
A BILL FOR AN ACT

RELATING TO VICTIM RESTITUTION.

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

1 SECTION 1. The legislature finds that Act 139, Session
2 Laws of Hawaii 2012, among other reforms, amended section 353-
3 22.6, Hawaii Revised Statutes, to expedite the payment of court-
4 ordered restitution to victims of crimes. The Act made use of
5 the fact that Hawaii inmates receive moneys in their individual
6 inmate accounts and the department of public safety is
7 responsible for the maintenance of those accounts. More
8 specifically, if an inmate owed unpaid restitution to a victim,
9 the Act required the director of public safety, on behalf of the
10 victim, to deduct twenty-five per cent of the total of all
11 moneys earned, new deposits, and credits to the inmate's
12 individual account.

13 The legislature also finds that Act 231, Session Laws of
14 Hawaii 2016, among other reforms, further amended section 353-
15 22.6, Hawaii Revised Statutes, to clarify that the rate of
16 deduction is required to be twenty-five per cent,
17 notwithstanding any contrary law or order that established a



1 rate of deduction less than twenty-five per cent. The Act also
2 amended section 706-646, Hawaii Revised Statutes, to clarify
3 that while an inmate is in the custody of the department of
4 public safety, restitution shall be collected pursuant to
5 chapter 353, Hawaii Revised Statutes, and any court-ordered
6 payment schedule shall be suspended.

7 The legislature further finds however, that some courts
8 have interpreted the twenty-five percent rate of deduction under
9 section 353-22.6, Hawaii Revised Statutes, as a "ceiling" or
10 maximum rate as opposed to a mandatory rate. Although the
11 amendments made by Act 231, Session Laws of Hawaii 2016, firmly
12 establish a rate of deduction of twenty-five per cent when an
13 inmate is in the custody of the department of public safety,
14 even if that rate is not stated in the court order, a court
15 order that states a rate of deduction lower than twenty-five
16 percent can be a source of confusion for victims and inmates.

17 The legislature believes that, because victims often suffer
18 financial harm as a result of the crimes of perpetrators,
19 payments of restitution to victims should be expedited,
20 regardless of whether a criminal offender is in the custody of
21 the department of public safety. The legislature therefore



1 finds that every offender who owes restitution to a victim
2 should be ordered to repay the victim at a rate of twenty-five
3 per cent of the offender's income until restitution has been
4 paid in full.

5 Accordingly, the purpose of this Act is to expedite the
6 payment of restitution to victims by requiring restitution
7 orders to:

8 (1) Require a defendant to submit to a payment schedule
9 that requires the defendant, at minimum, to render
10 payment no less than once every month, in an amount
11 that is not less than twenty-five per cent of the
12 defendant's gross monthly income from the previous
13 month, until the victim has been reimbursed for the
14 full amount of restitution ordered; and

15 (2) State specifically that during any time a defendant
16 who owes a victim restitution is in the custody of the
17 department of public safety, restitution shall be
18 collected pursuant to chapter 353, Hawaii Revised
19 Statutes, which includes the use of deductions from
20 the defendant's account at the rate and in the manner
21 established under section 353-22.6, Hawaii Revised



1 Statutes, and any court-ordered payment schedule shall
2 be suspended.

3 SECTION 2. Section 706-605, Hawaii Revised Statutes, is
4 amended by amending subsection (7) to read as follows:

5 "(7) The court shall order the defendant to make
6 restitution for losses as provided in section 706-646. In
7 ordering restitution, the court shall not consider the
8 defendant's financial ability to make restitution in determining
9 the amount of restitution to order. [~~The court, however, shall
10 consider the defendant's financial ability to make restitution
11 for the purpose of establishing the time and manner of
12 payment.~~]"

13 SECTION 3. Section 706-646, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§706-646 Victim restitution.** (1) As used in this
16 section, "victim" includes any of the following:

17 (a) The direct victim of a crime including a business
18 entity, trust, or governmental entity;

19 (b) If the victim dies as a result of the crime, a
20 surviving relative of the victim as defined in chapter
21 351;



1 (c) A governmental entity that has reimbursed the victim
2 for losses arising as a result of the crime or paid
3 for medical care provided to the victim as a result of
4 the crime; or

5 (d) Any duly incorporated humane society or duly
6 incorporated society for the prevention of cruelty to
7 animals, contracted with the county or State to
8 enforce animal-related statutes or ordinances, that
9 impounds, holds, or receives custody of a pet animal
10 pursuant to section 711-1109.1, 711-1109.2, or
11 711-1110.5; provided that this section does not apply
12 to costs that have already been contracted and
13 provided for by the counties or State.

14 (2) The court shall order the defendant to make
15 restitution for reasonable and verified losses suffered by the
16 victim or victims as a result of the defendant's offense when
17 requested by the victim. The court shall order restitution to
18 be paid to the crime victim compensation commission if the
19 victim has been given an award for compensation under chapter
20 351. If the court orders payment of a fine in addition to
21 restitution or a compensation fee, or both, the payment of



1 restitution and compensation fee shall be made pursuant to
2 section 706-651.

3 (3) In ordering restitution, the court shall not consider
4 the defendant's financial ability to make restitution in
5 determining the amount of restitution to order. [~~The court,
6 however, shall consider the defendant's financial ability to
7 make restitution for the purpose of establishing the time and
8 manner of payment. The court shall specify the time and manner
9 in which restitution is to be paid. While the defendant is in
10 the custody of the department of public safety, restitution
11 shall be collected pursuant to chapter 353 and any court ordered
12 payment schedule shall be suspended.~~] Restitution shall be a
13 dollar amount that is sufficient to reimburse any victim fully
14 for losses, including but not limited to:

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

19 (b) Medical expenses; and

20 (c) Funeral and burial expenses incurred as a result of
21 the crime.



1 (4) The court shall order a payment schedule regarding the
2 restitution amount ordered pursuant to subsection (3). The
3 court's order, at minimum, shall require the defendant to render
4 payment no less than once every month, in an amount that is not
5 less than twenty-five per cent of the defendant's gross monthly
6 income from the previous month, until the victim has been
7 reimbursed for the full amount of restitution ordered; provided
8 that the order shall also set forth the requirements of
9 subsection (5).

10 (5) During any time the defendant is in the custody of the
11 department of public safety:

12 (a) Restitution shall be collected pursuant to chapter
13 353, which includes the use of deductions from the
14 defendant's account at the rate and in the manner
15 established under section 353-22.6; and

16 (b) Any court-ordered payment schedule shall be suspended.

17 ~~[(4)]~~ (6) The restitution ordered shall not affect the
18 right of a victim to recover under section 351-33 or in any
19 manner provided by law; provided that any amount of restitution
20 actually recovered by the victim under this section shall be
21 deducted from any award under section 351-33."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2017.
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H.B. NO. 1561

Report Title:

Victim Restitution; Collection

Description:

Clarifies that restitution collections that are made pursuant to chapter 353, Hawaii Revised Statutes, when a criminal defendant is in the custody of the department of public safety include deductions from the defendant's account at the rate and in the manner established pursuant to section 353-22.6, Hawaii Revised Statutes. Requires a court-ordered restitution payment schedule to (1) set forth the foregoing requirements and (2) require, at minimum, monthly payments of 25% of the defendant's gross monthly income until restitution has been paid in full.

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