
A BILL FOR AN ACT

RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to part III to be appropriately
3 designated and to read as follows:

4 "§706- Income withholding for payment of restitution.

5 (1) Whenever a person is sentenced to supervision under adult
6 client services and a judgment or order is entered establishing,
7 modifying, or enforcing restitution, the court shall allow
8 ninety days for a defendant to make payment in full. If the
9 judgment or order is not satisfied after ninety days, the court
10 shall issue an income withholding order that shall operate as an
11 assignment, to the clerk of the court in which the order is
12 entered, of amounts that are due at times that may be specified
13 in the judgment or order, but no less than \$30 per month, from
14 the defendant's income that is due or to become due in the
15 future from the defendant's employer or successor employers. A
16 copy of the income withholding order shall be filed in the
17 office of the clerk of the court in which the income withholding
18 order was issued.



1 (2) The income withholding order issued pursuant to
2 subsection (1) shall be effective immediately after service upon
3 an employer of a copy of the income withholding order, which
4 service may be effected only by the prosecuting attorney of the
5 county where the offense occurred by regular mail, personal
6 delivery, or transmission through electronic means. Thereafter,
7 for each pay period, the employer shall withhold from the income
8 that is due to the defendant from the employer and that is not
9 required to be withheld by any other federal or state law, and
10 transmit to the clerk of the court in which the order is entered
11 as much as may remain payable for the pay period, up to the
12 amount specified in the order. The employer shall immediately
13 inform the court of any change that would affect the income
14 withholding order.

15 (3) Compliance by an employer with the income withholding
16 order shall operate as a discharge of the employer's liability
17 to the defendant for that portion of the defendant's earnings
18 withheld and transmitted to the clerk of the court from which
19 the order is issued, regardless of whether the employer has
20 withheld the correct amount. For each payment made pursuant to
21 an income withholding order, the employer may deduct and retain



1 as an administrative fee an additional amount of \$2 from the
2 income owed to the defendant. The total amount withheld from
3 the defendant's income, including the administrative fee, shall
4 not exceed the maximum amounts permitted under section 303 of
5 the Consumer Credit Protection Act (15 U.S.C. §1673).

6 (4) Any income withholding order made pursuant to this
7 section shall:

8 (a) Have priority as against any garnishment, attachment,
9 execution, or other income withholding order, or any
10 other order, except for any order made pursuant to
11 chapters 571, 576B, 576D, 576E, 580, and 584; and

12 (b) Not be subject to the exemptions or restrictions
13 contained in part III of chapter 651 and in chapters
14 652 and 653.

15 (5) An employer who fails to comply with an income
16 withholding order under this section shall be liable to the
17 obligee for the full amount of all sums not withheld and
18 transmitted as ordered. An employer receiving an income
19 withholding order shall:

20 (a) Transmit amounts withheld to the clerk of the court
21 within five business days after the defendant is paid,



1 either by cash, cashier's check, money order, or
2 commercial check; and
3 (b) Begin withholding no later than the first pay period
4 commencing within seven business days following the
5 date a copy of the income withholding order is served
6 upon the employer by regular mail, personal delivery,
7 or electronic means.
8 (6) An employer who:
9 (a) Complies with an income withholding order that is
10 valid on its face shall not be subject to civil
11 liability to any person, entity, or agency for conduct
12 in compliance with the order; and
13 (b) Is required to withhold amounts from the income of
14 more than one employee, may remit to the clerk of the
15 court a sum total of all amounts in one lump sum via
16 cash, cashier's check, money order, or commercial
17 check, with a listing of the amounts applicable to
18 each employee. Within twenty-one business days after
19 receipt of the amounts withheld by the employer, the
20 clerk of the court shall disburse the amounts to the
21 obligee.



1 (7) An income withholding order shall be terminated by a
2 court order when appropriate. The court shall promptly refund
3 any amount withheld in error to the defendant.

