

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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TESTIMONY ON SENATE BILL 2104 SD 2  
A BILL FOR AN ACT RELATING TO THE  
COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, April 5, 2016; 2:31 PM  
State Capitol, Conference Room 308

Chair Luke, Vice Chair Nishimoto, and Members of the House Committee on Finance,

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support, with proposed amendment, of Senate Bill 2104 SD 2 Relating to the Collection of Restitution for Crime Victims. Senate Bill 2104 SD 2 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; 5) Removes the sunset provision of Act 119, Session Laws of Hawai'i 2011; and 6) Extends the sunset provision for Hawai'i Revised Statutes § 353-22.6.

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 2 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 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 HAWAII 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.

EXTENDING THE SUNSET PROVISION FOR HRS §353-22.6 AND PROPOSED  
AMENDMENT TO REMOVE THE SUNSET PROVISION

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.

This bill's stated intent is to extend the sunset provision for two years. Crime victims deserve to continue to receive meaningful restitution beyond July 1, 2020. The Commission requests that Section 6 of this bill be amended to remove the sunset provision for HRS § 353-22.6.

Thank you for providing the Commission with an opportunity to testify in support of Senate Bill 2104 SD 2 with proposed amendment.



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Finance**

Representative Sylvia J. Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Tuesday, 4/5/16 at 2:31 p.m.

State Capitol, Conference Room 308

By

Sidney H. Nakamoto

Probation Administrator, First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 2104, S. D. 2, 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. 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.

**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.



Senate Bill No. 2104, S.D. 2, 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.

Senate Bill 2104, S.D. 2 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 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, a money order, or commercial check may cost more than the \$2 monthly administrative fee that employers are able to retain, which may result in 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 and fiscal office.

If Senate Bill No. 2104, S.D. 2 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



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Accountant I for Kauaʻi. Collectively, this amounts to 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. 2 be in addition to its FY 2016-2017 supplemental budget request contained in Senate Bill No. 2102, S.D. 1, H.D. 1.

Thank you for the opportunity to testify on Senate Bill No. 2104, S.D. 2.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR  
HOUSE COMMITTEE ON FINANCE  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai'i**

April 5, 2016

**RE: S.B. 2104, S.D. 2; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.**

Chair Luke, Vice Chair Nishimoto, and members of the House Committee on Finance, 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. 2, and suggests one additional revision. 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 a 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" 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. 2, 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—for all supervised offenders (but not for incarcerated or work furlough individuals, who are already subject to automatic deductions; 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. 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;

4. Exempts victims from the search and copy fee otherwise imposed by the court cashier's office, to access information regarding the status of restitution payments;
5. Extends for another 2 years, the increase in percentage deducted from incarcerated or work furlough individuals, for any outstanding victim restitution; and
6. Provides additional funding to the Judiciary, to facilitate income-withholding once ordered by the courts (to implement Section 1 of this bill statewide, for all supervised offenders, the Judiciary anticipates an additional expense of **\$651,744** , plus a one-time equipment cost of **\$43,000**).

The language contained in S.B. 2104, S.D. 2, is the result of 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 before and during the 2016 legislative session. We are still open to any further revisions or accommodations necessary to make these much-needed changes a reality. In particular, we are amenable to revising the definition for "employer" (page 6, lines 11-13) to clearly exempt inmates "under the jurisdiction of the Department of Public Safety" rather than simply "within the State"; this would include inmates from Hawai'i who are currently being housed out of State.

As a whole, we strongly believe that S.B. 2104, S.D. 2, presents a comprehensive and effective approach to restitution collection. Not only would this directly address criticisms of the current process 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.*

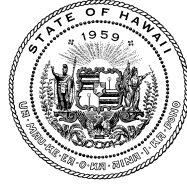
House Stand. Comm. Rep. No. 425, in 1975 House Journal.

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. 2. Thank you for the opportunity to testify on this matter.



DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

**LATE**

To: The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance

Date: Tuesday, April 5, 2016  
Time: 2:31 P.M.  
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 2104, S.D. 2, Relating to the Collection of Restitution for Crime Victims.

The Department of Taxation (Department) appreciates the intent of S.B. 2104, S.D. 2 and offers the following comments for your consideration.

S.B. 2104, S.D. 2, 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. 2, 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. S.D. 2 has a defective effective date of July 1, 2076.

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 in late 2018.

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 to implement the requirements of this measure using the existing computer system. Therefore, the Department believes it would be 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



NOLAN P. ESPINDA  
DIRECTOR

Cathy Ross  
Deputy Director  
Administration

Jodie F. Maesaka-Hirata  
Deputy Director  
Corrections

Shawn H. Tsuha  
Deputy Director  
Law Enforcement

**LATE**

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

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 2104, SD2  
RELATING TO THE COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

By

Nolan P. Espinda, Director

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, April 5, 2016; 2:31 p.m.  
State Capitol, Conference Room 308

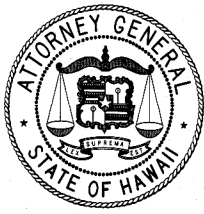
Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Department of Public Safety (PSD) **supports** Senate Bill (SB) 2104, Senate Draft (SD) 2, Relating to the Collection of Restitution For Crime Victims.

PSD's Justice Reinvestment Initiative Office and staff of the Crime Victims Compensation Commission have made great strides forward in processing Victim Restitution since December 2014, ensuring that offenders who are supervised by and/or housed under the Department's jurisdiction are making their Court Ordered payments.

SB 2014, SD 2 will strengthen the legal structure and impetus to continue improving and solidifying these processes, so that offenders, including those who are employed upon parole and/or maxed out even after long prison sentences continue to make their restitution payments.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2104, S.D. 2, RELATING TO THE COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**LATE**

**DATE:** Tuesday, April 5, 2016

**TIME:** 2:31 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General (the "Department") supports this bill and requests an amendment.

The purpose of this bill is to create standards and procedures for income-withholding for purposes of enforcing restitution orders; amend the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement; provide priority of income withholding orders; extend victims' access to adult probation records to include access to payment compliance records; require that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case; make permanent Act 119, Session Laws of Hawaii (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; and extend for an additional two years the increase in percentage deducted from inmates' earnings for restitution payments pursuant to Act 139, SLH 2012.

On page 2, at lines 1-6, the bill provides that an income withholding order shall be effective immediately after service upon an employer of a defendant. It further provides that service may be effected only by the prosecuting attorney of the county where the offense occurred. But the Department also prosecutes cases that result in restitution orders by the court. The Department, therefore, should also have the ability to effect service of income withholding orders. Accordingly, the Department respectfully requests that on page 2, at line 4, the bill be

amended to provide that service of the income withholding orders may be effected only by the Attorney General and by the prosecuting attorney of the county where the offense occurred.

The Department respectfully requests the passage of this bill with the proposed amendment.