



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



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

January 24, 2018

H.B. No. 1774: RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

Chair Scott Y. Nishimoto and Members of the Committee:

The Office of the Public Defender opposes passage of H.B. No. 1774 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 fixed incomes who are required to pay restitution. In situations where restitution payments are being paid on schedule, 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.

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. It is unclear whether this fee is a one-time fee or a per-pay check fee. 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 H.B. No. 1774.

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

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON HOUSE BILL 1774
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 Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, January, 25, 2018; 2:00 PM
State Capitol, Conference Room 325

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary,

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support of House Bill 1774 Relating to the Collection of Restitution for Crime Victims. House Bill 1774 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.

HB-1774

Submitted on: 1/23/2018 6:01:54 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	Yes

Comments:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** HB 1774, 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**.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i**

January 25, 2018

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

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House 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. 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 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, 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 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. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai'i

January 25, 2018

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

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai submits the following testimony in strong support of H.B. 1774. This bill is part of the Honolulu Prosecutor'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.

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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, both do comparable work that could provide valuable guidance.

After working with a number of other agencies on these measures, our Office believes that H.B. 1774 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:

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House Stand. Comm. Rep. No. 425, in 1975 House Journal.

For the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kauai strongly supports the passage of H.B. 1774. Thank you for the opportunity to testify on this matter.



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

LATE

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, January 25, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Nishimoto 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. It provides appropriations to the Department to implement the income withholding process by serving the court orders on employers, receiving payments from employers, and making disbursements to victims.

The Department's concerns relate to implementation of the income withholding process and costs associated with it. The scope of the income withholding collection program is unclear, but it appears to be very broad and includes all misdemeanor and felony cases, and cases in which defendants have completed probation and are no longer under any supervision. It may also apply to defendants on parole, and those that have been released from parole. An important part of the implementation of this program will be the ability to communicate and coordinate with the Judiciary Probation Office, and maybe Parole, who have primary responsibility to collect restitution. If an income withholding order is issued, it appears that other restitution collection efforts may not cease. The Department will need to receive updates on the restitution amounts owed in order to avoid overpayments of restitution.

With respect to cost, the Department will need additional time to determine the number of positions and funds needed. In addition to 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.

With respect to the implementation process, the Department has the following concerns.

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. That income withholding order, as well as the restitution order, must be provided by the court to the Department to initiate the Department's collection action.

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. It is not clear how the Department will obtain the employer information. It should be required that the Judiciary and/or Defendant be required to provide employment information to the Department and provide updates on any changes in employment.

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. The Department will need address and contact information for the victims. The Judiciary should be required to provide this information when it provides the restitution order to the Department. The Department has some concern about the requirement to disburse payments within five days. Payments from employers, if made by check, need to clear the bank before the Department can disburse the funds. And if a check does not clear, there will be no funds to disburse.

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 require address and contact information for the Defendant. The

Judiciary and/or the Defendant should be required to provide this information and keep it current.

Finally, the Department recommends one technical amendment. 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).

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