
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 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, 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 department of the
5 prosecuting attorney of the county where the offense occurred,
6 by regular mail, by personal delivery, or by transmission
7 through electronic means. Thereafter, for each pay period, the
8 employer shall withhold from the income that is due to the
9 defendant from the employer and that is not required to be
10 withheld by any other provision of federal or state law, and
11 transmit to the clerk of the court in which the order is
12 entered, as much as may remain payable for the pay period up to
13 the amount specified in the order. The employer shall
14 immediately inform the court of any change that would affect the
15 income withholding order.

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



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

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

9 (a) Have priority as against any garnishment, attachment,
10 execution, or other income withholding order, or any
11 other order, except for any order made pursuant to
12 chapters 571, 576B, 576D, 576E, 580, and 584; and

13 (b) Not be subject to the exemptions or restrictions
14 contained in part III of chapter 651 and in chapters
15 652 and 653.

16 (5) An employer who fails to comply with an income
17 withholding order under this section shall be liable to the
18 obligee for the full amount of all sums not withheld and
19 transmitted as ordered. An employer receiving an income
20 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) It shall be unlawful for any employer to refuse to
4 hire a prospective employee, to discharge an employee, or to
5 take any other disciplinary action against an employee, based in
6 whole or in part upon an order or notice to withhold child
7 support authorized by this section. Any employer violating this
8 section shall be guilty of a misdemeanor and shall be punished
9 under section 710-1077(1)(g).

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

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



1 (10) If a defendant changes employment while an income
2 withholding order is in effect, the defendant shall notify and
3 provide the clerk of the court with the new employer's contact
4 information within five business days of the change. The clerk
5 of the court shall notify the defendant's new employer of the
6 defendant's and the new employer's respective obligations under
7 this section. The new employer shall be bound by the income
8 withholding order until further court order.

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

11 (a) "Employer" means any individual, partnership,
12 association, joint stock company, trust, corporation,
13 personal representative of the estate of a deceased
14 individual, or receiver, trustee, or successor of any
15 of the same, employing any individual, including the
16 United States government, State, and any political
17 subdivision thereof, who is or shall become obligated
18 for payment of income; and

19 (b) "Income" includes, without limitation, salaries,
20 wages, earnings, workers' compensation, commissions,
21 fees, bonuses, independent contractor income, and any



1 other entitlement to money, including moneys payable
 2 as a disability, death, or other benefit, or moneys
 3 from the State or a political subdivision thereof, or
 4 from any disability system established by the State or
 5 any political subdivision thereof under law."

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

8 ""Debt" includes:

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



1 Higher Education Act of 1965 (Public Law 89-329, 79
2 Stat. 1219), as amended;

3 (4) Any federal income taxes due and owing to the United
4 States Treasurer; [~~or~~]

5 (5) Any medicaid overpayment under section 346-59.6 [-]; or

6 (6) Any unpaid court-ordered restitution enforceable as a
7 civil judgment pursuant to section 706-647."

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

10 "§706-646 Victim restitution. (1) As used in this
11 section, "victim" includes any of the following:

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

14 (b) If the victim dies as a result of the crime, a
15 surviving relative of the victim as defined in chapter
16 351;

17 (c) A governmental entity that has reimbursed the victim
18 for losses arising as a result of the crime or paid
19 for medical care provided to the victim as a result of
20 the crime; or



1 (d) Any duly incorporated humane society or duly
2 incorporated society for the prevention of cruelty to
3 animals, contracted with the county or State to
4 enforce animal-related statutes or ordinances, that
5 impounds, holds, or receives custody of a pet animal
6 pursuant to section 711-1109.1, 711-1109.2, or
7 711-1110.5; provided that this section does not apply
8 to costs that have already been contracted and
9 provided for by the counties or State.

