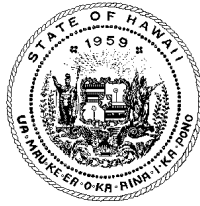


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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Commissioner

PAMELA FERGUSON-BREY
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

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Tuesday, March 13, 2018; 9:30 AM
State Capitol, Conference Room 016

Chair Taniguchi, Vice Chair Rhoads, and Members of the Senate Committee on Judiciary,

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
CITY AND COUNTY OF HONOLULU

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CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

March 13, 2018

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

Chair Taniguchi, Vice-Chair Rhoads and members of the Senate Committee on Judiciary, 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.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 13, 2018

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Taniguchi 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 if the judgment or order is not satisfied after 90 days. It would 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?

With respect to cost, the Department will need additional time to determine the number of positions and funds needed. At the minimum we project a need for an

attorney position and a legal assistant position. 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 have the ability to share restitution collection information with the Judiciary and the ability to track payments, disbursements, and addresses and contact information for employers, victims, and defendants.

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 without requiring communication and coordination between the courts and the Department, 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 of at least 30 days 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~~ thirty 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).

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

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Sen. Brian Taniguchi, Chair

Sen. Karl Rhoads, Vice Chair

Tuesday, March 13, 2018

9:30 am

Room 016

OPPOSE HB 1774 HD1 - CHILLING REENTRY

Aloha Chair Taniguchi, Vice Chair Rhoads and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 1774 HD1 establishes standards and procedures for withholding income to pay restitution orders and appropriates funds to the Department of the Attorney General for enhancing restitution collection.

The Acting Attorney General testified that *"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."*

Community Alliance on Prisons is in opposition to this measure since it DOES impose another burden on an employer. *"The employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the defendant."*

It is confounding to us when legislation is passed to embrace reentry for those exiting incarceration and then more legislation is passed that ensures that employers will avoid hiring these folks because of the burdens placed upon them. Why do we do this?

Mahalo for this opportunity to testify.

"The wise build bridges while the foolish build walls."

Black Panther



**Office of the Public Defender
State of Hawaii**



**Testimony of the Office of the Public Defender
to the Senate Committee on Judiciary**

March 9, 2018

HB No. 1774, HD1: RELATING TO COLLECTION OF RESTITUTION FOR
CRIME VICTIMS.

Chair Brian T. Taniguchi and Members of the Committee:

The Office of the Public Defender opposes passage of HB No. 1774, HD1 because it would create a legal burden on employers to collect and monitor the restitution payments in criminal cases. The Bill establishes a 90-day payment-in-full rule that not all indigent defendants have the ability to meet. We are concerned that this 90-day payment-in-full rule is overburdensome to families and people on limited or fixed incomes who are required to pay restitution. In situations where restitution payments are being paid on schedule and on time but where extra time is needed to pay-in-full, we are concerned that the mandatory involvement of the employer, in what may be a private matter, for the collection of restitution, may seriously jeopardize the employment status of defendants and may cause employers to fire or to simply not hire someone because they don't want to accept the burden the State would be placing on them to become a de facto collection agent.

The Courts currently **do** have the ability to monitor restitution to insure timely payment, they **do** have the ability to set payment plans based on a person's ability to pay and the total amount due, and they **do** have the ability to issue free-standing orders of restitution that can survive the completion of Court supervision to allow for continued collection of outstanding restitution. A free-standing order of restitution is an order by the Court that is separate from the Judgment. It is an enforceable Court order that may be used by the recipient to seek further payment through collection agents or to obtain a civil judgment for relief against assets. The issuance of free-standing orders of restitution is a matter of practice in the Courts and they are regularly ordered when restitution is an issue in a pending case. The Courts rely upon the Adult Client Services Division [also known as the Adult Probation Division] to monitor, collect and submit reports on restitution payments ordered by the Courts. Failure to pay may result in Court sanctions and require additional monitoring. We submit that creating a legal duty on employers to collect court-ordered restitution payments is overburdensome and unnecessary and will have very serious negative impacts on decisions by employers to keep or hire employees with court-ordered restitution.

We are also concerned about the inclusion of the \$2.00 administrative fee that an employer can deduct and retain for the collection of the garnishment. A person who gets paid weekly may be charged \$8.00 per month for the imposed garnishment. For a person who gets paid bi-weekly, the fee would be \$4.00 per month. We submit that this fee schedule is overburdensome and defeats the purpose of having restitution paid in a timely manner.

For these reasons, we oppose HB No. 1774, HD1.

Thank you for the opportunity to provide testimony in this matter.

Executive Director
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Nadine Tenn Salle, MD

Deane Salter

Joshua A. Wisch

Date: March 13, 2018

To: The Honorable Brian Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair
Senate Committee on Judiciary

From: Justin Murakami, Policy Research Associate
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of H.B. 1774 H.D. 1
Relating to Collection of Restitution for Crime Victims

Good morning Chair Taniguchi, Vice Chair Rhoads, and members of the Senate Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports H.B. 1774 H.D. 1.

Many victims suffer substantial financial losses as a result of the crimes committed against them. Consequently, in Hawai'i, the court is required, when asked by the victim, to order offenders to make restitution for reasonable and verifiable losses suffered by the victim. Examples of such losses are the value of stolen or damaged property; lost wages; medical expenses, including the cost of mental health services; and funeral and burial expenses.

Unfortunately, the existence of a court order does not guarantee that the victim will ever receive the restitution to which they are entitled. Offenders benefit from various legal and institutional barriers that stand in the way of collection activities by the State of Hawai'i, even where the offender may be earning substantial income.

H.B. 1774 H.D. 1 establishes standards and procedures that will allow the State of Hawai'i to withhold a portion of offenders' income to satisfy their restitution debts. This would be a significant step towards providing meaningful justice to victims of crime and holding offenders accountable for the consequences of their actions.

Therefore, we respectfully ask that you please pass H.B. 1774 H.D. 1.

HB-1774-HD-1

Submitted on: 3/12/2018 9:21:22 AM

Testimony for JDC on 3/13/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

LATE

HB-1774-HD-1

Submitted on: 3/12/2018 4:52:45 PM
Testimony for JDC on 3/13/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Testifying for Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, STRONGLY SUPPORTS HB 1774, HD 1 - Relating to Collection of Restitution for Crime Victims. Efforts to seek payment of restitution in full by convicted defendants will receive significant assistance from the income withholding procedures set forth by this measure.

The Department of the Prosecuting requests that this measure be PASSED.

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