
A BILL FOR AN ACT

RELATING TO 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 be appropriately designated
3 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, there shall concurrently be
7 issued an order that shall operate as an assignment to the clerk
8 of the court where the order is entered, of such amounts at such
9 times as may be specified in the judgment or order, but no less
10 than \$50 per month, from the defendant's income due or to become
11 due in the future from the defendant's employer or successor
12 employers. A copy of the income withholding order shall be
13 filed in the office of the clerk of the circuit court in the
14 circuit where the order was issued.

15 (2) The income withholding order issued pursuant to
16 subsection (1) shall be effective immediately after service upon
17 an employer of a copy of the order, which service may be
18 effected by regular mail, by personal delivery, or by



1 transmission through electronic means. Thereafter, for each pay
2 period, the employer shall withhold from the income due to the
3 defendant from the employer and that is not required to be
4 withheld by any other provision of federal or state law and
5 transmit to the clerk of the court where the order is entered,
6 as much as may remain payable for the pay period up to the
7 amount specified in the order. The employer shall immediately
8 inform the court of any change that would affect the income
9 withholding order.

10 (3) Compliance by an employer with the income withholding
11 order issued pursuant to subsection (1) shall operate as a
12 discharge of the employer's liability to the defendant for that
13 portion of the defendant's earnings withheld and transmitted to
14 the clerk of the court where the order is issued, whether or not
15 the employer has withheld the correct amount. For each payment
16 made pursuant to an income withholding order, the employer may
17 deduct and retain as an administrative fee an additional amount
18 of \$2 from the income owed to the defendant. The total amount
19 withheld from the defendant's income, including the
20 administrative fee, may not be in excess of the maximum amounts
21 permitted under section 303(b) of the Consumer Credit Protection
22 Act (15 U.S.C. §1673(b)). Any income withholding order made



1 pursuant to this section shall have priority as against any
2 garnishment, attachment, execution, or other income withholding
3 order, or any other order, except for any order made pursuant to
4 chapters 571, 576D, and 576E, which shall have first priority.
5 Any income withholding made pursuant to this section shall not
6 be subject to the exemptions or restrictions contained in part
7 III of chapter 651 and in chapters 652 and 653.

8 An employer who fails to comply with an income withholding
9 order under this section shall be liable to the obligee for the
10 full amount of all sums not withheld and transmitted as ordered.
11 An employer receiving an income withholding order shall transmit
12 amounts withheld to the clerk of the court within five business
13 days after the defendant is paid. The employer shall begin
14 withholding no later than the first pay period commencing within
15 seven business days following the date a copy of the order is
16 delivered, mailed, or transmitted to the employer. As used in
17 this subsection, the term "business day" means a day on which
18 the employer's office is open for regular business. An employer
19 who complies with an income withholding order that is regular on
20 its face shall not be subject to civil liability to any person,
21 entity, or agency for conduct in compliance with the order.



1 An employer who is required to withhold amounts from the
2 income of more than one employee may remit to the court a sum
3 total of all amounts in one check with a listing of the amounts
4 applicable to each employee. Within two business days after
5 receipt of the amounts withheld by the employer, the clerk of
6 the court shall disburse the amounts to the obligee.

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

10 (5) It shall be unlawful for any employer to refuse to
11 hire a prospective employee, discharge an employee, or take any
12 other disciplinary action against an employee based in whole or
13 in part upon an order or notice to withhold income pursuant to
14 this section. Any employer violating this section shall be
15 guilty of a misdemeanor.

16 (6) Notwithstanding any other provision of law, for the
17 purposes of this section, the term "income" shall include,
18 without limitation, salaries, wages, earnings, workers'
19 compensation, commissions, fees, bonuses, independent contractor
20 income, and any other entitlement to money, including moneys
21 payable as a pension or as an annuity, retirement, disability,
22 death, or other benefit, or from the State or a political



1 subdivision thereof, or from any retirement, disability, or
2 annuity system established by the State or any political
3 subdivision thereof under law.

