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# A BILL FOR AN ACT

RELATING TO THE COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

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

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

4           "§706-       Income withholding for payment of restitution.

5           (1) Whenever a judgment or order is entered establishing,  
6 modifying, or enforcing restitution, the court shall allow  
7 ninety days for a defendant to make payment in full. If the  
8 judgment or order is not satisfied after ninety days, the court  
9 shall issue an income withholding order that shall operate as an  
10 assignment to the clerk of the court in which the order is  
11 entered, of amounts that are due at times that may be specified  
12 in the judgment or order, but no less than \$30 per month, from  
13 the defendant's income due or to become due in the future from  
14 the defendant's employer or successor employers. A copy of the  
15 income withholding order shall be filed in the office of the  
16 clerk of the court in which the income withholding order was  
17 issued.



1       (2) The income withholding order issued pursuant to  
2 subsection (1) shall be effective immediately after service upon  
3 an employer of a copy of the income withholding order, which  
4 service may be effected only by the prosecuting attorney of the  
5 county where the offense occurred by regular mail, by personal  
6 delivery, or by transmission through electronic means.  
7 Thereafter, for each pay period, the employer shall withhold  
8 from the income that is due to the defendant from the employer  
9 and that is not required to be withheld by any other federal or  
10 state law, and transmit to the clerk of the court in which the  
11 order is entered as much as may remain payable for the pay  
12 period up to the amount specified in the order. The employer  
13 shall immediately inform the court of any change that would  
14 affect the income withholding order.

15       (3) Compliance by an employer with the income withholding  
16 order shall operate as a discharge of the employer's liability  
17 to the defendant for that portion of the defendant's earnings  
18 withheld and transmitted to the clerk of the court from which  
19 the order is issued, whether or not the employer has withheld  
20 the correct amount. For each payment made pursuant to an income  
21 withholding order, the employer may deduct and retain as an



1 administrative fee an additional amount of \$2 from the income  
2 owed to the defendant. The total amount withheld from the  
3 defendant's income, including the administrative fee, shall not  
4 exceed the maximum amounts permitted under section 303(b) of the  
5 Consumer Credit Protection Act (15 U.S.C. §1673(b)).

6 (4) Any income withholding order made pursuant to this  
7 section shall:

8 (a) Have priority as against any garnishment, attachment,  
9 execution, or other income withholding order, or any  
10 other order, except for any order made pursuant to  
11 chapters 571, 576B, 576D, 576E, 580, and 584; and  
12 (b) Not be subject to the exemptions or restrictions  
13 contained in part III of chapter 651 and in chapters  
14 652 and 653.

15 (5) An employer who fails to comply with an income  
16 withholding order under this section shall be liable to the  
17 obligee for the full amount of all sums not withheld and  
18 transmitted as ordered. An employer receiving an income  
19 withholding order shall:



1        (a) Transmit amounts withheld to the clerk of the court  
2        within five business days after the defendant is paid;  
3        and

4        (b) Begin withholding no later than the first pay period  
5        commencing within seven business days following the  
6        date a copy of the income withholding order is served  
7        upon the employer by regular mail, personal delivery,  
8        or electronic means.

9        As used in this subsection, the term "business day" means a day  
10       on which the employer's office is open for regular business.

11       (6) An employer who:

12       (a) Complies with an income withholding order that is  
13       valid on its face shall not be subject to civil  
14       liability to any person, entity, or agency for conduct  
15       in compliance with the order; and

16       (b) Is required to withhold amounts from the income of  
17       more than one employee may remit to the clerk of the  
18       court a sum total of all amounts in one check with a  
19       listing of the amounts applicable to each employee.  
20       Within ten business days after receipt of the amounts



1           withheld by the employer, the clerk of the court shall  
2           disburse the amounts to the obligee.

3           (7) An income withholding order shall be terminated by a  
4           court order when appropriate. The court shall promptly refund  
5           any amount withheld in error to the defendant.

6           (8) If there is more than one restitution judgment or  
7           order, the amounts withheld from the income of a defendant shall  
8           be allocated among the different restitution judgments or  
9           orders. If the multiple income withholding orders would cause  
10          the amounts withheld from the defendant's income to exceed wage  
11          withholding limitations established under this section, the  
12          amount withheld shall be allocated so that in no case shall the  
13          allocation result in a withholding for any of the restitution  
14          obligations not being implemented.

