



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1774, H.D. 1, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Friday, February 16, 2018

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Michael S. Vincent, or Dean A. Soma, Deputy Attorneys General

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Chair Luke and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill and submits comments and recommendations.

The purpose of this bill is to create an income withholding process to enforce restitution orders in criminal cases. This bill will require that the Department implement the income withholding process by serving the court orders on employers, receiving payments from employers, and making disbursements to victims.

The bill does not impose any further burden upon employers than they would already have under chapter 576D (Child Support Enforcement), Hawaii Revised Statutes (HRS), or chapter 652 (Garnishment), HRS.

Nevertheless, the Department has concerns relating to implementation of the income withholding process and costs associated with it. First and foremost, the scope of the income withholding collection program is unclear and should be clarified. Does the bill intend to require income withholding for all misdemeanor and felony cases, cases where defendants have completed probation and are no longer under any supervision, and cases where the defendants are on parole or released from parole?

Key to the success of the income withholding process established by this bill will be the Department's communication and coordination with the Judiciary Probation Office and the Hawaii Paroling Authority (if income withholding is required of parolees),

who currently have primary responsibility for collecting and distributing restitution. If a court issues an income withholding order and communication and coordination between the courts and the Department are not required, the Department will not be able to effectively perform the income withholding functions and overlapping efforts to collect and distribute restitution may result. Specific examples of the need for communication and coordination are as follows:

On page 1, lines 15-17, the bill requires that the income withholding order be filed in the office of the clerk of the court. The bill also needs to require the Judiciary to provide this order and the restitution order to the Department to initiate the Department's collection action. The bill should also require that the courts provide updates to the Department on the restitution amounts owed.

On page 2, lines 1-5, the bill provides that the income withholding order becomes effective immediately after service upon an employer by the Department. However, the bill does not state how the Department will acquire the defendant's employment information to implement the income withholding. The bill should require the Judiciary and/or defendant to provide employment information to the Department and to provide updates on any changes in employment on an on-going basis.

On page 4, lines 18-21, the bill provides that the Department disburse amounts to the victim within five days after receipt of income withholdings from the employer. Because the Department will need addresses and contact information for the victims in order to make disbursements, the bill should require the Judiciary to provide this information when it provides the restitution order to the Department. Further, the Department does not believe that five days is sufficient time to make disbursements to victims. Payments from employers, if made by check, need to clear the bank before the Department can disburse the funds, and it can take approximately 10 business days for a check to clear. Also, the Department of Accounting and General Services would be making the disbursement checks and would need time to process the requests. Finally, if a check does not clear, there will be no funds to disburse. Realistically, the Department will need additional time to get funds to the victims.

On page 5, lines 2-4, the bill requires the Department to promptly refund to the defendant any amount withheld in error. To comply with this requirement, the Department will need the address and contact information for the defendant. The bill should require the Judiciary and/or defendant to provide this information to the Department and to keep it current.

One technical suggestion, on page 4, lines 18-21, the sentence, "Within five business days after receipt of the amounts withheld by the employer, the department of the attorney general shall disburse the amounts to the victim," should be removed from subsection (6)(b) and placed in its own subsection. The requirement is completely separate from the rest of the provisions in subsection (6).

With respect to cost, the Department will need additional time to determine what is needed to successfully implement this income withholding program, in particular the number of positions and funds required. In addition to obtaining the court orders, serving the court orders on employers, receiving payments from employers, making disbursements to victims, and reimbursing overpayments to defendants, the Department will also need to be able to share restitution collection information with the Judiciary, including tracking payments, disbursements, and addresses and contact information for employers, victims, and defendants.

The Department appreciates the opportunity to provide comments on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
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Executive Director

TESTIMONY ON HOUSE BILL 1774 HD1  
A BILL FOR AN ACT RELATING TO  
COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair

Friday, February 16, 2018; 2:00 PM  
State Capitol, Conference Room 308

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance,

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support of House Bill 1774 HD1, Relating to the Collection of Restitution for Crime Victims. House Bill 1774 HD1 creates a tool to enhance restitution collection by requiring orders of income withholding for the collection of restitution.

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 8,000 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. Through its own project and through discussion with Victim Witness Counselors throughout the State, the Commission found that most crime victims have no effective means to collect restitution even if the offender has the ability to make restitution payments.

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.

Thank you for providing the Commission with an opportunity to testify in support of House Bill 1774 HD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE SYLVIA LUKE, CHAIR  
THE HONORABLE TY J.K. CULLEN, VICE CHAIR  
HOUSE COMMITTEE ON FINANCE  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai'i**

January 25, 2018

**RE: H.B. 1774, H.D. 1; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.**

Chair Luke, Vice-Chair Cullen, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of H.B. 1774, H.D. 1. This bill is part of the Department’s 2018 legislative package.

The purpose of this bill is to 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 lawsuit 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, H.B. 1774, H.D. 1 would create standards and procedures for income withholding, similar to those used for collecting outstanding child support payments. Inmates and work furlough participants would be exempt, as their accounts are already subject to automatic deductions under HRS §353-22.6. Child support withholdings would receive first priority over restitution withholdings, to comply with federal regulations.

Although the Department’s prior proposals for this mechanism had placed the responsibility with Adult Client Services (Judiciary), the Department now believes that the Department of the Attorney General would be the best agency to carry out this program. The Department of the Attorney General is a statewide agency authorized to handle both civil and criminal matters, and already has a “civil recoveries” division, in addition to housing the Child Support Enforcement Agency; while neither of those divisions currently handles the exact duties outlined in H.B. 1774, H.D.1 both do comparable work that could provide valuable guidance.

After working with a number of other agencies on these measures, the Department believes that H.B. 1774, H.D. 1 would directly address criticisms that the current process provides only "hollow promises" to victims, and would be a crucial step forward in transforming 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 H.B. 1774, H.D.1. Thank you for the opportunity to testify on this matter.

**HB-1774-HD-1**

Submitted on: 2/15/2018 1:52:57 PM

Testimony for FIN on 2/16/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawaii	Support	No

Comments:



**HB-1774-HD-1**

Submitted on: 2/15/2018 11:14:02 AM

Testimony for FIN on 2/16/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
maile mclaurin	Individual	Support	No

Comments:

As I understand it, this bill intends to simplify and expedite payment of restitution to victims of crime. While courts order compensation in many criminal cases, it is not often enforced, and victims are often left to seek restitution by a private lawsuit against a defendant.

As a previous victim of a crime against my person, experience has proved that the present system significantly reduces the probability that victims will receive the restitution payments promised to them. Moreover, it destabilizes the injured party by exposing them to further oppression by ignoring the very assistance that restitution is meant to provide.

H.B. 1774 would directly address critiques that the current method delivers empty assurances to victims and would be a vital step forward, altering Hawai'i's restitution system into a valuable tool for victim restitution, offender rehabilitation, and public confidence. Victim restoration is a fundamental right focusing on the many devastating effects of crime, impacting victims physical, emotional, psychological, financial and socially.