

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Tuesday, March 11, 2025, 2:00 PM
State Capitol, Conference Room 325 & 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

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Deputy Chief Judge District Court of the Fifth Circuit

Bill No. and Title: Senate Bill No. 1316, SD1, 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 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 provides the following comments regarding the impact HB1316, SD1 will have on the district courts of the State of Hawai'i. As currently drafted, the amendments to Haw. Rev. Stat. § 706-644(1) outlined in Section 3 would mandate proof of compliance hearings in all district court cases where a fee, fine, or restitution is ordered, even in cases where such fees and fines are sent to collection.

The Judiciary is cognizant of the priority in which payments are to be applied in criminal cases under Haw. Rev. Stat. § 706-651, and acknowledges the difficulties persons who are owed restitution may experience while waiting for restitution to be paid. The Judiciary therefore does not oppose the setting of proof of compliance hearings in district court cases where restitution is ordered.

However, in cases where restitution is not ordered, proof of compliance hearings may weigh down district court calendars and divert court resources away from other matters. The district courts already refer unpaid fines and fees in criminal traffic cases (*e.g.*, driving without license, driving without insurance, reckless driving, leaving the scene of a motor vehicle collision, etc.) to collection, and had been doing so long before *State v. Fay*, 154 Hawai'i 305 (2024). To limit the number of cases in which defendants are ordered to appear for proof of compliance hearings – which siphon court resources away from adjudicating new cases to monitoring old ones and may require defendants to take time off from work and other productive activities to attend court – the Judiciary suggests the proposed revisions for consideration:

1. On page 3, line 4, after “condition of probation or deferred plea,” add a colon and insert “(A) If the defendant was ordered to pay restitution”
2. On page 4, line 12, after “compliance” delete the period and insert “(B) If the defendant was ordered to pay fines, fees, or both, but no restitution, the district court shall refer the outstanding fines and/or fees to the collection agency contracted pursuant to section 601-17.5. A proof of compliance hearing shall not be required in cases where no restitution was ordered.”

Thank you for the opportunity to submit testimony.



**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, RELATING TO COURT-ORDERED PAYMENTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Tuesday, March 11, 2025

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas and Members of the Committee:

The Department of the Attorney General strongly supports this bill and offers the following comments, with two suggested amendments noted at the end of this testimony. In addition, we understand the Judiciary is further requesting that mandatory proof of compliance hearings be limited to cases in which restitution is ordered, while cases in which only fines and/or fees are ordered will be sent to collections. The Department has no opposition to such changes.

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 court, upon default in payments by a defendant, to have the defendant show cause why the default should not be treated as contumacious; (4) requiring the court to set proof of compliance hearings for any orders to pay fees, fines, or restitution, 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, as reflected in the current form of the bill. To improve clarity, we recommend relocating the phrase "in district court" from page 3, lines 5-6, to page 2, line 20, so that the beginning of section 706-644(1), HRS, reads: "When a defendant **in district court** is sentenced" Additionally, on page 3, line 5, we suggest revising "**a** defendant" to "**the** defendant."

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

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March 10, 2025

Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
415 South Beretania Street, Conf. Rm. 325
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition to S.B. 1316
Hearing: March 11, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

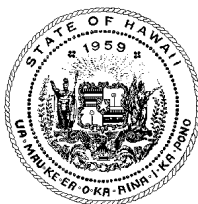
The Office of the Public Defender **OPPOSES THIS BILL** which remains contrary to the purpose and holding of State v. Fay, 154 Hawaii 305, 550 P.3d 1163 (2024), and does not accomplish its stated purpose.

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[,]” this measure does not ensure that the POC hearings will ensure payment of fees or restitution. This measure does ensure that court time will be wasted and court dockets will be clogged up needlessly. Rather, a free standing restitution order means that the victim can enforce the restitution as a civil judgment and employ its effectuating tools without the strain on court resources.

Moreover, the Hawaii Supreme Court’s ruling in State v. Fay, which held that financial obligations were not meant to “prolong[] criminal justice oversight, creating a type of shadow control that surpasses the original sentence[,]” clearly delineated the purpose and intent behind the holding. 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 proof of compliance hearings overreach and are wasteful, illogical and unlawful. This measure, which attempts to enact what the Court explicitly struck, is an invitation for another appeal.

There are other means to ensure payment for fees, fines and restitution which, not only can but in light of Fay, must be explored. Thank you for taking these comments into consideration.

JOSH B. GREEN, M.D.
GOVERNOR



MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII

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

**Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission**

**House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair**

**Tuesday, March 11, 2025; 2:00 PM
State Capitol, Conference Room 325 & Videoconference**

Good afternoon Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (the “Commission”) with the opportunity to testify in support of Senate Bill 1316, SD1. SB 1316, SD1 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 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. While we strongly support this measure, the Commission is concerned that it does not go far enough because it does not provide for proof-of-compliance hearings in Circuit Court. We urge the Committee to consider expanding the use of proof-of-compliance hearings to Circuit Court.

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

Dennis M. Dunn

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TO: Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Senate Committee on Judiciary

RE: SB 1316, Relating to Court-Ordered Payments

HEARING: Wednesday, February 12, 2025, 9:45 a.m.

Good morning, Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. 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**.

I am testifying in full support of this measure as it 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. I am open to ideas about how to 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 there must be some way to adapt the Circuit Court process to make it work there also.

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. Thank you for your time and consideration.

Mahalo!