

STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII

**CRIME VICTIM COMPENSATION
COMMISSION**

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**TESTIMONY ON SENATE BILL 1316, SD1, HD1
RELATING TO COURT-ORDERED PAYMENTS**

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, March 27, 2025; 3:30 PM
State Capitol, Conference Room 308 & Videoconference

Good afternoon, Chair Yamashita, Vice Chair Takenouchi, and Members of the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of Senate Bill 1316, SD1, HD1. SB 1316, SD1, HD1, addresses issues created by a recent Hawai'i Supreme Court decision making it more difficult to enforce restitution. The Supreme Court limited the circumstances under which trial courts can use proof-of-compliance hearings as a tool to enforce court-ordered restitution. SB 1316, SD1, HD1, provides an important tool, through proof of compliance hearings, to enforce court-ordered restitution.

The Commission provides compensation for victims of violent crime to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. In January 2021, the Commission and the Council of State Governments released an article titled "*Victim Restitution Matters: Four Lessons from Hawai'i to Ensure Financial Justice for Crime Victims.*"

Court-ordered restitution offsets the financial harm to crime victims by holding the defendant financially accountable. For the forty percent (40%) of Americans who cannot afford an emergency expense of a few hundred dollars, the unexpected financial burden resulting from a crime can make being victimized even more devastating. Unless restitution is paid in full in a timely manner, many victims of crime never financially recover from the crime.

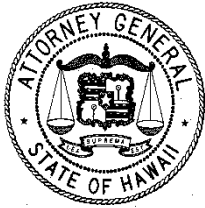
Restitution is the primary pathway to mitigate the financial impact of a crime; however, the restitution process is often inefficient and fraught with institutional barriers. A restitution order is only the first step. Failure of the court to enforce its own orders undermines the rule of law and public trust in the justice system.

In a 2011 letter to the editor written by the Administrative Director of the Court, after a series of articles critical of restitution collection in Hawai'i, the Administrative Director noted:

Clearly, offenders' failure to fully pay restitution is a difficult, complex and long-standing problem, but one that absolutely has to be addressed because of the hurtful impact it has on victims and because non-compliance with court orders undermines public trust and confidence in the justice system.

Proof-of-compliance hearings have been found to be an effective tool for restitution collections in Hawai'i's District Courts

Thank you for providing the Commission with the opportunity to testify in support of Senate Bill 1316, SD1, HD1.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1316, S.D. 1, H.D. 1, RELATING TO COURT-ORDERED PAYMENTS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 27, 2025

TIME: 3:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General strongly supports this bill and offers the following comments, with two recommended amendments noted at the end of this testimony.

The purpose of the bill is to address a recent Supreme Court decision by:

(1) requiring the Judiciary to contract with a collection agency or licensed attorney, to collect delinquent court-ordered fines, fees, sanctions, or court costs; (2) allowing courts to grant a specified period of time or specified installments for payment of fees, fines, and restitution; (3) requiring the district court, upon default in payments by a defendant, to have the defendant show cause why the default should not be treated as contumacious; and (4) requiring the district court to set proof of compliance hearings for all cases in which restitution is ordered, and set further proof of compliance hearings if the payments have not been completed, until they have been paid in full.

In *State v. Fay*, 154 Hawai'i 305 (2024), the Hawaii Supreme Court interpreted section 706-644, Hawaii Revised Statutes (HRS), to mean that the court may only order a compliance hearing regarding restitution payments if a defendant is on probation or defaults on payments. If a defendant is not on probation, but the court has issued a freestanding restitution order, the court cannot hold compliance hearings but can only act if the person defaults on restitution payments. The ruling made it more difficult to ensure that convicted defendants complied with orders for restitution and victims were

properly compensated for their losses. As a result, victims of crime could potentially face the unjust recourse of having to file a civil lawsuit to personally pursue court-ordered restitution from uncooperative or unapologetic defendants. This bill is needed to assist victims by re-establishing a clear court procedure for court-ordered restitution.

The Department does not oppose limiting mandatory proof of compliance hearings to district court cases in which restitution was ordered, as reflected in the current form of the bill.

