



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 997, RELATING TO COURT-ORDERED PAYMENTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Wednesday, February 12, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark Tom, Deputy Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General strongly supports this bill and offers the following comments.

The purpose of the bill is to address a recent Supreme Court decision by:
(1) requiring the Judiciary to contract with a collection agency or licensed attorney, to collect delinquent court-ordered fines, fees, sanctions, or court costs; (2) allowing courts to grant a specified period of time or specified installments for payment of fees, fines, and restitution; (3) requiring the court, upon default in payments by a defendant, to have the defendant show cause why the default should not be treated as contumacious; (4) requiring the court to set proof of compliance hearings for any orders to pay fees, fines, or restitution, and set further proof of compliance hearings, if the payments have not been completed, until they have been paid in full.

In *State v. Fay*, 154 Hawai'i 305 (2024), the Hawaii Supreme Court interpreted section 706-644, Hawaii Revised Statutes (HRS), to mean that the court may only order a compliance hearing regarding restitution payments if a defendant is on probation or defaults on payments. If a defendant is not on probation, but the court has issued a freestanding restitution order, the court cannot hold compliance hearings but can only act if the person defaults on restitution payments. The ruling made it more difficult to ensure that convicted defendants complied with orders for restitution and victims were

properly compensated for their losses. As a result, victims of crime could potentially face the unjust recourse of having to file a civil lawsuit to personally pursue court-ordered restitution from uncooperative or unapologetic defendants. This bill is needed to assist victims by re-establishing a clear court procedure for court-ordered restitution.

We respectfully ask your committee to pass this bill. Thank you for the opportunity to provide support for this bill.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Wednesday, February 12, 2025, 2:00 p.m.

State Capitol, Conference Room 325

By

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 997, Relating to Court-Ordered Payments.

Purpose: Requires the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs. Repeals the authority of the Judiciary to contract with a collection agency or licensed attorney to collect delinquent restitution. Expressly allows courts to specify a period of time or installments for payment of fees and restitution. Requires courts to hold payment compliance hearings once per year or as soon as practicable, until all fees, fines, and restitution are fully paid, and requires a defendant to appear and show cause if the defendant fails to pay in full within a time specified by the court or fails to pay three consecutive installments. Makes corresponding amendments to related statutes.

Judiciary's Position:

The Judiciary takes no position on the intent of the proposed legislation but provides the following comments regarding the impact the amendments to section 706-644(1) as outlined in Section 3 will have on the circuit courts of the State of Hawai‘i. The Justification Sheet accompanying the bill states that the bill is intended to address the recent Supreme Court decision in *State v. Fay*, 154 Hawai‘i 305 (2024). The Justification Sheet further states that “[t]he Judiciary may be impacted by having to set additional court dates; however, it should be noted that these court dates were already occurring prior to the Hawai‘i Supreme Court’s



decision in *State v. Fay*.” While it is true that proof of compliance hearings were routinely set in district court matters prior to the *Fay* decision, that is not true with respect to circuit court matters. Because defendants convicted in circuit court are generally sentenced to either a period of probation (where payment of fees, fines, and restitution is a term and condition of their probation) or a period of incarceration, proof of compliance hearings are not routinely set in circuit court. Indeed, in felony matters a convicted defendant could be sentenced to a term of four to 10 years of probation or to an indeterminate term of imprisonment depending on the offense of one to five years, five to 10 years, or 20 years, as well as an indeterminate term of life imprisonment with or without the possibility of parole.

The amendments outlined in Section 3 would mandate proof of compliance hearings in all circuit court cases where a fee, fine, or restitution¹ is ordered rather than leaving it to the terms and conditions of a defendant’s probation (where a defendant’s probation could be revoked for their failure to pay the fee, fine, or restitution), or to the fee, fine, or restitution’s collection by the Department of Corrections and Rehabilitation (DCR) during a defendant’s incarceration. *See, eg.* Hawai‘i Revised Statute Section 353-22.6 (Victim Restitution). The provisions of Section 3 are unnecessary for circuit court matters and would place a significant strain on the circuit courts statewide. As there are substantial differences between these processes for district and circuit court cases, and because the *Fay* case arose out of the processes utilized by the district court, the Judiciary respectfully requests an amendment to the provisions of Section 3 to ensure that they apply only to district court cases. Should the clarification not be made, the Judiciary will require additional resources and staff in order to comply with the provisions of the bill in circuit court. Even if the proof of compliance requirement was limited to district court matters, the Judiciary would anticipate considerable impacts to court operations as not all courts schedule proof of compliance hearings for the collection of fines and fees.

