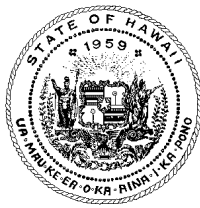


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GOVERNOR



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COMMENTS ON SENATE BILL 230  
RELATING TO RESTITUTION FOR VICTIMS OF CRIME

Nolan P. Espinda, Director  
Department of Public Safety

Senate Committee on Ways and Means  
Senator Jill N. Tokuda, Chair  
Senator Ronald D. Kouchi, Vice Chair

Friday, February 27, 2015, 9:00 AM  
State Capitol, Conference Room 211

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Department of Public Safety (PSD) would like to **comment** on Senate Bill (SB) 230, which clarifies that lost earnings and mental health treatment, therapy, and counseling are expenses that can be ordered for restitution to crime victims. The PSD supports having victims of crimes being made whole monetarily, as related to lost earnings and related medical expenses, including mental health treatment, therapy, and counseling.

Thank you for the opportunity to comment on this bill.

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

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**TESTIMONY IN SUPPORT OF  
SB230 – RELATING TO RESTITUTION FOR VICTIMS OF CRIME**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

Senate Committee on Ways and Means  
February 27, 2015, 9:00 a.m., Conference Room 211

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, submits this testimony in **STRONG SUPPORT** of SB230 – Relating to Restitution for Victims of Crime. This Bill clarifies that reimbursement to crime victims includes lost wages and mental health treatment, counseling and therapy.

Historically, such types of expenses were considered as eligible for restitution; however, a 2013 decision of the Intermediate Court of Appeals held that because Section 706-646 of the Hawai'i Revised Statutes did not explicitly provide for these types of restitution, it was not legal to order them. Many victims of crimes suffer injuries that result in lost wages and require them to seek mental health treatment, counseling and therapy. There exists no compelling public policy reason to deny crime victims compensation for these expenses; quite the contrary. Further, there is no reason to allow violent offenders to benefit from the existing loophole in the statute.

Accordingly, we are in **STRONG SUPPORT** of SB230. We ask that your Committee **PASS** the Bill.

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

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**THE HONORABLE JILL N. TOKUDA, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Eighth State Legislature  
Regular Session of 2015  
State of Hawai`i**

February 27, 2015

**RE: S.B. 230; RELATING TO RESTITUTION FOR VICTIMS OF CRIME.**

Chair Tokuda, Vice-Chair Kouchi and members of the Senate Committees on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 230.

The purpose of Senate Bill 230 is to amend H.R.S. Section 706-646 to clarify that the Legislature intends that restitution ordered by a criminal court includes under the phrase "including but not limited to" includes both wages lost as a result of the crime as well as the "mental health treatment, counseling, and therapy counseling" required to address the psychological and emotional injuries inflicted by the crime.

It is well established that crime victimization causes substantial injuries of many types. Crime can have powerful, life changing repercussions for the health, well-being and financial stability of victims. Mental illness, suicide, and drug and alcohol abuse can result from untreated trauma caused by crime. The trauma from victimization can result in a range of reactions, from an immediate crisis response to long term psychological and emotional consequences. Research suggests that victims of violent crime are at greater risk of developing Posttraumatic Stress Disorder (PTSD) than victims of non-criminal traumatic events such as natural disaster. In response to these stark realities we believe that it critically important that Legislature re-affirm with great clarity that it intends that mental health treatment, counseling, and therapy are among the multitude of crime related expenses that the Legislature intends that Section 706-646 cover.

About 1.4 million violent and non-violent crime victimizations led to missed work days in 2002. Of the nearly 400,000 violent crimes that resulted in lost work days, nine percent involved between six and 10 missed days; 14 percent involved 11 or more days; and over half involved an

absence of one to five days. While more non-violent crimes resulted in missed work days, the time lost tended to be shorter. Among non-violent crimes resulting in missed work days, 46 percent involved an absence of one to five days, and 44 percent involved missing less than one day. According to a recent study, victims of intimate partner violence, including rape, physical assault, and stalking, experience substantial lost time in employment and household work. Annually, domestic violence victims miss nearly eight million days of paid work because of the violence in their lives—equal to 30,000 fulltime jobs. This violence also results in an annual loss of over five million days in household work. In the face of these staggering numbers it should not be the victim, their employers, or taxpayers that should be responsible for recovering the substantial financial damage caused by crime. It is the criminal that has caused these losses and it is the criminal who should bear the responsibility of repaying them.