To improve clarity, we recommend deleting the phrase "**for a defendant in district court**" from page 3, lines 14-15, and page 4, line 16, because section 706-644(1), HRS, will only apply to defendants in district court (see page 2, line 20), and the phrase is unnecessary.

Additionally, we suggest revising page 5, line 3, as follows (underscoring removed from new material in bill, to Ramseyer additional changes): ". . . refer the outstanding fines and ~~or~~ fees to the collection . . . "

We respectfully ask your committee to pass this bill with the suggested amendments. Thank you for the opportunity to provide support for this bill.

JON N. IKENAGA
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March 25, 2025

Committee on Finance
Rep. Kyle T. Yamashita, Chair
Rep. Jenna Takenouchi, Vice Chair
415 South Beretania Street, Conf. Rm. 325
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition to S.B. 1316
Hearing: March 27, 2024, 3:30 PM

Dear Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee,

The Office of the Public Defender **OPPOSES THIS BILL** which remains contrary to the purpose and holding of State v. Fay, 154 Hawaii 305, 550 P.3d 1163 (2024), and does not accomplish its stated purpose.

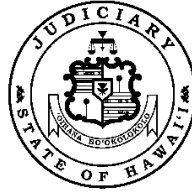
Despite the articulated basis for this measure, to ensure payment especially for victims of crime to avoid “having to file a civil lawsuit to personally pursue court-ordered restitution” and to establish “a clear court procedure for court-ordered restitution[,]” there are no assurances that endless proof of compliance hearings ensure payment of fees or restitution. Endless POC hearings only ensure that court time and judicial resources will be wasted with court dockets remaining needlessly clogged up. Rather, when the court converts restitution to a free standing order, the victim can enforce the restitution as a civil judgment and employ its effectuating tools without the hassle of initiating a civil lawsuit or a strain on court resources.

In State v. Fay, the Hawaii Supreme Court directly addressed the strain that these types of needless POCs create. Specifically, financial obligations, including restitution, were not meant to “prolong[] criminal justice oversight, creating a type of shadow control that surpasses the original sentence.” Specifically, “court monitoring of freestanding restitution orders unnecessarily burdens defendants and wastes judicial resources.” The clear and concise language in Fay plainly states that infinite POC hearings overreach and are wasteful, illogical and unlawful. This measure, which attempts to enact what the Court explicitly and rationally struck, makes no logical or financial sense. There are other means to ensure payment for fees, fines and restitution which, not only can but in light of Fay, must be explored.

In light of Fay and commonsense, the OPD suggests amending paragraph (1), line 5, to delete the phrase, “**whether as an independent order, as part of a judgment and sentence, or**[.]” This would limit POCs to circumstances articulated in Fay, where the defendant is on probation or deferral plea supervision.

This maintains that the court will keep track of defendants' progress and performance in accordance with the mandated supervision. Notably, POCs do not ensure that defendants pay restitution which is what SB 1316 seeks to guarantee. Rather, a free standing order guarantees that the victim has a mechanism for repayment without having to initiate a civil lawsuit. A free standing order effectuates the intent to have restitution repaid without the problems the Hawaii Supreme Court articulated in Fay.

Thank you for taking these comments into consideration.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Finance

Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, March 27, 2025, 3:30 PM
State Capitol, Conference Room 308 & Videoconference

WRITTEN TESTIMONY ONLY

By

Melanie May
Deputy Chief Judge, District Court of the First Circuit

Christopher M. Dunn
Judge, District Court of the Second Circuit

Michelle K. Laubach
Deputy Chief Judge, District Court of the Third Circuit

Michael K. Soong
Deputy Chief Judge District Court of the Fifth Circuit

Bill No. and Title: Senate Bill No. 1316, SD1, HD1, Relating to Court-Ordered Payments.

Purpose: Requires the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs. Repeals the authority of the Judiciary to contract with a collection agency or licensed attorney to collect delinquent restitution. Expressly allows courts to specify a period of time or installments for payment of fees and restitution. Requires courts to hold payment compliance hearings once per year or as soon as practicable, until all fees, fines, and restitution are fully paid, and requires a defendant to



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appear and show cause if the defendant fails to pay in full within a time specified by the court or fails to pay three consecutive installments. Makes corresponding amendments to related statutes.