4 (8) If there is more than one restitution judgment or
5 order, the amounts withheld from the income of a defendant shall
6 be allocated among the different restitution judgments or
7 orders. If the multiple income withholding orders would cause
8 the amounts withheld from the defendant's income to exceed wage
9 withholding limitations established under this section, the
10 amount withheld shall be allocated so that in no case shall the
11 allocation result in a withholding for any of the restitution
12 obligations not being implemented.

13 (9) If a defendant changes employment while an income
14 withholding order is in effect, the defendant shall notify and
15 provide the clerk of the court with the new employer's contact
16 information within five business days of the change. The clerk
17 of the court shall notify the defendant's new employer of the
18 defendant's and the new employer's respective obligations under
19 this section. The new employer shall be bound by the income
20 withholding order until further court order.



1 (10) As used in this section and notwithstanding any other
2 provision of law:

3 "Business day" means a day on which the employer's office
4 is open for regular business.

5 "Employer" means any individual, partnership, association,
6 joint stock company, trust, corporation, personal representative
7 of the estate of a deceased individual, or receiver, trustee, or
8 successor of any of the same, employing any individual,
9 including the United States government, State, and any political
10 subdivision thereof, who is or shall become obligated for
11 payment of income; provided that this meaning shall not apply if
12 the employed individual is incarcerated in a correctional
13 facility or engaged in an inmate work furlough program within
14 the State.

15 "Income" includes without limitation salaries, wages,
16 earnings, workers' compensation, commissions, fees, bonuses,
17 independent contractor income, and any other entitlement to
18 money, including moneys payable as a disability, death, or other
19 benefit, or moneys from the State or a political subdivision
20 thereof, or from any disability system established by the State
21 or any political subdivision thereof under law."



1 SECTION 2. Section 231-52, Hawaii Revised Statutes, is
2 amended by amending the definition of "debt " to read as
3 follows:

4 "Debt" includes:

- 5 (1) Any delinquency in periodic court-ordered or
6 administrative-ordered payments for child support
7 pursuant to section 576D-1, in an amount equal to or
8 exceeding the sum of payments which would become due
9 over a one-month period;
- 10 (2) Any liquidated sum exceeding \$25 which is due and
11 owing any claimant agency, regardless of whether there
12 is an outstanding judgment for that sum, and whether
13 the sum has accrued through contract, subrogation,
14 tort, operation of law, or judicial or administrative
15 judgment or order;
- 16 (3) Any defaulted education loan note held by the United
17 Student Aid Funds, Inc. incurred under the federal
18 Higher Education Act of 1965 (Public Law 89-329, 79
19 Stat. 1219), as amended;
- 20 (4) Any federal income taxes due and owing to the United
21 States Treasurer; [~~or~~]



- 1 (5) Any medicaid overpayment under section 346-59.6 [-]; or
- 2 (6) Any unpaid court-ordered restitution enforceable as a
- 3 civil judgment pursuant to section 706-647."

4 SECTION 3. Section 706-645, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§706-645 Revocation of fine [~~or restitution~~]. (1) A
7 defendant who has been sentenced to pay a fine [~~or restitution~~]
8 and who is not in contumacious default in the payment thereof
9 may at any time petition the court [~~which~~] that sentenced the
10 defendant for a revocation of the fine [~~or restitution~~] or of
11 any unpaid portion thereof.

12 (2) If it appears to the satisfaction of the court that
13 the circumstances [~~which~~] that warranted the imposition of the
14 fine [~~or restitution~~] have changed, or that it would otherwise
15 be unjust to require payment, the court may revoke the fine [~~or~~
16 ~~restitution~~] or the unpaid portion thereof in whole or in part.
17 Prior to revocation, the court shall afford the prosecuting
18 attorney an opportunity to be heard."

