

ACT 108

S.B. NO. 852

A Bill for an Act Relating to Restitution for Victims of Crime.

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

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

The legislature further finds that the additional language in this Act will clarify that the intent of section 706-646, Hawaii Revised Statutes, is to reimburse crime victims fully for all reasonable and verified losses resulting from a defendant's offense. Nevertheless, as signaled by the use of the phrase, "including but not limited to", the losses enumerated in subsection (3) of section 706-646, Hawaii Revised Statutes, are intended to be illustrative, not exhaustive, for purposes of restitution.

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

“(3) In ordering restitution, the court shall not consider the defendant’s financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant’s financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. While the defendant is in the custody of the department of public safety, restitution shall be collected pursuant to chapter 353 and any court-ordered payment schedule shall be suspended. 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]~~, which shall include mental health treatment, counseling, and therapy;
- (c) Funeral and burial expenses ~~[incurred as a result of the crime.]; and~~
- (d) Lost earnings, which shall include paid leave.”

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

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 Statutory material to be repealed is bracketed and stricken.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

SECTION 5. This Act shall take effect on July 1, 2019.

(Approved June 21, 2019.)