on July 1, 2018, but reenacted in the same form as it existed on June 30, 2018.

The sunset provision in Act 139, was amended by Act 67 of Session Laws of Hawai'i 2013 which provided that HRS § 353-22.6 would still be repealed on July 1, 2018, but would be reenacted in the form it existed on June 30, 2012, which would decrease restitution payment for inmates back to 10% of earnings. Unless the sunset provision for HRS § 353-22.6 is amended, on July 1, 2018, crime victims will lose a substantial amount of restitution payments from inmates and parolees.

3. Allow Disclosure Of Defendant's Address For Purposes Of Civil Enforcement Of Restitution

Victims who are seeking to enforce their restitution orders civilly must serve the defendant with legal documents. Unless the victim has the defendant's address, the victim would not be able to pursue the defendant civilly. The following proposed amendment to HRS § 706-647 would allow a victim to get the defendant's address from the defendant's parole or probation officer:

§706-647 Civil enforcement. (1) A certified or exemplified copy of an order of any court of this State for payment of a fine or restitution pursuant to section 706-605 may be filed in the office of the clerk of an appropriate court of this State as a special proceeding without the assessment of a filing fee or surcharge. The order, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, shall be enforceable in the same manner as a civil judgment.

(2) In the event the victim has received or applied for reimbursement from any governmental entity, the victim named in the order or the victim's attorney shall also mail notice of the filing to the governmental entity providing reimbursement and shall file proof of mailing with the clerk.

(3) Fees for docketing, transcription, or other enforcement proceedings shall be as provided by law for judgments of a court of this State.

(4) Upon the initiation of an enforcement proceeding and upon the written request of the victim, the defendant's probation officer or parole office shall provide the victim with the defendant's last known address. The use of the address shall be restricted to service of legal documents.

Thank you for providing the Commission with an opportunity to testify in support of Senate Bill 2104 SD 1 with proposed amendments.



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, 2/24/16 at 1:00 p.m.
State Capitol, Conference Room 211

By

Sidney H. Nakamoto
Probation Administrator, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2104, S. D. 1, Relating to the Collection of Restitution for Crime Victims.

Purpose: 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. Appropriates funds. Takes effect on 1/7/2019.

Judiciary's Position:

The Judiciary supports the underlying intent of this bill which is to improve the collection of restitution for crime victims. However, the Judiciary has concerns that this bill could have an adverse impact on Judiciary operations and respectfully offers the following comments.



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Relating to the Collection of Restitution for Crime Victims.
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The main purpose of this bill is to help ensure that offenders satisfy their restitution obligations to their victims by requiring employers to withhold income for payment of restitution. While the Judiciary believes that the intent for offenders to comply with their restitution payments is important, there are several challenges and concerns regarding implementation of the provisions in this bill.

It appears that this bill applies to all offenders who have received a judgment/order of restitution obligation. However, there are many cases where only restitution is ordered as a “straight sentence”, and the defendant does not receive direct probation supervision. In these situations, it will be difficult for the court to obtain the necessary information as to the defendant’s current and/or future employer for withholding purposes. Further, trying to monitor the compliance of defendants not on probation will be difficult unless additional court hearings are held resulting in more court time being devoted to compliance monitoring.

Senate Bill 2104, S.D. 1 contains stringent deadlines by which the employer must remit the amount withheld to the Clerk of the Court within five business days. The fiscal office then has 10 business days after receipt of the amounts withheld to disburse the amount to the victim. Currently, the Judiciary’s Fiscal Office only accepts cash, a cashier’s check, or a money order for payment. If employers are allowed to pay with company checks, this form of payment needs to clear the employers’ bank account before the Judiciary can issue a restitution payment. The bill does not allow adequate time for a check to clear; specifically, checks processed in-state take 10 days to clear and out-of-state checks take 21 days to clear. In the event an employer has insufficient funds in its account, the Judiciary would sustain the loss.