10 (2) The court shall order the defendant to make
11 restitution for reasonable and verified losses suffered by the
12 victim or victims as a result of the defendant's offense when
13 requested by the victim. The court shall order restitution to
14 be paid to the crime victim compensation commission in the event
15 that the victim has been given an award for compensation under
16 chapter 351. If the court orders payment of a fine in addition
17 to restitution or a compensation fee, or both, the payment of
18 restitution and compensation fee shall have priority over the
19 payment of the fine, and payment of restitution shall have
20 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, in any
18 criminal proceeding before any court, that has not been declared
19 forfeited, shall be applied toward payment of any restitution,
20 finances, or fees ordered by the court in the same case, consistent
21 with the priorities 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 4. 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[‡] 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;



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



- 1 (4) Access to adult probation records by a victim, as
2 defined in section 706-646 to enforce an order filed
3 pursuant to section 706-647, shall be limited to the
4 [name]:
- 5 (A) Name and contact information of the defendant's
6 adult probation officer;
- 7 (B) Compliance record of the defendant with court-
8 ordered payments;
- 9 (C) Amounts paid by the defendant;
- 10 (D) Dates of the payments made by the defendant;
- 11 (E) Payee of payments made by the defendant; and
- 12 (F) Remaining unpaid balance;
- 13 (5) Upon written request, the victim, or the parent or
14 guardian of a minor victim or incapacitated victim, of
15 a defendant who has been placed on probation for an
16 offense under section 580-10(d)(1), 586-4(e), 586-
17 11(a), or 709-906 may be notified by the defendant's
18 probation officer when the probation officer has any
19 information relating to the safety and welfare of the
20 victim;



1 (6) Notwithstanding paragraph (3) and upon notice to the
2 defendant, records and information relating to the
3 defendant's risk assessment and need for treatment
4 services; information related to the defendant's past
5 treatment and assessments, with the prior written
6 consent of the defendant for information from a
7 treatment service provider; provided that for any
8 substance abuse records such release shall be subject
9 to title 42 Code of Federal Regulations part 2,
10 relating to the confidentiality of alcohol and drug
11 abuse patient records; and information that has
12 therapeutic or rehabilitative benefit, may be provided
13 to:

14 (A) A case management, assessment, or treatment
15 service provider assigned by adult probation to
16 service the defendant; provided that the
17 information shall be given only upon the
18 screening for admission, acceptance, or
19 admittance of the defendant into a program;



- 1 (B) Correctional case manager, correctional unit
2 manager, and parole officers involved with the
3 defendant's treatment or supervision; and
- 4 (C) In accordance with applicable law, persons or
5 entities doing research;
- 6 (7) Probation drug test results may be released with prior
7 written consent of a defendant to the defendant's
8 treating physician when test results indicate
9 substance use which may be compromising the
10 defendant's medical care or treatment;
- 11 (8) Any person, agency, or entity receiving records, or
12 contents of records, pursuant to this subsection shall
13 be subject to the same restrictions on disclosure of
14 the records as Hawaii state adult probation offices;
15 and
- 16 (9) Any person who uses the information covered by this
17 subsection for purposes inconsistent with the intent
18 of this subsection or outside of the scope of the
19 person's official duties shall be fined no more than
20 \$500."



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

3 "SECTION 4. This Act shall take effect on July 1, 2011[7
4 and shall be repealed on July 1, 2016; provided that section
5 806-73(b), Hawaii Revised Statutes, shall be reenacted in the
6 form in which it read on the day before the effected date of
7 this Act]."

8 SECTION 6. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2016-2017 for the
11 purpose of enhancing restitution collection pursuant to section
12 1 of this Act, including the hiring of any necessary staff to
13 implement section 1 of this Act as follows:

14 (1) For first circuit (JUD 310), the judiciary may
15 establish two full-time equivalent (2.0 FTE) permanent
16 social worker IV positions, two full-time equivalent
17 (2.0 FTE) judicial clerk III positions, and one full-
18 time equivalent (1.0 FTE) accountant I position;

19 (2) For second circuit (JUD 320), the judiciary may
20 establish one full-time equivalent (1.0 FTE) permanent
21 social worker IV position, one full-time equivalent



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

3 (3) For third circuit (JUD 330), the judiciary may
4 establish two full-time equivalent (2.0 FTE) social
5 worker IV positions, two full-time equivalent (2.0
6 FTE) judicial clerk III positions, and one full-time
7 equivalent (1.0 FTE) accountant I position; and

8 (4) For fifth circuit (JUD 350), the judiciary may
9 establish one full-time equivalent (1.0 FTE) social
10 worker IV position, one full-time equivalent (1.0 FTE)
11 judicial clerk III position, and one full-time
12 equivalent (1.0 FTE) accountant I position.

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

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

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect on March 15, 2037;
21 provided that section 2 shall take effect on January 1, 2017.



Report Title:

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 except as to support orders pursuant to Chapters 580 and 584, Hawaii Revised Statutes. 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. Appropriates funds.
(HB1660 HD1)

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

