
A BILL FOR AN ACT

RELATING TO VICTIM RESTITUTION.

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

1 SECTION 1. In 2012, the legislature enacted the justice
2 reinvestment initiative, Act 139, Session Laws of Hawaii 2012,
3 to reduce corrections spending, increase efficiency, decrease
4 recidivism, and increase offender accountability through data-
5 driven strategies. One justice reinvestment initiative data-
6 driven strategy to increase offender accountability was to
7 increase the amount of restitution collected from all inmates
8 with unpaid restitution orders. Section 353-22.6, Hawaii
9 Revised Statutes, was amended to increase the amount of
10 restitution collected from inmates from ten per cent of inmate
11 earnings to twenty-five per cent of all inmate earnings,
12 deposits, and credits. The legislature intended the amendment
13 to apply to all unpaid restitution orders.

14 While it was the legislature's intent that crime victims
15 achieve financial justice through increased restitution
16 collection, the collection of twenty-five per cent from inmates'
17 earnings, deposits, and credits has not been uniformly applied
18 to all inmates in all correctional facilities.



1 The legislature finds that some courts have ordered
2 restitution payments of less than twenty-five per cent of all
3 inmate earnings, deposits, and credits and that the department
4 of public safety had been advised to comply with the court
5 orders instead of section 353-22.6, Hawaii Revised Statute. The
6 legislature further finds that the department of public safety
7 was also advised that the twenty-five per cent deduction of all
8 inmate earnings, deposits, and credits could not be applied to
9 sentences imposed prior to July 1, 2012, the effective date of
10 the amendment to section 353-22.6, Hawaii Revised Statutes.
11 These limitations to the application of section 353-22.6, Hawaii
12 Revised Statutes, are contrary to the legislature's intent,
13 which was to increase the collection of restitution from all
14 inmates.

15 The purpose of this Act is to clarify that twenty-five per
16 cent of inmate earnings, deposits, and credits shall be deducted
17 to satisfy victim restitution orders and that amount shall not
18 be lowered by any other existing statute or court order. This
19 Act also clarifies that the twenty-five per cent deduction shall
20 apply to all restitution orders imposed prior to the effective
21 date of this Act. While the Supreme Court of Hawaii has not
22 addressed the ex post facto issue raised by a retroactive



1 application of the statute, the Ninth Circuit Court of Appeals
2 in *Quarles v. Kane*, 482 F.3d 1154 (9th Cir. 2007), found that
3 the ex post facto prohibition is not implicated when the rate of
4 payment, and not the amount of restitution, is modified.

5 SECTION 2. Section 353-22.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§353-22.6 Victim restitution. The director of public
8 safety shall enforce victim restitution orders against all
9 moneys earned by the inmate or deposited or credited to the
10 inmate's individual account while incarcerated. [The]
11 Notwithstanding any other law or court order to the contrary,
12 the amount deducted shall be twenty-five per cent of the total
13 of all moneys earned, new deposits, and credits to the inmate's
14 individual account. The moneys intended for victim restitution
15 shall be deducted monthly and paid to the victim once the amount
16 reaches \$25, or annually, whichever is sooner. This section
17 shall not apply to moneys earned on work furlough pursuant to
18 section 353-17."

19 SECTION 3. Section 706-646, Hawaii Revised Statutes, is
20 amended by amending subsection (3) to read as follows:

21 "(3) In ordering restitution, the court shall not consider
22 the defendant's financial ability to make restitution in



1 determining the amount of restitution to order. The court,
2 however, shall consider the defendant's financial ability to
3 make restitution for the purpose of establishing the time and
4 manner of payment. The court shall specify the time and manner
5 in which restitution is to be paid[-]; provided that the court's
6 order shall comply with the requirements of section 353-22.6.

7 Restitution shall be a dollar amount that is sufficient to
8 reimburse any victim fully for losses, including but not limited
9 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 SECTION 4. This Act shall apply to orders for restitution
18 in effect on and entered after the effective date of this Act.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

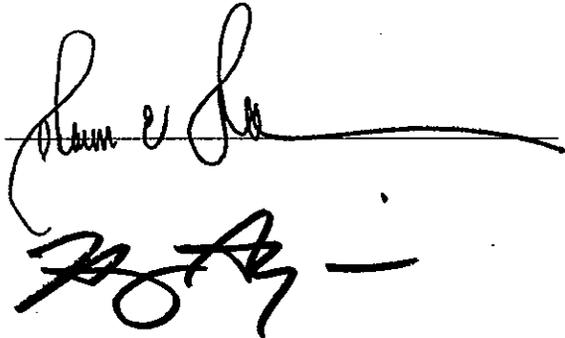
21 SECTION 6. This Act shall take effect on July 1, 2014;
22 provided that the amendment made to section 353-22.6, Hawaii



1 Revised Statutes, by this Act shall be repealed when section
2 353-22.6, Hawaii Revised Statutes, is reenacted on July 1, 2018,
3 by section 14 of Act 139, Session Laws of Hawaii 2012, as
4 amended by section 2 of Act 67, Session Laws of Hawaii 2013.

5

INTRODUCED BY:

Two handwritten signatures in black ink. The top signature is a cursive name, possibly 'Liam & Lu'. The bottom signature is a stylized signature, possibly 'R. A. G.'.

JAN 23 2014



H.B. NO. 2654

Report Title:

Crime Victim Compensation; Restitution

Description:

Clarifies the director of public safety's authority to deduct 25% of all moneys earned, new deposits, and credits to an inmate's individual account for restitution.

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