15          (9) If a defendant changes employment while an income  
16          withholding order is in effect, the defendant shall notify and  
17          provide the clerk of the court with the new employer's contact  
18          information within five business days of the change. The clerk  
19          of the court shall notify the defendant's new employer of the  
20          defendant's and the new employer's respective obligations under



1 this section. The new employer shall be bound by the income  
2 withholding order until further court order.

3 (10) As used in this section, and notwithstanding any other  
4 provision of law:

5 "Employer" means any individual, partnership, association,  
6 joint stock company, trust, corporation, personal representative  
7 of the estate of a deceased individual, or receiver, trustee, or  
8 successor of any of the same, employing any individual,  
9 including the United States government, State, and any political  
10 subdivision thereof, who is or shall become obligated for  
11 payment of income.

12 "Income" includes, without limitation, salaries, wages,  
13 earnings, workers' compensation, commissions, fees, bonuses,  
14 independent contractor income, and any other entitlement to  
15 money, including moneys payable as a disability, death, or other  
16 benefit, or moneys from the State or a political subdivision  
17 thereof, or from any disability system established by the State  
18 or any political subdivision thereof under law."

19 SECTION 2. Section 231-52, Hawaii Revised Statutes, is  
20 amended by amending the definition of "debt" to read as follows:

21 "Debt" includes:



- 1           (1) Any delinquency in periodic court-ordered or  
2           administrative-ordered payments for child support  
3           pursuant to section 576D-1, in an amount equal to or  
4           exceeding the sum of payments which would become due  
5           over a one-month period;
- 6           (2) Any liquidated sum exceeding \$25 which is due and  
7           owing any claimant agency, regardless of whether there  
8           is an outstanding judgment for that sum, and whether  
9           the sum has accrued through contract, subrogation,  
10          tort, operation of law, or judicial or administrative  
11          judgment or order;
- 12          (3) Any defaulted education loan note held by the United  
13          Student Aid Funds, Inc. incurred under the federal  
14          Higher Education Act of 1965 (Public Law 89-329, 79  
15          Stat. 1219), as amended;
- 16          (4) Any federal income taxes due and owing to the United  
17          States Treasurer; [e#]
- 18          (5) Any medicaid overpayment under section 346-59.6[-]; or
- 19          (6) Any unpaid court-ordered restitution enforceable as a  
20          civil judgment pursuant to section 706-647."



1 SECTION 3. Section 706-646, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§706-646 Victim restitution. (1) As used in this  
4 section, "victim" includes any of the following:

5 (a) The direct victim of a crime including a business  
6 entity, trust, or governmental entity;

7 (b) If the victim dies as a result of the crime, a  
8 surviving relative of the victim as defined in chapter  
9 351;

10 (c) A governmental entity that has reimbursed the victim  
11 for losses arising as a result of the crime or paid  
12 for medical care provided to the victim as a result of  
13 the crime; or

14 (d) Any duly incorporated humane society or duly  
15 incorporated society for the prevention of cruelty to  
16 animals, contracted with the county or State to  
17 enforce animal-related statutes or ordinances, that  
18 impounds, holds, or receives custody of a pet animal  
19 pursuant to section 711-1109.1, 711-1109.2, or  
20 711-1110.5; provided that this section does not apply





1 to costs that have already been contracted and  
2 provided for by the counties or State.

3 (2) The court shall order the defendant to make  
4 restitution for reasonable and verified losses suffered by the  
5 victim or victims as a result of the defendant's offense when  
6 requested by the victim. The court shall order restitution to  
7 be paid to the crime victim compensation commission in the event  
8 that the victim has been given an award for compensation under  
9 chapter 351. If the court orders payment of a fine in addition  
10 to restitution or a compensation fee, or both, the payment of  
11 restitution and compensation fee shall have priority over the  
12 payment of the fine, and payment of restitution shall have  
13 priority over payment of a compensation fee.

14 (3) In ordering restitution, the court shall not consider  
15 the defendant's financial ability to make restitution in  
16 determining the amount of restitution to order. The court,  
17 however, shall consider the defendant's financial ability to  
18 make restitution for the purpose of establishing the time and  
19 manner of payment. The court shall specify the time and manner  
20 in which restitution is to be paid. Restitution shall be a



1 dollar amount that is sufficient to reimburse any victim fully  
2 for losses, including but not limited to:

3 (a) Full value of stolen or damaged property, as  
4 determined by replacement costs of like property, or  
5 the actual or estimated cost of repair, if repair is  
6 possible;

7 (b) Medical expenses; and

8 (c) Funeral and burial expenses incurred as a result of  
9 the crime.