Our restitution statute means very little if it fails to address this basic and significant cost. After the Intermediate Court of Appeals, in *State v. DeMello*, struck down the awarding of lost earnings as part of a restitution order due to lack of an explicit provision in the statute permitting restitution for that purpose, it is incumbent upon the Legislature to clarify this issue by passing the measure before you today.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 230. Thank you for the opportunity to testify on this matter.



# THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director  
Adriana Ramelli

DATE: February 27, 2015

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TO: The Honorable Jill Tokuda, Chair  
The Honorable Ronald Kouchi, Vice Chair  
Senate Committee on Ways and Means

FROM: Adriana Ramelli, Executive Director  
The Sex Abuse Treatment Center

RE: Testimony in Support of S.B. 230  
Relating to Restitution for Victims of Crime

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in support of Senate Bill 230 (S.B. 230).

S.B. 230 specifies that crime victims may seek restitution for reasonable and verifiable costs of lost wages and mental health treatment, counseling, and therapy (collectively "mental health services," or "MHS"). S.B. 230 also includes a findings section that clarifies an understanding that the list of example items for which crime victims may seek restitution is illustrative, but non-exhaustive.

A recent Hawai'i appeals court determination, *State v. Demello*, denied restitution to a crime victim for lost wages, on the basis that HRS §706-646 did not explicitly include lost wages in a list of specific costs resulting from crime for which restitution could be sought. This finding was in spite of plain language in the statute stating that reasonable and verifiable costs for which restitution could be sought "include[ed] but [were] not limited to" the specifically listed items, indicating that the list was non-exhaustive. To reach this conclusion, the court relied on legislative reports from 1998 indicating a belief, at the time, that costs for wage loss and MHS were immeasurable and could not be determined with specificity. This suggested that, in addition to lost wages, the court would also deny restitution coverage for MHS costs.

The statement that the costs of MHS are immeasurable and cannot be determined with specificity is not consistent with a more current, accurate understanding of these services. Allowing the *Demello* court's determination to stand as the law of the land in Hawai'i would deny many victims of serious crimes, including sexual assault, the means to pay for MHS that are appropriate and necessary to their recovery. MHS are comparable to other medical services with respect to determinations of reasonable and verifiable costs. As is the case with other medical treatments and therapies, MHS are delivered by licensed professionals who undergo rigorous courses of education and training, with methodologies that are grounded in evidence-based science. Courses of treatment, expected outcomes, and evaluation of progress are

based on clinical observation and professional judgment. Moreover, documentation standards required by state and federal laws, and the professional organizations of mental health care providers, are as strict as those applicable to other medical professionals.

It should also be noted that the medical payor industry has long-recognized that MHS are quantifiable and can be valued on a fee-for-service basis. For both private and government insurance plan billing purposes, MHS are subject to the same code-based billing system and pricing considerations as other medical services. Moreover, management of claims for payment of MHS occurs through comparable third-party liability, service audit, and utilization review processes as other medical services.

Finally, the everyday experiences of other US jurisdictions support that MHS costs can be easily determined to be reasonable and verifiable, and therefore subject to coverage by victim restitution. For example, the federal government's Restitution Process for Victims of Federal Crimes allows crime victims the opportunity to provide proofs of MHS costs resulting from federal offenses to trial judges for the purpose of determining restitution amounts. Likewise, various states with restitution statutes that are similar to Hawai'i's, including Washington, California, and Utah, also mandate that victims receive restitution for their MHS costs.

By recognizing that the costs of mental health services that result from crime are reasonable and verifiable, and therefore can be covered by judge-ordered restitution in the State of Hawai'i, your support of S.B. 230 ensures that many survivors of serious crimes in Hawai'i will be able to afford these critical services that needed for their healing and recovery.

RE: SB230 RELATING TO RESTITUTION FOR VICTIMS OF CRIME

Senate Bill 230 “clarifies that reimbursement to crime victims includes lost wages and mental health treatment, counseling and therapy.” The impact caused by the offender is emotionally, physically, and financially draining on the victim and their families, and but for the criminal acts of the defendant, the victim would not have suffered these types of losses.

For all of the foregoing reasons, I respectfully ask for your support on Senate Bill 230 to help with the burden caused by the offender and bring some peace to the victim. Thank you for your time and consideration