Judiciary's Position:

The Judiciary thanks the House Committee on the Judiciary & Hawaiian Affairs for HD1, which limits the types of cases for which proof of compliance hearings are required under Haw. Rev. Stat. § 706-644. The Judiciary believes HD1 is a workable approach to addressing issues raised by *State v. Fay*, 154 Hawai'i 305 (2024), while providing for a mechanism for enforcement of court judgments consistent with the priority in which payments are to be applied in criminal cases under Haw. Rev. Stat. § 706-651.

Based on an analysis of staffing conditions statewide the Judiciary would request an appropriation of \$1,846,534.47. This amount would facilitate the need for an additional per diem judge, court clerks and bailiffs in all circuits and as some circuits have limited fiscal offices, additional account clerks positions will be required.

Thank you for the opportunity to submit testimony.

Dennis M. Dunn

Kailua, Hawaii 96734

dennismdunn47@gmail.com

TO: Representative Kyle Yamashita, Chair

Representative Jenna Takenouchi, Vice Chair

House Committee on Finance

RE: SB 1316, S.D. 1, H.D. 1, Relating to Court-Ordered Payments

HEARING: Thursday, March 27, 2025, 3:30 p.m.

Good afternoon, Chair Yamashita, Vice Chair Takenouchi, and Members of the House Committee on Finance. My name is Dennis Dunn, and I am the retired Director of the Victim Witness Kokua Services in the Honolulu Prosecuting Attorney's Office, having retired after 44 years of service. Prior to that I was a volunteer Victim Advocate for People Against Rape. I am testifying today **in support of SB 1316., S.D., H.D. 1.**

This bill is designed to restore Proof of Compliance Hearings in our District Courts, which was struck down by the Hawai'i Supreme Court *in State v Fay*. I am testifying in full support of this measure as it ensures compliance with Court ordered restitution, which touches on principles that are at the foundation of our criminal justice system. These principles underly the process by which we establish the dimensions of the harm caused by an individual criminal act. In its simplest form, the establishment of a process of proof of compliance hearings is at its heart a direct means of requiring accountability for criminal offenders. And how do we measure this accountability? It is through the process of restitution, possibly the most critical element in demonstrating that we truly have a system that administers justice. The terms restorative justice and rehabilitation are but hollow platitudes without the full and accurate establishment of the amount of restitution, the requirement of its payment by the offender, and a meaningful process of collection. While we can tinker around with elements of the process that this bill establishes, without basic adherence to the principles stated above any claim that we have a fair and just system of criminal law is disingenuous and without merit. The effectiveness of our restitution process puts our feet to the fire in testing any credibility that we have in declaring that our legal process fulfills the high ideals that we so often hear loudly proclaimed when comparing our justice system to other legal systems that we declare to be inferior or corrupt.

Why then is restitution so important? It is typically the one concrete measure by which we assess the harm caused by an offender. While psychological harm and traumatic emotional injury are abstract concepts, restitution, measured in dollars and cents, provides a means of quantification that can be understood and appreciated by both victim and offender. Restitution that is fulfilled can have a significant impact in the financial restoration of a crime victim. It is also a meaningful act that provides concrete evidence of an offender's willingness to take responsibility for their actions. Successfully completing a restitution obligation is the very first step in offender rehabilitation. Failure to pay restitution, in my opinion, clearly demonstrates that an offender is not sincere about their willingness to take responsibility for their actions, nor are they serious about embarking upon a path of rehabilitation. For me, restitution is the price that an offender must pay to successfully re-enter civil society.

This brings us back to our Bill, SB 1316, S.D. 1, H.D. 1. I believe that we can make the process of compliance with court ordered restitution work, as failure to do so means our criminal justice system has failed, and I am determined to see it become a success. I have seen compliance calendars in our District Courts work and this measure would restore that process.

We so often hear the term restorative justice being casually bantered around these days. True restorative justice is focused on restoring crime victims, beginning with financial restoration through restitution. Please support SB 1316, S.D. 1, H.D. 1. Thank you for your time and consideration.

Mahalo!