10 (4) All money deposited by the defendant as bail, in any  
11 criminal proceeding before any court, that has not been declared  
12 forfeited, shall be applied toward payment of any restitution,  
13 finer, or fees ordered by the court in the same case, consistent  
14 with the priorities in subsection (2).

15 [~~4~~] (5) The restitution ordered shall not affect the  
16 right of a victim to recover under section 351-33 or in any  
17 manner provided by law; provided that any amount of restitution  
18 actually recovered by the victim under this section shall be  
19 deducted from any award under section 351-33."

20 SECTION 4. Section 806-73, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) All adult probation records shall be confidential and  
2 shall not be deemed to be public records. As used in this  
3 section, the term "records" includes but is not limited to all  
4 records made by any adult probation officer in the course of  
5 performing the probation officer's official duties. The  
6 records, or the content of the records, shall be divulged only  
7 as follows:

8           (1) A copy of any adult probation case record or of a  
9 portion of it, or the case record itself, upon  
10 request, may be provided to:

11           (A) An adult probation officer, court officer, social  
12 worker of a Hawaii state adult probation unit, or  
13 a family court officer who is preparing a report  
14 for the courts; or

15           (B) A state or federal criminal justice agency, or  
16 state or federal court program that:

17           (i) Is providing supervision of a defendant or  
18 offender convicted and sentenced by the  
19 courts of Hawaii; or

20           (ii) Is responsible for the preparation of a  
21 report for a court;



- 1           (2) The residence address, work address, home telephone
- 2                   number, or work telephone number of a current or
- 3                   former defendant shall be provided only to:
- 4           (A) A law enforcement officer as defined in section
- 5                   [+]710-1000[+] to locate the probationer for the
- 6                   purpose of serving a summons or bench warrant in
- 7                   a civil, criminal, or deportation hearing, or for
- 8                   the purpose of a criminal investigation; or
- 9           (B) A collection agency or licensed attorney
- 10                   contracted by the judiciary to collect any
- 11                   delinquent court-ordered penalties, fines,
- 12                   restitution, sanctions, and court costs pursuant
- 13                   to section 601-17.5;
- 14           (3) A copy of a presentence report or investigative report
- 15                   shall be provided only to:
- 16           (A) The persons or entities named in section 706-604;
- 17           (B) The Hawaii paroling authority;
- 18           (C) Any psychiatrist, psychologist, or other
- 19                   treatment practitioner who is treating the
- 20                   defendant pursuant to a court order or parole
- 21                   order for that treatment;

- 1 (D) The intake service centers;
- 2 (E) In accordance with applicable law, persons or
- 3 entities doing research; and
- 4 (F) Any Hawaii state adult probation officer or adult
- 5 probation officer of another state or federal
- 6 jurisdiction who:
  - 7 (i) Is engaged in the supervision of a defendant
  - 8 or offender convicted and sentenced in the
  - 9 courts of Hawaii; or
  - 10 (ii) Is engaged in the preparation of a report
  - 11 for a court regarding a defendant or
  - 12 offender convicted and sentenced in the
  - 13 courts of Hawaii;
- 14 (4) Access to adult probation records by a victim, as
- 15 defined in section 706-646 to enforce an order filed
- 16 pursuant to section 706-647, shall be limited to the
- 17 [name] :
  - 18 (A) Name and contact information of the defendant's
  - 19 adult probation officer;
  - 20 (B) Compliance record of the defendant with court-
  - 21 ordered payments;



- 1           (C) Amounts paid by the defendant;  
2           (D) Dates of the payments made by the defendant;  
3           (E) Payee of payments made by the defendant; and  
4           (F) Remaining unpaid balance;
- 5           (5) Upon written request, the victim, or the parent or  
6           guardian of a minor victim or incapacitated victim, of  
7           a defendant who has been placed on probation for an  
8           offense under section 580-10(d)(1), 586-4(e),  
9           586-11(a), or 709-906 may be notified by the  
10          defendant's probation officer when the probation  
11          officer has any information relating to the safety and  
12          welfare of the victim;
- 13          (6) Notwithstanding paragraph (3) and upon notice to the  
14          defendant, records and information relating to the  
15          defendant's risk assessment and need for treatment  
16          services; information related to the defendant's past  
17          treatment and assessments, with the prior written  
18          consent of the defendant for information from a  
19          treatment service provider; provided that for any  
20          substance abuse records such release shall be subject  
21          to title 42 Code of Federal Regulations part 2,