Furthermore, we note that if the Judiciary were required to send criminal monetary assessments to collections, as contemplated in this measure, a manual process would need to be utilized. This is partly because, unlike for traffic assessments, the Judiciary Information Management System (JIMS) is not currently set-up to automatically send criminal assessments to collections. The Judiciary is in the process of discussing alternative options, but anticipates that meeting the mandates of this measure would be a resource and staff intensive process.

The Judiciary is currently determining the positions and amounts necessary to meet the obligations outlined in this measure and will provide the same to the Legislature as soon as possible. The Judiciary also requests that any appropriations that may be added to this bill not supplant the Judiciary’s existing funding and current budget requests.

Thank you for the opportunity to testify on this measure.

¹ Approximately 1,300 cases were disposed of through a conviction and sentence in the circuit court of the First Circuit last year.

JOSH B. GREEN, M.D.
GOVERNOR



MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII – KA MOKU ʻĀINA ʻO HAWAII

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TESTIMONY ON HOUSE BILL 997
RELATING TO COURT-ORDERED PAYMENTS
by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary and Hawaiian Affairs
Representative David A Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Wednesday, February 12, 2025; 2:00 PM
State Capitol, Conference Room 325 & Videoconference

Good afternoon Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (the “Commission”) with the opportunity to testify in support of House Bill 997. HB 997 addresses issues created by a recent Hawai‘i Supreme Court decision making it more difficult to enforce restitution. The Supreme Court limited the circumstances under which trial courts can use proof-of-compliance hearings as a tool to enforce court-ordered restitution. HB 997 provides an important tool, through proof of compliance hearings, to enforce court-ordered restitution.

The Commission provides compensation for victims of violent crime to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. In January 2021, the Commission and the Council of State Governments released an article titled “*Victim Restitution Matters: Four Lessons from Hawai‘i to Ensure Financial Justice for Crime Victims.*”

Court-ordered restitution offsets the financial harm to crime victims by holding the defendant financially accountable. For the forty percent (40%) of Americans who cannot afford an emergency expense of a few hundred dollars, the unexpected financial burden resulting from a crime can make being victimized even more devastating. Unless restitution is paid in full in a timely manner, many victims of crime never financially recover from the crime.

Restitution is the primary pathway to mitigate the financial impact of a crime; however, the restitution process is often inefficient and fraught with institutional barriers. A restitution order is only the first step. Failure of the court to enforce its own orders undermines the rule of law and public trust in the justice system.

Proof of compliance hearings have been found to be an effective tool for restitution collections in the District Courts. There is no reason that this tool should not be available in the Circuit Courts where historically restitution collections have been deficient.

In a 2011 letter to the editor written by the Administrative Director of the Court, after a series of articles critical of restitution collection in Hawai'i, the Administrative Director noted:

Clearly, offenders' failure to fully pay restitution is a difficult, complex and long-standing problem, but one that absolutely has to be addressed because of the hurtful impact it has on victims and because non-compliance with court orders undermines public trust and confidence in the justice system.

Thank you for providing the Commission with the opportunity to testify in support of House Bill 997.

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HB997 RELATING TO COURT-ORDERED PAYMENTS

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

The Office of the Public Defender (OPD) **OPPOSES THIS BILL**

Contrary to a recent Supreme Court holding, this measure **requires** the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs, allows courts to set a payment schedule and deadline, requires courts to hold proof of compliance hearings at least once a year until payment in full is made and requires a defendant to appear and show cause if the defendant failed to pay in full within the specified time or fails to pay three consecutive installments and a warrant or summons will issue for the defendant's arrest.