Senate Bill 2104, S.D. 1 requires the defendant to report any changes in employment to the Clerk of the Court and places the responsibility on the Clerk to notify the defendant’s new employer of its obligation to withhold restitution payment. Not only is this responsibility not aligned with the duties of the Clerk, but monitoring defendants will be difficult, particularly for defendants who are unsupervised and fail to notify the Clerk of his/her change in employment. Further, the bill does not address what happens when a defendant fails to report a change in employment, nor if clerks cannot verify a defendant’s change in employment or failure to report a change. Also, the purported assignment is contrary to the victim’s right to pursue civil collection of the free standing order of restitution via assignment to a collection agency, if desired, pursuant to HRS 706-644, 706-646, and 706-647.

The mandatory minimum of \$30 per month in restitution payment plus the \$2 per month administrative fee may be discouraging for some defendants who are trying to make ends meet on limited income. Further, the bill has no flexibility to allow the minimum amount to be adjusted by the court.

The requirement for employers to submit a cashier check or a money order may cost more than the \$2 monthly administrative fee that employers are able to retain, which may result in



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employers resisting compliance. This may also discourage employers from hiring or retaining employees that have Income Withholding Orders, especially since such an Order may alert an employer of the employee's involvement with the Courts. This would hinder the defendant's effort in rehabilitation and accountability, and would impede his/her ability to pay restitution.

This bill allows the victim to access the adult probation records to determine the defendant's compliance with court-ordered payments; the amounts, dates, and payee of payments made by the defendant; and the balance unpaid. Accommodating these requests will increase the already significant workload of the probation staff.

If Senate Bill No. 2104, S.D. 1 is enacted, the Judiciary will face a significant increase in the court's workload. In order to implement procedures to accommodate the provisions in this bill, it is estimated that it would cost about \$652,000 annually for the existing population that is supervised by probation. The estimated cost includes the projected staffing requirements needed statewide: two Social Worker (SW) IVs, two Judicial Clerk IIIs, and one Accountant I for Oahu; one SW IV, one Judicial Clerk III, and one Accountant I for Maui; two SW IVs, two Judicial Clerk IIIs, and one Accountant I for Hawai'i; and one SW IV, one Judicial Clerk III, and one Accountant I for Kaua'i. Collectively, this is six SW IVs, six Judicial Clerk IIIs, and four Accountants to implement the program statewide.

One-time equipment costs needed to support the staffing are estimated at about \$43,000.

The Judiciary respectfully requests that any appropriation to implement the requirements of Senate Bill No. 2104, S.D. 1 be in addition to its FY 2016-2017 supplemental budget request contained in Senate Bill No. 2102 and House Bill No. 1649, H.D. 1.

Thank you for the opportunity to testify on Senate Bill No. 2104, S.D. 1.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2104, SENATE DRAFT 1 (SSCR 2367)
RELATING TO THE COLLECTION OF RESTITUTION FOR CRIME VICTIMS

By

Nolan P. Espinda, Director

Senate Committee on Ways and Means
Senator Jill Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016; 1:00 p.m.
State Capitol, Conference Room 211

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of Senate Bill (SB) 2104, Senate Draft (SD) 1 (SSCR 2367), but is concerned that offenders under the Department's jurisdiction may be twice subjected to restitution collection if this measure is enacted.

Presently, HRS 353-22.6 Non-Furlough and HRS 353-17 Furlough direct restitution collection from offenders under our jurisdiction. As written, this bill may force PSD to unfairly collect a second round of victim restitution from offenders each month until their Court Order is completed. An amendment to SB 2104, SD1 exempting offenders under PSD's jurisdiction would address the concern of double collection.

It would be well to note that the Department's Justice Reinvestment Initiative Office, working with the Crime Victims Compensation Commission since April 2013, has made good progress in increasing the accuracy and efficiency of victim restitution collection, ensuring that offenders who are supervised by and/or housed under PSD's jurisdiction are making their court ordered payments. We fear that injecting another victim restitution mechanism into our ongoing processes would be disruptive and would hamper procedures that are now working well.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i**

February 24, 2016

RE: S.B. 2104, S.D. 1; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2104, S.D. 1. The original bill S.B. 2104 was part of the Department's 2016 legislative package.

