

## ACT 269

H.B. NO. 2776

A Bill for an Act Relating to Restitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding to part III two new sections to be appropriately designated and to read as follows:

**“§706- Victim restitution.** (1) As used in this section, “victim” includes any of the following:

- (a) The direct victim of a crime including a business entity, trust, or governmental entity;
- (b) If the victim dies as a result of the crime, a surviving relative of the victim as defined in chapter 351; or
- (c) A governmental entity which has reimbursed the victim for losses arising as a result of the crime.

(2) The court may order the defendant to make restitution for losses suffered by the victim or victims as a result of the defendant’s offense. The court may order restitution to be paid to the criminal injuries compensation commission in the event that the victim has been given an award for compensation under chapter 351.

(3) Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses including but not limited to:

- (a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (b) Medical expenses; and
- (c) Funeral and burial expenses incurred as a result of the crime.

(4) The restitution ordered shall not affect the right of a victim to recover under section 351-33 or in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award under section 351-33.

**§706- Civil enforcement.** (1) A certified or exemplified copy of an order of any court of this State for payment of a fine or restitution pursuant to section 706-605 may be filed in the office of the clerk of an appropriate court of this State as a special proceeding. The order, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, shall be enforceable in the same manner as a civil judgment.

(2) In the event the victim has received or applied for reimbursement from any governmental entity, the victim named in the order or the victim’s attorney shall also mail notice of the filing to the governmental entity providing reimbursement and shall file proof of mailing with the clerk.

(3) Fees for docketing, transcription, or other enforcement proceedings shall be as provided by law for judgments of a court of this State.”

SECTION 2. Section 657-23, Hawaii Revised Statutes, is amended to read as follows:

“[[§657-23]] Extension while criminal case is pending. If at any time when any cause of action for recovery of restitution or compensation for damage or injury to [the person of a child] a victim of a crime exists, a criminal action is pending which arises out of the same occurrence [and in which the child is the victim], the time during which the criminal action is pending shall not be deemed or taken as any part of the time limited for the commencement of the civil action.

As used in this section, a criminal action is pending until [its final adjudication in the trial court.] the court’s jurisdiction in the criminal action is terminated.”

SECTION 3. Chapter 706, Hawaii Revised Statutes, is amended by amending the title of part III to read as follows:

**“PART III. FINES AND RESTITUTION”**

SECTION 4. Section 706-605, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Except as provided in parts II and IV of this chapter or in section 706- and subsection (2) of this section and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II of this chapter;
- (b) To pay a fine as authorized by part III and section 706-624 of this chapter;
- (c) To be imprisoned for a term as authorized by part IV of this chapter;
- (d) To make restitution in an amount the defendant can afford to pay; provided that the court may order any restitution to be paid to victims pursuant to section 706- or to the criminal injuries compensation commission in the event that the victim has been given an award for compensation under chapter 351 and, if the court orders, in addition to restitution, payment of fine in accordance with paragraph (b), the payment of restitution shall have priority over the payment of the fine; or
- (e) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor[,]; provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.”

SECTION 5. Section 706-630, Hawaii Revised Statutes, is amended to read as follows:

“**§706-630 Discharge of defendant.** Upon the termination of the period of the<sup>1</sup> probation or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court[.], except as to any action under this chapter to collect unpaid fines, restitution, attorney’s fees, costs, or interest.”

SECTION 6. Section 706-644, Hawaii Revised Statutes, is amended to read as follows:

**“§706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.** (1) When a defendant is sentenced pursuant to section 706-605, granted a conditional discharge pursuant to section 712-1255, or granted a deferred plea pursuant to chapter 853, and the defendant is ordered to pay<sup>2</sup> a fine or restitution, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant’s default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant’s appearance. Unless the defendant shows that the defendant’s default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant’s part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant’s default was contumacious and may order the defendant committed until the fine, restitution, or a specified part thereof is paid.

(2) When a fine or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure to do so<sup>3</sup> may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fine or restitution shall be specified in the order of commitment, and shall not exceed one day for each \$25 of the fine, thirty days if the fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine [or restitution] shall be given credit toward payment of the fine for each day of imprisonment, at the rate of \$25 per day.

(4) If it appears that the defendant’s default in the payment of a fine or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount [thereof or] of each installment, or revoking the fine [or restitution] or the unpaid portion thereof in whole or in part[.], or converting the unpaid portion of the fine to community service. A defendant shall not be discharged from an order to pay restitution until the full amount of the restitution has actually been collected or accounted for.

[(5) The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for nonpayment of the fine<sup>4</sup> or restitution until the amount of the fine has actually been collected or accounted for under subsection (3).

(6) (5) Unless discharged by payment or, in the case of a fine, service of imprisonment [in default of a fine, a fine] pursuant to subsection (3), an order to pay a fine or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to chapter 853, may be collected in the same manner as a judgment in a civil action. The State or the victim named in the order may collect the restitution, including costs, interest, and attorney’s fees, pursuant to section 706-\_\_\_\_. The State may collect the fine, including costs, interest, and attorney’s fees pursuant to section 706-\_\_\_\_.

[(7) Costs may be collected in the same manner as a judgment in a civil action, but] (6) Attorney’s fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of [costs.] attorney’s fees, costs, and interest.<sup>1</sup>

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[(8) The state attorney general may institute proceedings to collect the fine, and costs, including interest and attorney's fees, as a civil judgment in the court of appropriate jurisdiction.]''

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>5</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

### Notes

1. Should be underscored.
2. "Pay" should not be underscored.
3. Prior to amendment "so to do" appeared here.
4. Prior to amendment "or restitution" appeared here.
5. Edited pursuant to HRS §23G-16.5.