19 SECTION 4. Section 706-646, Hawaii Revised Statutes, is
20 amended to read as follows:



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

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

5 (b) If the victim dies as a result of the crime, a
6 surviving relative of the victim as defined in chapter
7 351;

8 (c) A governmental entity that has reimbursed the victim
9 for losses arising as a result of the crime or paid
10 for medical care provided to the victim as a result of
11 the crime; or

12 (d) Any duly incorporated humane society or duly
13 incorporated society for the prevention of cruelty to
14 animals, contracted with the county or State to
15 enforce animal-related statutes or ordinances, that
16 impounds, holds, or receives custody of a pet animal
17 pursuant to section 711-1109.1, 711-1109.2, or
18 711-1110.5; provided that this section does not apply
19 to costs that have already been contracted and
20 provided for by the counties or State.



1 (2) The court shall order the defendant to make
2 restitution for reasonable and verified losses suffered by the
3 victim or victims as a result of the defendant's offense when
4 requested by the victim. The court shall order restitution to
5 be paid to the crime victim compensation commission if the
6 victim has been given an award for compensation under chapter
7 351. If the court orders payment of a fine in addition to
8 restitution or a compensation fee, or both, the payment of
9 restitution and compensation fee shall be made pursuant to
10 section 706-651.

11 (3) In ordering restitution, the court shall not consider
12 the defendant's financial ability to make restitution in
13 determining the amount of restitution to order. The court,
14 however, shall consider the defendant's financial ability to
15 make restitution for the purpose of establishing the time and
16 manner of payment. The court shall specify the time and manner
17 in which restitution is to be paid. While the defendant is in
18 the custody of the department of public safety, restitution
19 shall be collected pursuant to chapter 353 and any court-ordered
20 payment schedule shall be suspended. Restitution shall be a



1 dollar amount that is sufficient to reimburse any victim fully
2 for losses, including but not limited to:

3 (a) Full value of stolen or damaged property, as
4 determined by replacement costs of like property, or
5 the actual or estimated cost of repair, if repair is
6 possible;

7 (b) Medical expenses; and

8 (c) Funeral and burial expenses incurred as a result of
9 the crime.

10 (4) In any criminal proceeding before any court, all money
11 deposited by the defendant as bail and not declared forfeited
12 shall be applied toward payment of any restitution, fines, or
13 fees ordered by the court in the same case, consistent with the
14 priorities in subsection (2).

15 [~~4~~] (5) The restitution ordered shall not affect the
16 right of a victim to recover under section 351-33 or in any
17 manner provided by law; provided that any amount of restitution
18 actually recovered by the victim under this section shall be
19 deducted from any award under section 351-33."

20 SECTION 5. Section 806-73, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) All adult probation records shall be confidential and
2 shall not be deemed to be public records. As used in this
3 section, the term "records" includes [7] but is not limited to [7]
4 all records made by any adult probation officer in the course of
5 performing the probation officer's official duties. The
6 records, or the content of the records, shall be divulged only
7 as follows:

8 (1) A copy of any adult probation case record or of a
9 portion of it, or the case record itself, upon
10 request, may be provided to:

11 (A) An adult probation officer, court officer, social
12 worker of a Hawaii state adult probation unit, or
13 a family court officer who is preparing a report
14 for the courts; or

15 (B) A state or federal criminal justice agency, or
16 state or federal court program that:

17 (i) Is providing supervision of a defendant or
18 offender convicted and sentenced by the
19 courts of Hawaii; or

20 (ii) Is responsible for the preparation of a
21 report for a court;



- 1 (2) The residence address, work address, home telephone
2 number, or work telephone number of a current or
3 former defendant shall be provided only to:
- 4 (A) A law enforcement officer as defined in section
5 710-1000 to locate the probationer for the
6 purpose of serving a summons or bench warrant in
7 a civil, criminal, or deportation hearing, or for
8 the purpose of a criminal investigation; or
- 9 (B) A collection agency or licensed attorney
10 contracted by the judiciary to collect any
11 delinquent court-ordered penalties, fines,
12 restitution, sanctions, and court costs pursuant
13 to section 601-17.5 [†]; [†]
- 14 (3) A copy of a presentence report or investigative report
15 shall be provided only to:
- 16 (A) The persons or entities named in section 706-604;
17 (B) The Hawaii paroling authority;
18 (C) Any psychiatrist, psychologist, or other
19 treatment practitioner who is treating the
20 defendant pursuant to a court order or parole
21 order for that treatment;