This measure seeks to circumvent the Hawaii Supreme Court's 2024 ruling in *State v. Fay*. In *Fay*, the Court held that the district court could not hold indefinite proof of compliance hearings for Fay's restitution debt, related to her petty misdemeanor conviction. Financial obligations were not meant to "prolong[] criminal justice oversight, creating a type of shadow control that surpasses the original sentence." The Court remarked that "from-the-outset court monitoring of freestanding restitution orders unnecessarily burdens defendants and wastes judicial resources." The Court concluded that *Fay* demonstrated how expansive POC hearings would lead to absurd and illogical results where if *Fay* paid restitution as ordered, she would have to make 130 payments and up to 11 years to complete restitution which surpassed a ten-year period of probation for a class A felony, while she was not placed on probation.

Many cases before the district court present the same issue as in *Fay*. The trial court should not be setting a payment plan, payment schedule and deadline like a financial institution. The trial court rules on issues of law, not financial payments. There are other means in place to ensure that payment for fines, fees, sanctions and court costs are met. License stoppers, probation terms and liens are mechanisms that accomplish payment without the strain defendants. Holding annual or more frequent POC hearings are unnecessary and threatening a summons or warrant of arrest is cruel and overreaching. Notably, the POC hearings would be regardless of whether the individual is on probation or despite the expiration of the court's sentence and lawful

jurisdiction. The proposed change would extend court supervision and oversight infinitely which is wasteful, absurd and illogical. Thank you for taking these comments into consideration. Thank you for the opportunity to testify on this measure.

Dennis M. Dunn

Kailua, Hawaii 96734

dennismdunn47@gmail.com

TO: Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

House Committee on judiciary and Hawai'ian Affairs

RE: HB 997, Relating to Court-Ordered Payments

HEARING: Wednesday, February 12, 2025, 2:00 P.M.

Good afternoon, Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawai'ian Affairs. My name is Dennis Dunn, and I am the retired Director of the Victim Witness Kokua Services in the Honolulu Prosecuting Attorney's Office, having retired after 44 years of service. Prior to that I was a volunteer Victim Advocate for People Against Rape. I am testifying today **in support of HB 997**.

I am testifying in full support of this measure as it touches on principles that are at the foundation of our criminal justice system. These principles underly the process by which we establish the dimensions of the harm caused by an individual criminal act. In its simplest form, the establishment of a process of proof of compliance hearings is at its heart a direct means of requiring accountability for criminal offenders. And how do we measure this accountability? It is through the process of restitution, possibly the most critical element in demonstrating that we truly have a system that administers justice. The terms restorative justice and rehabilitation are but hollow platitudes without the full and accurate establishment of the amount of restitution, the requirement of its payment by the offender, and a meaningful process of collection. While we can tinker around with elements of the process that this bill establishes, without basic adherence to the principles stated above any claim that we have a fair and just system of criminal law is disingenuous and without merit. The effectiveness of our restitution process puts our feet to the fire in testing any credibility that we have in declaring that our legal process fulfills the high ideals that we so often hear loudly proclaimed when comparing our justice system to other legal systems that we declare to be inferior or corrupt.

Why then is restitution so important? It is typically the one concrete measure by which we assess the harm caused by an offender. While psychological harm and traumatic emotional injury are abstract concepts, restitution, measured in dollars and cents, provides a means of quantification that can be understood and appreciated by both victim and offender. Restitution that is fulfilled can have a significant impact in the financial restoration of a crime victim. It is also a meaningful act that provides concrete evidence of an offender's willingness to take responsibility for their actions. Successfully completing a restitution obligation is the very first step in offender rehabilitation. Failure to pay restitution, in my opinion, clearly demonstrates that an offender is not sincere about their willingness to take responsibility for their actions, nor are they serious about embarking upon a path of rehabilitation. For me, restitution is the price that an offender must pay to successfully re-enter civil society.

This brings us back to our Bill, HB 997. I am open to ideas about how to make the process of compliance with court ordered restitution work as failure to do so means our criminal justice system has failed and I am determined to see it become a success. I have seen compliance calendars in our District Courts work and there must be some way to adapt the Circuit Court process to make it work there also.

We so often hear the term restorative justice being casually bantered around these days. True restorative justice is focused on restoring crime victims, beginning with financial restoration through restitution. Please support HB 997. Thank you for your time and consideration.

Mahalo!