

JAN 20 2017

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 part III to be appropriately
3 designated and to read as follows:
4 "§706- Income withholding for payment of
5 restitution. (1) Whenever a person is sentenced to supervision
6 under adult client services and a judgment or order is entered
7 establishing, modifying, or enforcing restitution, the court
8 shall allow ninety days for a defendant to make payment in full.
9 If the judgment or order is not satisfied after ninety days, the
10 court shall issue an income withholding order that shall operate
11 as an assignment, to the clerk of the court in which the order
12 is entered, of amounts that are due at times that may be
13 specified in the judgment or order, but no less than \$30 per
14 month, from the defendant's income that is due or to become due
15 in the future from the defendant's employer or successor
16 employers. A copy of the income withholding order shall be



1 filed in the office of the clerk of the court in which the
2 income withholding order was issued.

3 (2) The income withholding order issued pursuant to
4 subsection (1) shall be effective immediately after service upon
5 an employer of a copy of the income withholding order, which
6 service may be effected only by the prosecuting attorney of the
7 county where the offense occurred by regular mail, by personal
8 delivery, or by transmission through electronic means.
9 Thereafter, for each pay period, the employer shall withhold
10 from the income that is due to the defendant from the employer
11 and that is not required to be withheld by any other federal or
12 state law, and transmit to the clerk of the court in which the
13 order is entered as much as may remain payable for the pay
14 period, up to the amount specified in the order. The employer
15 shall immediately inform the court of any change that would
16 affect the income withholding order.

17 (3) Compliance by an employer with the income withholding
18 order shall operate as a discharge of the employer's liability
19 to the defendant for that portion of the defendant's earnings
20 withheld and transmitted to the clerk of the court from which
21 the order is issued, regardless of whether the employer has



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

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

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

14 (b) Not be subject to the exemptions or restrictions
15 contained in part III of chapter 651 and in chapters
16 652 and 653.

17 (5) An employer who fails to comply with an income
18 withholding order under this section shall be liable to the
19 obligee for the full amount of all sums not withheld and
20 transmitted as ordered. An employer receiving an income
21 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 either by cash, cashier's check, money order, or
4 commercial check; and
- 5 (b) Begin withholding no later than the first pay period
6 commencing within seven business days following the
7 date a copy of the income withholding order is served
8 upon the employer by regular mail, personal delivery,
9 or electronic means.
- 10 (6) An employer who:
- 11 (a) Complies with an income withholding order that is
12 valid on its face shall not be subject to civil
13 liability to any person, entity, or agency for conduct
14 in compliance with the order; and
- 15 (b) Is required to withhold amounts from the income of
16 more than one employee, may remit to the clerk of the
17 court a sum total of all amounts in one lump sum via
18 cash, cashier's check, money order, or commercial
19 check, with a listing of the amounts applicable to
20 each employee. Within twenty-one business days after
21 receipt of the amounts withheld by the employer, the



1 clerk of the court shall disburse the amounts to the
2 obligee.

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

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

15 (9) If a defendant changes employment while an income
16 withholding order is in effect, the defendant shall notify and
17 provide the clerk of the court with the new employer's contact
18 information within five business days of the change. The clerk
19 of the court shall notify the defendant's new employer of the
20 defendant's and the new employer's respective obligations under



1 this section. The new employer shall be bound by the income
2 withholding order until further court order.

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

5 "Business day" means a day on which the employer's office
6 is open for regular business.

7 "Employer" means any individual, partnership, association,
8 joint stock company, trust, corporation, personal representative
9 of the estate of a deceased individual, or receiver, trustee, or
10 successor of any of the same, employing any individual,
11 including the United States government, State, and any political
12 subdivision thereof, who is or shall become obligated for
13 payment of income; provided that this meaning shall not apply if
14 the employed individual is incarcerated in a correctional
15 facility or engaged in an inmate work furlough program within
16 the State.

