



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2177, S.D. 1, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS..

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 28, 2018 **TIME:** 10:45 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY**
(For further information, please contact Dean A. Soma,
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Chair Dela Cruz 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 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).

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

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SENATE COMMITTEE ON WAYS AND MEANS
Twenty-Ninth State Legislature
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State of Hawai`i

February 28, 2018

RE: S.B. 2177, S.D. 1; RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

Chair Dela Cruz, Vice-Chair Keith-Agaran and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of S.B. 2177, S.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, S.B. 2177, S.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 S.B. 2177, S.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 S.B. 2177, S.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 S.B. 2177, S.D. 1. Thank you for the opportunity to testify on this matter.