The purpose of this bill is to support, encourage and facilitate payment of restitution to victims of crime. While restitution is ordered by courts in many criminal cases today, it is not strictly enforced, and victims are often left to "fend for themselves" with their only recourse being private lawsuit against the defendant. In this sense, the current system greatly decreases the chances that victims will ever receive the restitution payments promised to them, and further demoralizes or "re-victimizes" these victims of crime, discounting the very benefits that restitution is intended to provide.

To more effectively facilitate and enforce payment of restitution by offenders, S.B. 2104, S.D. 1, provides for the following methods (with additional comments in parentheses):

1. Creates standards and procedures for income-withholding, similar to those used for outstanding child support payments (child support withholdings would receive first priority, to comply with federal regulations);
2. Includes unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support payments or judgments owed to the State);
3. Removes a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect the ability to appeal and/or reverse a conviction);

4. Requires that any money deposited by way of bail or bond be applied to any restitution, fines, or fees ordered by the court, before any balance is returned to a defendant;
5. Extends victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders civilly (though it is our understanding that the Judiciary has been working to coordinate alternative methods of providing this information to the appropriate agencies); and
6. Provides additional funding to the Judiciary, to facilitate income-withholding once ordered by the courts (it is our understanding that the Judiciary anticipates an additional expense of **\$651,744** to implement this function statewide, for all supervised offenders).

The language contained in S.B. 2104, S.D. 1, is the result of the diligent collaboration between our Department, other county prosecutors, the Judiciary, Crime Victim Compensation Commission, and other entities in 2013 (S.B. 873), as well as renewed discussions initiated immediately before the 2016 legislative session. We truly appreciate that it will indeed be a group effort—including new staff positions for the Judiciary—to see these provisions come to fruition for the benefit of crime victims, and we are more than willing to continue our work and discussions with these entities, and any others, to ensure this system is workable for everyone involved. In particular, we understand that the Judiciary may need additional processing time for checks, the Department of Public Safety would like an express exemption for inmates, and the Department of Taxation would like additional time to adjust their system to accommodate these amendments. While we understand that these are policy matters for the Legislature's consideration, we are more than willing to work with these accommodations and/or clarifications as needed. Nevertheless, we strongly believe that this bill, as a whole, presents a comprehensive and effective approach to restitution collection. Not only would this directly address criticisms of the current process as providing only "hollow promises" to victims, but more importantly, this would truly transform Hawai'i's restitution process into an effective tool for victim restoration, offender rehabilitation, and public faith.

Victim restitution is perhaps the *only* core victims' right that addresses such a wide range of the--often devastating--effects of crime, including physical, emotional, psychological, financial *and* social impacts. As stated by the House Judiciary Committee, upon passing the language that later became Section 706-605, Hawaii Revised Statutes:

Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play...[B]y imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed.

House Stand. Comm. Rep. No. 425, in 1975 House Journal.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 2104, S.D. 1. Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: kauaihale@gmail.com
Subject: Submitted testimony for SB2104 on Feb 24, 2016 13:00PM
Date: Monday, February 22, 2016 3:04:31 PM

SB2104

Submitted on: 2/22/2016

Testimony for WAM on Feb 24, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Louisa Wooton	Individual	Support	No

Comments: As victims of a crime that requires restitution, we have seen that the convicted felons do not regularly send in restitution. We were told by one of the counselors at the DA office that many victims receive no payments at all. This is not pono. This is the second time our family suffered a property damage incident. The first time, because the perpetrators were under-age when they vandalized our own teenager's car, they were only required to make restitution until they were eighteen. Thousands in damage, pennies in restitution. THEY GET OFF THINKING CRIME DOES PAY!!! STRONG SUPPORT for this legislation

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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