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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

January 31, 2017

RE: S.B. 316; RELATING TO RESTITUTION FOR VICTIMS OF CRIME.

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 316.

The purpose of Senate Bill 316 is to amend section 706-646, Hawaii Revised Statutes, to clarify that the Legislature intends that restitution ordered by a criminal court includes under the phrase “including but not limited to” includes both wages lost as a result of the crime as well as the “mental health treatment, counseling, and therapy” required to address the psychological and emotional injuries inflicted by the crime.

It is well established that crime victimization causes substantial injuries of many types. Crime can have powerful, life changing repercussions for the health, well-being and financial stability of victims. Mental illness, suicide, and drug and alcohol abuse can result from untreated trauma caused by crime. The trauma from victimization can result in a range of reactions, from an immediate crisis response to long term psychological and emotional consequences. Research suggests that victims of violent crime are at greater risk of developing Posttraumatic Stress Disorder (PTSD) than victims of non-criminal traumatic events such as natural disaster. In response to these stark realities we believe that it critically important that Legislature re-affirm with great clarity that it intends that mental health treatment, counseling, and therapy are among the multitude of crime related expenses that the Legislature intends that Section 706-646 cover.

Nationwide, about 1.4 million violent and non-violent crime victimizations led to missed work days in 2002. Of the nearly 400,000 violent crimes that resulted in lost work days, nine percent involved between six and 10 missed days; 14 percent involved 11 or more days; and over half involved an absence of one to five days. While more non-violent crimes resulted in missed work days, the time lost tended to be shorter. Among non-violent crimes resulting in missed

work days, 46 percent involved an absence of one to five days, and 44 percent involved missing less than one day. According to a recent study, victims of intimate partner violence, including rape, physical assault, and stalking, experience substantial lost time in employment and household work. Annually, domestic violence victims miss nearly eight million days of paid work because of the violence in their lives—equal to 30,000 fulltime jobs. This violence also results in an annual loss of over five million days in household work.

In the face of these staggering numbers, it should not be the victims, their employers, or taxpayers held responsible for covering the substantial financial damage caused by crime. It is the criminal who caused these losses and it is the criminal who should bear the responsibility of repaying them. Our restitution statute means very little if it fails to address these basic and significant costs, and the proposed clarification of HRS §706-646 would make it plainly and unambiguously clear that these losses are covered.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 316. Thank you for the opportunity to testify on this matter.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 316

A BILL FOR AN ACT RELATING RESTITUTION FOR
VICTIMS OF CRIME

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

Tuesday, January 31, 2017, 9:00 AM
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Honorable Vice Chair Rhoads, and Members of the Committee Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 316.

This measure clarifies that reimbursement to crime victims includes lost wages, mental health treatment, counseling, and therapy.

The purpose of this bill is to support, encourage and facilitate payment of restitution to victims of crime by reimbursing crime victims fully for all reasonable and verified losses resulting from a defendant's offense. This would include reimbursing crime victims who miss work due to injuries or impairment suffered as a result of a defendant's offense, as well as reimbursing victims for the cost of mental health treatment, counseling, and therapy.

Our office believes that SB 316 presents a comprehensive and effective approach to restitution collection. Not only would this directly address criticisms of the current process as providing only "hollow promises" to victims, but more importantly, this would truly transform Hawai'i's restitution process into an effective tool for victim restoration, offender rehabilitation, and public faith.

The Hawai'i County Office of the Prosecuting Attorney supports the passage of Senate Bill No. 316. Thank you for the opportunity to testify on this matter.

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

January 31, 2017

S.B. No. 316: RELATING TO RESTITUTION FOR VICTIMS OF CRIME

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 316 because it would substantially broaden the restitution statute beyond what was intended by the Hawaii Supreme Court in State v. Demello, 136 Hawaii 193 (2015). In Demello, a majority of the supreme court held that the statutory section relating to restitution, H.R.S. § 706-646(2), permitted restitution for reasonable and verified lost wages. Demello did not speak to the awarding of costs for paid leave. Nor did the decision address mental health treatment, counseling, and therapy.

The trial court must determine, under Demello, on a case-by-case basis, whether a restitution request is reasonable and verified. Paid leave could present many issues which must be sorted out by the trial court. For instance, what if a person was on paid leave and sustained injuries in a fight? Would that person be entitled to restitution of the paid leave even though the leave predated the offense?

Moreover, while medical expenses are relatively easy for the court to verify, expenses involving counseling and therapy can be more difficult to determine and can extend for years after the incident. What would be the cut-off time for restitution liability? S.B. No. 316 would significantly expand H.R.S. § 706-646 to allow for more categories of restitution. Given the difficulty in verifying these addition types of restitution, such determination should be left to the civil courts where there can be a full vetting of the restitution claim.

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

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Subject: Submitted testimony for SB316 on Jan 31, 2017 09:00AM
Date: Monday, January 30, 2017 10:45:19 AM

SB316

Submitted on: 1/30/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Marci Lopes	Hawaii State Coalition Against Domestic Violence	Support	No

Comments: Thank you for your support of crime victims.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SB316

Submitted on: 1/28/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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SB316

Submitted on: 1/30/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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