The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, 2/11/16 at 9:00 a.m.
State Capitol, Conference Room 016

By

Sidney H. Nakamoto
Probation Administrator, First Circuit

Bill No. and Title: Senate Bill No. 2104, 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 victim's 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 an unspecified appropriation to the Judiciary for the purpose of enhancing restitution collection.

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.

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 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 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 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 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 be in addition to its FY 2016-2017 supplemental budget request contained in Senate Bill No. 2102 and House Bill No. 1649.

Thank you for the opportunity to testify on Senate Bill No. 2104.

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

ON THE FOLLOWING MEASURE:
S.B. NO. 2104, RELATING TO THE COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 11, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement Agency

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General wishes to provide comments on this bill.

The provisions of this bill seek to address court-ordered restitution and the civil enforcement of such orders.

Currently, the State of Hawaii is in compliance with section 466(b)(7) of the Social Security Act (42 U.S.C. §666(b)(7)), which specifically requires that withholding for support collection must be given priority over any other legal process under state law, against the same income. The new subsection 4(a) on page 3, lines 9 through 12, does give orders made pursuant to chapters 571, 576B, 576D, and 576E, Hawaii Revised Statutes (HRS), priority over income withholding for court-ordered restitution. However, this measure does not address orders made pursuant to chapter 580 (divorce and separation proceedings) and chapter 584 (paternity), HRS.

We respectfully request that the Committee amend subsection 4(a) at page 3, line 12, to also include orders made pursuant to chapters 580 and 584, HRS, as having priority over income withholding orders for court-ordered restitution. This amendment will ensure that the State will continue to be in compliance with existing federal law so that federal welfare funding and federal funding of the child support enforcement programs are not jeopardized. The new subsection 4(a) should be amended to read, "(a) Have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, except for any order made pursuant to chapters 571, 576B, 576D, 576E, 580, and 584; and".

We respectfully request that the Committee make the above-proposed amendment before passing this bill.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

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To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: February 11, 2016
Time: 9:00 A.M.
Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

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

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

S.B. 2104 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 provisions in this bill. S.B. 2104 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 June 30, 2016.

The Department appreciates the intent of this bill to enable the recovery of restitution owed to the State's citizens, however, the Department has concerns about its ability to implement the proposal. The Department is in the process of updating its core tax computer system. 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 2017.

As drafted, this proposal would require system changes to our existing computer system. Given the substantial effort and staff resources focused on the transition to the new Tax System Modernization (TSM) project, it would be very difficult and costly for the Department to modify the current computer system. The Department also notes that the income tax phase of TSM is scheduled to be completed by late 2018. If the Legislature were to adopt this measure, the Department believes it would be more prudent to implement this proposal utilizing the new computer system.

Thank you for the opportunity to provide comments.

STATE OF HAWAI`I
CRIME VICTIM COMPENSATION COMMISSION
1136 Union Plaza, Suite 600
Honolulu, Hawai`i 96813
Telephone: 808 587-1143
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TESTIMONY ON SENATE BILL 2104
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 Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, February 11, 2016; 9:00 AM
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor,

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support, with amendments, of Senate Bill 2104 Relating to the Collection of Restitution for Crime Victims. Senate Bill 2104 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 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.

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.

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 decease 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 collecting 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 with amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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ARMINA A. CHING
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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

February 11, 2016

RE: S.B. 2104; 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. This bill is 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" via private civil action against a 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 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).

After working with a number of other agencies on these measures, the Department believes that S.B. 2104 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. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy

Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN SUPPORT
SB 2104 – RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Justin F. Kollar, Prosecuting Attorney
County of Kauaʻi

Senate Committee on Judiciary and Labor
February 11, 2016, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kauaʻi, Office of the Prosecuting Attorney, SUPPORTS SB 2104 – Relating to Collection of Restitution for Crime Victims.

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" via private civil action against a 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, SB 2104 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).

Our Office believes that SB 2104 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:

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

Accordingly, we SUPPORT SB 2104. We request that your Committee PASS the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2104 on Feb 11, 2016 09:00AM*
Date: Friday, February 05, 2016 3:38:44 PM

SB2104
Submitted on: 2/5/2016
Testimony for JDL on Feb 11, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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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From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2104 on Feb 11, 2016 09:00AM*
Date: Thursday, February 04, 2016 4:09:15 PM

SB2104
Submitted on: 2/4/2016
Testimony for JDL on Feb 11, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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