

JAN 19 2018

# A BILL FOR AN ACT

RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

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

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

"§706- Income withholding for payment of restitution.

(1) Whenever a person is sentenced and a judgment or order is entered establishing, modifying, or enforcing restitution, the court shall allow ninety days for a defendant to make payment in full. If the judgment or order is not satisfied after ninety days, the court shall issue an income withholding order that shall operate as an assignment to the department of the attorney general for the benefit of the victim, of amounts that are due at times that may be specified in the judgment or order, but no less than \$30 per month, from the defendant's income due or to become due in the future from the defendant's employer or successor employers. A copy of the income withholding order shall be filed in the office of the clerk of the court in which the income withholding 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 order, which service may be  
4 effected by the department of the attorney general by regular  
5 mail, by personal delivery, or by transmission through  
6 electronic means. Thereafter, the employer, for each pay  
7 period, shall withhold from the income due to the defendant from  
8 the employer, and not required to be withheld by any other  
9 provision of federal or state law, and transmit to the  
10 department of the attorney general as much as may remain payable  
11 to the defendant for the pay period up to the amount specified  
12 in the order as being payable during the same pay period. The  
13 employer shall immediately inform the department of the attorney  
14 general of any change that would affect the income withholding  
15 order.

16       (3) Compliance by an employer with an income withholding  
17 order issued pursuant to subsection (1) shall operate as a  
18 discharge of the employer's liability to the defendant for that  
19 portion of the defendant's earnings withheld and transmitted to  
20 the department of the attorney general, regardless of whether  
21 the employer has withheld the correct amount. For each payment



1 made pursuant to an income withholding order, the employer may  
2 deduct and retain as an administrative fee an additional amount  
3 of \$2 from the income owed to the defendant. The total amount  
4 withheld from the defendant's income, including the  
5 administrative fee, shall not exceed the maximum amounts  
6 permitted under section 303(b) of the Consumer Credit  
7 Protection Act, (15 U.S.C. 1673(b)).

8 (4) Any income withholding order issued pursuant to this  
9 section shall:

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

14 (b) Not be subject to the exemptions or restrictions  
15 contained in part III of chapter 651 and in chapters  
16 652 and 653.

17 (5) An employer who fails to comply with an income  
18 withholding order under this section shall be liable to the  
19 victim or the department of the attorney general for the full  
20 amount of all sums ordered to be withheld and transmitted. An  
21 employer receiving an income withholding order shall:



1        (a)    Transmit withheld amounts to the department of the  
2        attorney general within five business days after the  
3        defendant is paid; and

4        (b)    Begin withholding no later than the first pay period  
5        commencing within seven business days following the  
6        date a copy of the order is served upon the employer  
7        by regular mail, personal delivery, or electronic  
8        means.

9        (6)    An employer who:

10       (a)    Complies with an income withholding order that is  
11       valid on its face shall not be subject to civil  
12       liability to any person or agency for conduct in  
13       compliance with the order; and

14       (b)    Is required to withhold amounts from the income of  
15       more than one employee may remit to the department of  
16       the attorney general a sum total of all amounts in one  
17       lump check with a listing of the amounts applicable to  
18       each employee. Within five business days after  
19       receipt of the amounts withheld by the employer, the  
20       department of the attorney general shall disburse the  
21       amounts to the victim.



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

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

14       (9) If a defendant changes employment when an income  
15 withholding order is in effect, the department of the attorney  
16 general shall notify the defendant's new employer of the  
17 defendant's and the new employer's respective obligations under  
18 this section. The new employer shall be bound by the income  
19 withholding order until further court order.

20       (10) As used in this section, and notwithstanding any  
21 other provision of law:



1       "Business day" means a day on which an employer's office is  
2       open for regular business.

3       "Employer" means any person, including the United States  
4       government, the State, and any political subdivision thereof,  
5       who uses or engages the services of any person in exchange for  
6       the payment of wages or other means of exchange, or who is or  
7       shall become obligated for payment of income, except that this  
8       meaning shall not apply if the employed individual is  
9       incarcerated in a correctional facility or engaged in an inmate  
10       work furlough program within the State.

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

18       SECTION 2. There is appropriated out of the general  
19       revenues of the State of Hawaii the sum of \$            or so much  
20       thereof as may be necessary for fiscal year 2018-2019 to the  
21       department of the attorney general for the purpose of enhancing



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1 restitution collection pursuant to section 1 of this Act,  
2 including the hiring of any necessary staff.

3 The sum appropriated shall be expended by the department of  
4 the attorney general for the purposes of this Act.

5 SECTION 3. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8 SECTION 4. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

14 SECTION 5. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval;  
16 provided that section 2 shall take effect on July 1, 2018.

17

INTRODUCED BY: \_\_\_\_\_

*[Signature]*

By Request



# S.B. NO. 2177

**Report Title:**

Honolulu Prosecuting Attorney Package; Crime Victims;  
Restitution; Appropriation

**Description:**

Creates standards and procedures for income withholding for purposes of enforcing restitution orders. Provides appropriations to the Department of the Attorney General.

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

