



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

The Honorable Sylvia Luke, Chair

The Honorable Scott Y. Nishimoto, Vice Chair

The Honorable Aaron Ling Johanson, Vice Chair

Wednesday, March 27, 2013, 4:45 p.m.

State Capitol, Conference Room 308

By

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Deputy Chief Court Administrator, First Circuit

Bill No. and Title: Senate Bill No. 873, S.D. 2, H.D. 1, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

Purpose: 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 an unspecified appropriation to the judiciary for the purpose of enhancing restitution collection. Effective July 1, 2013.

Judiciary's Position:

The Judiciary supports the underlying intent of this bill which is to improve the collection of restitution for crime victims; however, the Judiciary has concerns that this bill potentially will have an adverse impact on Judiciary operations.

By design, the bill is to help ensure that the offender satisfies his restitution obligations to his/her victims by requiring employers to withhold income for payment of restitution. While the Judiciary believes that it is important for offenders to comply with their restitution payments there are several challenges regarding resources to carry these recommendations forward.



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It appears that this provision applies to all offenders who have received a judgment/order of a restitution obligation. There are many cases in which restitution will be ordered for a defendant who is not on probation and may not be under the supervision of any criminal justice entity. In these situations, the court will have no means of obtaining the necessary information as to the defendants' current and future employers. For the defendants that are currently unsupervised by the Judiciary but would require tracking oversight, it is recommended that the Victim Witness Program administered out of the Prosecutors Office, be responsible for these cases.

The bill requires stringent deadlines by which the employer must remit the amounts withheld to the clerk of the court and by which the fiscal office must disburse the amount to the victim. The employer must remit amounts withheld within five days and the court's fiscal office must disburse the amount to the victim within two days of receipt of amounts withheld. Currently the Judiciary Fiscal Office only accepts cash, a cashier's check or money orders for payments to ensure payment collection. The current bill does not allow adequate time for a check to clear and in the event a business may have insufficient funds in their account, the check could bounce and the Judiciary would sustain the loss.

The mandatory minimum of \$50 per month in restitution payment plus the \$2 per month administrative fee may be prohibitive for some defendants. There is no flexibility in the bill for the minimum amount to be adjusted by the court.

Although the bill determines that discrimination in the hiring or retention of a defendant based on the income withholding order to be a misdemeanor offense, this may make employers reluctant in hiring offenders which could adversely affect an offender from obtaining employment and adversely contributing to his/her ability to pay restitution.

The bill allows access to the adult probation records by the victim to determine the compliance record of the defendant with court-ordered payments, the amounts paid by the defendant, the dates of the payments made by the defendant, the payee of payments made by the defendant, and the balance unpaid. In order to accommodate these requests the already significant workload of the probation staff will increase.

It is unclear who would be responsible to ensure service of the initial order upon the employer. Also, it would be impractical and unrealistic for the "clerk of the court" to be responsible to notify new employers should the defendant change jobs without additional staffing and without access to the necessary information regarding the defendants' employment status. If Senate Bill No. 873 is enacted, the Judiciary will face a significant increase in the court's workload. In order to administer/implement procedures to accommodate the provisions in this



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bill, it is estimated to cost \$866,360.68 annually for the existing population that is supervised by probation. The estimated cost is inclusive of the projected staffing requirements needed statewide. The positions include 2 Social Worker (SW) IVs, 2 Judicial Clerk III's, and 1 Accountant I for Oahu, 1 SW IV, 1 Judicial Clerk III, and 1 Accountant I for Maui, 2 SW IV's, 2 Judicial Clerk III's, and 1 Accountant I for Hawaii and 1 SW IV, 1 Judicial Clerk III, and 1 Accountant I for Kauai. Collectively, this is 6 SW IV's, 6 Judicial Clerk III's and 4 Accountant I's, to service statewide.

Thank you for the opportunity to testify on Senate Bill No. 873, S. D. 2, H. D. 1.

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**THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i**

March 27, 2013

**RE: S.B. 873, S.D. 2, H.D. 1; RELATING TO COLLECTION OF RESTITUTION FOR
CRIME VICTIMS.**

Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 873, S.D. 2, H.D. 1.

The purpose of this bill is to support, encourage and facilitate payment of restitution to crime victims. Although restitution is appropriately ordered in many criminal cases, it is not strictly enforced, and victims are often left to "fend for themselves," with their only recourse being private civil action against the offender. Thus, the current system greatly decreases the odds that victims ever receive the restitution payments promised to them, further demoralizing or "re-victimizing" these victims of crime. This counteracts the very benefits that restitution is intended to provide.

The current version of S.B. 873, S.D. 2, H.D. 1, is the result of improvements by prior committees, with the combined input and suggestions of this Department, the Judiciary, Department of the Attorney General, Crime Victim Compensation Commission, Child Support Enforcement Agency, and others. Overall, these measures present a comprehensive and effective approach to restitution, and illustrate an overall desire for the agencies to work together, to ensure that restitution is actually paid once ordered.

To more effectively facilitate and enforce payment of restitution to crime victims, S.B. 873, S.D. 2, H.D. 1, provides for the following methods (with additional comments in parentheses):

1. Creates standards and procedures for income-withholding, similar to those used for outstanding child support payments (child support withholdings would receive first priority, to comply with federal regulations);

2. Includes unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support payments or judgments owed to the State);
3. Requires that bail money deposited by a defendant be applied to any court-ordered restitution, fines, or fees, before the balance is returned to such defendant;
4. Allows victims to receive information about an offender's compliance with restitution payments, via adult probation records, for the purpose of enforcing restitution orders civilly (this provision may not be necessary, as Judiciary is currently working to develop alternative methods of providing this information to appropriate agencies); and
5. Provides additional funding to the Judiciary, to facilitate income-withholding ordered by the courts (it is our understanding that the Judiciary anticipates an additional expense of \$866,360.68 to implement this function statewide, for all supervised offenders).

Together, these measures present a comprehensive and effective approach to facilitate payment of restitution to victims of crime. This is critical, as victim restitution is perhaps the *only* core victims' right that addresses such a wide range of the--often devastating--effects of crime, including the physical, emotional, psychological, financial *and* social impacts. As stated by the House Judiciary Committee, upon passing language that later became Section 706-605(6), Hawaii Revised Statutes:

Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play...[B]y imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed.

House Stand. Comm. Rep. No. 425, in 1975 House Journal.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 873, S.D. 2, H.D. 1. Thank you for the opportunity to testify on this matter.