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

12 (8) If a defendant changes employer when an income
13 withholding order is in effect, the defendant shall notify and
14 provide the clerk of the court with the new employer's contact
15 information within five business days of the change. The clerk
16 of the court shall notify the defendant's new employer of the
17 defendant's and the new employer's respective obligations under
18 this section. The new employer shall be bound by the income
19 withholding order until further court order.

20 (9) For purposes of this section, "employer" means any
21 individual; partnership; association; joint stock company;
22 trust; corporation; personal representative of the estate of a



1 deceased individual; or receiver, trustee, or successor of any
2 of the same, employing any individual, including the United
3 States government, State, and any political subdivision thereof,
4 who is or shall become obligated for payment of income."

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

7 ""Debt" includes:

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



- 1 (4) Any federal income taxes due and owing to the United
- 2 States Treasurer; [~~or~~]
- 3 (5) Any medicaid overpayment under section 346-59.6[~~-~~]; or
- 4 (6) Any unpaid court-ordered restitution enforceable as a
- 5 civil judgment pursuant to section 706-647."

6 SECTION 3. Section 706-645, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§706-645 Revocation of fine [~~or restitution~~]**. (1) A
9 defendant who has been sentenced to pay a fine [~~or restitution~~]
10 and who is not in contumacious default in the payment thereof
11 may at any time petition the court which sentenced the defendant
12 for a revocation of the fine [~~or restitution~~] or of any unpaid
13 portion thereof.

14 (2) If it appears to the satisfaction of the court that
15 the circumstances which warranted the imposition of the fine [~~or~~
16 ~~restitution~~] have changed, or that it would otherwise be unjust
17 to require payment, the court may revoke the fine [~~or~~
18 ~~restitution~~] or the unpaid portion thereof in whole or in part.
19 Prior to revocation, the court shall afford the prosecuting
20 attorney an opportunity to be heard."

21 SECTION 4. Section 706-646, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§706-646 Victim restitution. (1) As used in this

2 section, "victim" includes any of the following:

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

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

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

12 (2) The court shall order the defendant to make
13 restitution for reasonable and verified losses suffered by the
14 victim or victims as a result of the defendant's offense when
15 requested by the victim. The court shall order restitution to
16 be paid to the crime victim compensation commission in the event
17 that the victim has been given an award for compensation under
18 chapter 351. If the court orders payment of a fine in addition
19 to restitution or a compensation fee, or both, the payment of
20 restitution and compensation fee shall have priority over the
21 payment of the fine, and payment of restitution shall have
22 priority over payment of a compensation fee.



1 (3) In ordering restitution, the court shall not consider
2 the defendant's financial ability to make restitution in
3 determining the amount of restitution to order. The court,
4 however, shall consider the defendant's financial ability to
5 make restitution for the purpose of establishing the time and
6 manner of payment. The court shall specify the time and manner
7 in which restitution is to be paid. Restitution shall be a
8 dollar amount that is sufficient to reimburse any victim fully
9 for losses, including but not limited to:

10 (a) Full value of stolen or damaged property, as
11 determined by replacement costs of like property, or
12 the actual or estimated cost of repair, if repair is
13 possible;

14 (b) Medical expenses; and

15 (c) Funeral and burial expenses incurred as a result of
16 the crime.

17 (4) All money deposited by the defendant as bail or bond,
18 in any criminal proceeding before any court, that has not been
19 declared forfeited shall be applied toward payment of any
20 restitution, fines, or fees ordered by the court in the same
21 case, consistent with the priorities stated in subsection (2).



1 ~~[(4)]~~ (5) The restitution ordered shall not affect the
2 right of a victim to recover under section 351-33 or in any
3 manner provided by law; provided that any amount of restitution
4 actually recovered by the victim under this section shall be
5 deducted from any award under section 351-33."