1 relating to the confidentiality of alcohol and drug  
2 abuse patient records; and information that has  
3 therapeutic or rehabilitative benefit, may be provided  
4 to:

5 (A) A case management, assessment, or treatment  
6 service provider assigned by adult probation to  
7 service the defendant; provided that the  
8 information shall be given only upon the  
9 screening for admission, acceptance, or  
10 admittance of the defendant into a program;

11 (B) Correctional case manager, correctional unit  
12 manager, and parole officers involved with the  
13 defendant's treatment or supervision; and

14 (C) In accordance with applicable law, persons or  
15 entities doing research;

16 (7) Probation drug test results may be released with prior  
17 written consent of a defendant to the defendant's  
18 treating physician when test results indicate  
19 substance use which may be compromising the  
20 defendant's medical care or treatment;



- 1           (8) Any person, agency, or entity receiving records, or  
 2           contents of records, pursuant to this subsection shall  
 3           be subject to the same restrictions on disclosure of  
 4           the records as Hawaii state adult probation offices;  
 5           and
- 6           (9) Any person who uses the information covered by this  
 7           subsection for purposes inconsistent with the intent  
 8           of this subsection or outside of the scope of the  
 9           person's official duties shall be fined no more than  
 10          \$500."

11          SECTION 5. Act 119, Session Laws of Hawaii 2011, is  
 12          amended by amending section 4 to read as follows:

13          "SECTION 4. This Act shall take effect on July 1, 2011[  
 14          ~~and shall be repealed on July 1, 2016; provided that section~~  
 15          ~~806-73(b), Hawaii Revised Statutes, shall be reenacted in the~~  
 16          ~~form in which it read on the day before the effected date of~~  
 17          ~~this Act]."~~

18          SECTION 6. There is appropriated out of the general  
 19          revenues of the State of Hawaii the sum of \$                    or so  
 20          much thereof as may be necessary for fiscal year 2016-2017 for  
 21          the purpose of enhancing restitution collection pursuant to





1 section 1 of this Act, including the hiring of any necessary  
2 staff to implement section 1 of this Act as follows:

- 3 (1) For first circuit (JUD 310), the judiciary may  
4 establish two full-time equivalent (2.0 FTE) permanent  
5 social worker IV positions, two full-time equivalent  
6 (2.0 FTE) judicial clerk III positions, and one full-  
7 time equivalent (1.0 FTE) accountant I position;
- 8 (2) For second circuit (JUD 320), the judiciary may  
9 establish one full-time equivalent (1.0 FTE) permanent  
10 social worker IV position, one full-time equivalent  
11 (1.0 FTE) judicial clerk III position, and one full-  
12 time equivalent (1.0 FTE) accountant I position;
- 13 (3) For third circuit (JUD 330), the judiciary may  
14 establish two full-time equivalent (2.0 FTE) social  
15 worker IV positions, two full-time equivalent (2.0  
16 FTE) judicial clerk III positions, and one full-time  
17 equivalent (1.0 FTE) accountant I position; and
- 18 (4) For fifth circuit (JUD 350), the judiciary may  
19 establish one full-time equivalent (1.0 FTE) social  
20 worker IV position, one full-time equivalent (1.0 FTE)



1           judicial clerk III position, and one full-time  
2           equivalent (1.0 FTE) accountant I position.

3           The sum appropriated shall be expended by the judiciary for  
4 the purposes of section 1 of this Act.

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

8           SECTION 8. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

14          SECTION 9. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16          SECTION 10. This Act shall take effect on January 7, 2059.



**Report Title:**

Honolulu Prosecuting Attorney Package; Crime Victims;  
Restitution; Collection; Appropriation

**Description:**

Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Amends the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement. Provides priority of income withholding orders. Extends victims' access to adult probation records to include access to payment compliance records. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Makes permanent Act 119, SLH 2011, which allows certain adult probation records to be provided to certain case management, assessment, or treatment service providers upon the screening for admission, acceptance, or admittance of the defendant into a treatment program. Appropriates funds. Takes effect on 1/7/2059. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

