

JAN 18 2019

A BILL FOR AN ACT

RELATING TO RESTITUTION FOR VICTIMS OF CRIME.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the holding in *State*
2 *v. DeMello*, 130 Hawai'i 332, 310 P.3d 1033 (App. 2013) denied
3 restitution for a crime victim's wage loss on the basis that
4 "[t]here is no explicit provision in HRS §706-646 for the award
5 of lost wages as part of restitution". Although the Hawaii
6 Supreme Court later vacated the lower court's ruling in *State v.*
7 *DeMello*, 136 Hawai'i 193, 361 P.3d 420 (2015), holding that
8 section 706-646, Hawaii Revised Statutes, is generally "broad in
9 scope" and requires restitution for lost wages through a plain
10 reading of the language, ambiguity still exists in the section
11 as to what losses are eligible for reimbursement.

12 The legislature further finds that the additional language
13 in this Act will clarify that the intent of section 706-646,
14 Hawaii Revised Statutes, is to reimburse crime victims fully for
15 all reasonable and verified losses resulting from a defendant's
16 offense. Nevertheless, as signaled by the use of the phrase,
17 "including but not limited to", the losses enumerated in



1 subsection (3) of section 706-646, Hawaii Revised Statutes, are
2 intended to be illustrative, not exhaustive, for purposes of
3 restitution.

4 SECTION 2. Section 706-646, Hawaii Revised Statutes, is
5 amended by amending subsection (3) to read as follows:

6 "(3) In ordering restitution, the court shall not consider
7 the defendant's financial ability to make restitution in
8 determining the amount of restitution to order. The court,
9 however, shall consider the defendant's financial ability to
10 make restitution for the purpose of establishing the time and
11 manner of payment. The court shall specify the time and manner
12 in which restitution is to be paid[-]; provided that while the
13 defendant is in the custody of the director of public safety,
14 restitution payments shall be as set forth in section 353-22.6.
15 While the defendant is in the custody of the department of
16 public safety, restitution shall be collected pursuant to
17 chapter 353 and any court-ordered payment schedule shall be
18 suspended. Restitution shall be a dollar amount that is
19 sufficient to reimburse any victim fully for losses, including
20 but not limited to:



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- 1 (a) Full value of stolen or damaged property, as
- 2 determined by replacement costs of like property, or
- 3 the actual or estimated cost of repair, if repair is
- 4 possible;
- 5 (b) Medical expenses [~~+~~and], which shall include mental
- 6 health treatment, counseling, and therapy;
- 7 (c) Funeral and burial expenses [~~incurred as a result of~~
- 8 ~~the crime.~~]; and
- 9 (d) Lost earnings, which include paid leave."

10 SECTION 3. This Act does not affect rights and duties that
 11 matured, penalties that were incurred, and proceedings that were
 12 begun before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

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Mike Galtford

INTRODUCED BY:

~~*DC [unclear]*~~
Paul [unclear]
[unclear]
Alma Mercado K.
Rosendo L. Babin



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Report Title:

Crime Victim Restitution; Lost Wages; Therapy

Description:

Clarifies that reimbursement to crime victims includes lost wages, mental health treatment, and therapy.

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