- 1 (D) The intake service centers;
- 2 (E) In accordance with applicable law, persons or
- 3 entities doing research; and
- 4 (F) Any Hawaii state adult probation officer or adult
- 5 probation officer of another state or federal
- 6 jurisdiction who:
 - 7 (i) Is engaged in the supervision of a defendant
 - 8 or offender convicted and sentenced in the
 - 9 courts of Hawaii; or
 - 10 (ii) Is engaged in the preparation of a report
 - 11 for a court regarding a defendant or
 - 12 offender convicted and sentenced in the
 - 13 courts of Hawaii;
- 14 (4) Access to adult probation records by a victim, as
- 15 defined in section 706-646 to enforce an order filed
- 16 pursuant to section 706-647, shall be limited to the
- 17 [name]:
- 18 (A) Name and contact information of the defendant's
- 19 adult probation officer;
- 20 (B) Compliance record of the defendant with court-
- 21 ordered payments;



- 1 (C) Amounts paid by the defendant;
- 2 (D) Dates of the payments made by the defendant;
- 3 (E) Payee of payments made by the defendant; and
- 4 (F) Remaining unpaid balance;
- 5 without the assessment of a filing fee or surcharge;
- 6 (5) Upon written request, the victim, or the parent or
- 7 guardian of a minor victim or incapacitated victim, of
- 8 a defendant who has been placed on probation for an
- 9 offense under section 580-10(d)(1), 586-4(e), 586-
- 10 11(a), or 709-906 may be notified by the defendant's
- 11 probation officer when the probation officer has any
- 12 information relating to the safety and welfare of the
- 13 victim;
- 14 (6) Notwithstanding paragraph (3) and upon notice to the
- 15 defendant, records and information relating to the
- 16 defendant's risk assessment and need for treatment
- 17 services; information related to the defendant's past
- 18 treatment and assessments, with the prior written
- 19 consent of the defendant for information from a
- 20 treatment service provider; provided that for any
- 21 substance abuse records such release shall be subject



1 to title 42 Code of Federal Regulations part 2,
2 relating to the confidentiality of alcohol and drug
3 abuse patient records; and information that has
4 therapeutic or rehabilitative benefit, may be provided
5 to:

6 (A) A case management, assessment[+], [+] or treatment
7 service provider assigned by adult probation to
8 service the defendant; provided that such
9 information shall be given only upon the
10 acceptance or admittance of the defendant into a
11 treatment program;

12 (B) Correctional case manager, correctional unit
13 manager, and parole officers involved with the
14 defendant's treatment or supervision; and

15 (C) In accordance with applicable law, persons or
16 entities doing research;

17 (7) Probation drug test results may be released with prior
18 written consent of a defendant to the defendant's
19 treating physician when test results indicate
20 substance use which may be compromising the
21 defendant's medical care or treatment;



1 (8) Records obtained pursuant to section [†] 704-404 (9) [†]
2 may be made available as provided in that section;

3 (9) Any person, agency, or entity receiving records, or
4 contents of records, pursuant to this subsection shall
5 be subject to the same restrictions on disclosure of
6 the records as Hawaii state adult probation offices;
7 and

8 (10) Any person who uses the information covered by this
9 subsection for purposes inconsistent with the intent
10 of this subsection or outside of the scope of the
11 person's official duties shall be fined no more than
12 \$500."

13 SECTION 6. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 7. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on January 7, 2059.

4



Report Title:

Honolulu Prosecuting Attorney Package; Crime Victims;
Restitution; Collection

Description:

Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Clarifies the priority of income withholding 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. Removes the court's ability to revoke restitution ordered as part of the defendant's sentencing. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Extends victims' access to adult probation records to include access to payment compliance records without a fee or surcharge. Takes effect on 1/7/2059. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