6 SECTION 5. Section 806-73, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) All adult probation records shall be confidential and
9 shall not be deemed to be public records. As used in this
10 section, the term "records" includes but is not limited to all
11 records made by any adult probation officer in the course of
12 performing the probation officer's official duties. The
13 records, or the content of the records, shall be divulged only
14 as follows:

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

18 (A) An adult probation officer, court officer, social
19 worker of a Hawaii state adult probation unit, or
20 a family court officer who is preparing a report
21 for the courts; or



- 1 (B) A state or federal criminal justice agency, or
- 2 state or federal court program that:
 - 3 (i) Is providing supervision of a defendant or
 - 4 offender convicted and sentenced by the
 - 5 courts of Hawaii; or
 - 6 (ii) Is responsible for the preparation of a
 - 7 report for a court;
- 8 (2) The residence address, work address, home telephone
- 9 number, or work telephone number of a current or
- 10 former defendant shall be provided only to:
 - 11 (A) A law enforcement officer as defined in section
 - 12 710-1000(13) to locate the probationer for the
 - 13 purpose of serving a summons or bench warrant in
 - 14 a civil, criminal, or deportation hearing, or for
 - 15 the purpose of a criminal investigation; or
 - 16 (B) A collection agency or licensed attorney
 - 17 contracted by the judiciary to collect any
 - 18 delinquent court-ordered penalties, fines,
 - 19 restitution, sanctions, and court costs pursuant
 - 20 to section 601-17.5;
- 21 (3) A copy of a presentence report or investigative report
- 22 shall be provided only to:



- 1 (A) The persons or entities named in section 706-604;
- 2 (B) The Hawaii paroling authority;
- 3 (C) Any psychiatrist, psychologist, or other
4 treatment practitioner who is treating the
5 defendant pursuant to a court order or parole
6 order for that treatment;
- 7 (D) The intake service centers;
- 8 (E) In accordance with applicable law, persons or
9 entities doing research; and
- 10 (F) Any Hawaii state adult probation officer or adult
11 probation officer of another state or federal
12 jurisdiction who:
- 13 (i) Is engaged in the supervision of a defendant
14 or offender convicted and sentenced in the
15 courts of Hawaii; or
- 16 (ii) Is engaged in the preparation of a report
17 for a court regarding a defendant or
18 offender convicted and sentenced in the
19 courts of Hawaii;
- 20 (4) Access to adult probation records by a victim, as
21 defined in section 706-646 to enforce an order filed
22 pursuant to section 706-647, shall be limited to the



1 name and contact information of the defendant's adult
2 probation officer[+], the compliance record of the
3 defendant with court-ordered payments, the amounts
4 paid by the defendant, the dates of the payments made
5 by the defendant, the payee of payments made by the
6 defendant, and the balance unpaid;

7 (5) Upon written request, the victim, or the parent or
8 guardian of a minor victim or incapacitated victim, of
9 a defendant who has been placed on probation for an
10 offense under section 580-10(d)(1), 586-4(e), 586-
11 11(a), or 709-906 may be notified by the defendant's
12 probation officer when the probation officer has any
13 information relating to the safety and welfare of the
14 victim;

15 (6) Notwithstanding paragraph (3) and upon notice to the
16 defendant, records and information relating to the
17 defendant's risk assessment and need for treatment
18 services; information related to the defendant's past
19 treatment and assessments, with the prior written
20 consent of the defendant for information from a
21 treatment service provider; provided that for any
22 substance abuse records such release shall be subject



1 to Title 42 Code of Federal Regulations Part 2,
2 relating to the confidentiality of alcohol and drug
3 abuse patient records; and information that has
4 therapeutic or rehabilitative benefit, may be provided
5 to:

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

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

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

17 (7) Probation drug test results may be released with prior
18 written consent of a defendant to the defendant's
19 treating physician when test results indicate
20 substance use which may be compromising the
21 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 6. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so
13 much thereof as may be necessary for fiscal year 2013-2014 and
14 the same sum or so much thereof as may be necessary for fiscal
15 year 2014-2015 for the purpose of enhancing restitution
16 collection pursuant to this Act and the hiring of any necessary
17 staff to implement this Act.

18 The sums appropriated shall be expended by the judiciary
19 for the purposes of this Act.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 8. This Act shall take effect on July 1, 2013.



Report Title:

Collection of Restitution for Crime Victims; 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. Removes court's authority to revoke restitution once ordered. Extends victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Makes an unspecified appropriation to the judiciary for the purpose of enhancing restitution collection. (SD2)

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