17 "Income" includes without limitation salaries, wages,
18 earnings, workers' compensation, commissions, fees, bonuses,
19 independent contractor income, and any other entitlement to
20 money, including moneys payable as a disability, death, or other
21 benefit, or moneys from the State or a political subdivision



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

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

6 "Debt" includes:

- 7 (1) Any delinquency in periodic court-ordered or
8 administrative-ordered payments for child support
9 pursuant to section 576D-1, in an amount equal to or
10 exceeding the sum of payments which would become due
11 over a one-month period;
- 12 (2) Any liquidated sum exceeding \$25 which is due and
13 owing any claimant agency, regardless of whether there
14 is an outstanding judgment for that sum, and whether
15 the sum has accrued through contract, subrogation,
16 tort, operation of law, or judicial or administrative
17 judgment or order;
- 18 (3) Any defaulted education loan note held by the United
19 Student Aid Funds, Inc. incurred under the federal
20 Higher Education Act of 1965 (Public Law 89-329, 79
21 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 706-646, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§706-646 Victim restitution. (1) As used in this
9 section, "victim" includes any of the following:

- 10 (a) The direct victim of a crime including a business
- 11 entity, trust, or governmental entity;
- 12 (b) If the victim dies as a result of the crime, a
- 13 surviving relative of the victim as defined in chapter
- 14 351;
- 15 (c) A governmental entity that has reimbursed the victim
- 16 for losses arising as a result of the crime or paid
- 17 for medical care provided to the victim as a result of
- 18 the crime; or
- 19 (d) Any duly incorporated humane society or duly
- 20 incorporated society for the prevention of cruelty to
- 21 animals, contracted with the county or State to



1 enforce animal-related statutes or ordinances, that
2 impounds, holds, or receives custody of a pet animal
3 pursuant to section 711-1109.1, 711-1109.2, or
4 711-1110.5; provided that this section does not apply
5 to costs that have already been contracted and
6 provided for by the counties or State.

7 (2) The court shall order the defendant to make
8 restitution for reasonable and verified losses suffered by the
9 victim or victims as a result of the defendant's offense when
10 requested by the victim. The court shall order restitution to
11 be paid to the crime victim compensation commission if the
12 victim has been given an award for compensation under chapter
13 351. If the court orders payment of a fine in addition to
14 restitution or a compensation fee, or both, the payment of
15 restitution and compensation fee shall be made pursuant to
16 section 706-651.

17 (3) In ordering restitution, the court shall not consider
18 the defendant's financial ability to make restitution in
19 determining the amount of restitution to order. The court,
20 however, shall consider the defendant's financial ability to
21 make restitution for the purpose of establishing the time and



1 manner of payment. The court shall specify the time and manner
2 in which restitution is to be paid. While the defendant is in
3 the custody of the department of public safety, restitution
4 shall be collected pursuant to chapter 353 and any court-ordered
5 payment schedule shall be suspended. Restitution shall be a
6 dollar amount that is sufficient to reimburse any victim fully
7 for losses, including but not limited to:

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

12 (b) Medical expenses; and

13 (c) Funeral and burial expenses incurred as a result of
14 the crime.

15 (4) In any criminal proceeding before any court, all money
16 deposited by the defendant as bail and not declared forfeited
17 shall be applied toward payment of any restitution, fines, or
18 fees ordered by the court in the same case, consistent with the
19 priorities in subsection (2).

20 [~~4~~] (5) The restitution ordered shall not affect the
21 right of a victim to recover under section 351-33 or in any



1 manner provided by law; provided that any amount of restitution
2 actually recovered by the victim under this section shall be
3 deducted from any award under section 351-33."

4 SECTION 4. Section 806-73, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) All adult probation records shall be confidential and
7 shall not be deemed to be public records. As used in this
8 section, the term "records" includes[~~7~~] but is not limited to[~~7~~]
9 all records made by any adult probation officer in the course of
10 performing the probation officer's official duties. The
11 records, or the content of the records, shall be divulged only
12 as follows:

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

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

20 (B) A state or federal criminal justice agency, or
21 state or federal court program that:



- 1 (i) Is providing supervision of a defendant or
2 offender convicted and sentenced by the
3 courts of Hawaii; or
4 (ii) Is responsible for the preparation of a
5 report for a court;
- 6 (2) The residence address, work address, home telephone
7 number, or work telephone number of a current or
8 former defendant shall be provided only to:
- 9 (A) A law enforcement officer as defined in section
10 710-1000 to locate the probationer for the
11 purpose of serving a summons or bench warrant in
12 a civil, criminal, or deportation hearing, or for
13 the purpose of a criminal investigation; or
14 (B) A collection agency or licensed attorney
15 contracted by the judiciary to collect any
16 delinquent court-ordered penalties, fines,
17 restitution, sanctions, and court costs pursuant
18 to section 601-17.5[+]; [+]
- 19 (3) A copy of a presentence report or investigative report
20 shall be provided only to:
- 21 (A) The persons or entities named in section 706-604;



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



1 pursuant to section 706-647, shall be limited to the
2 [name];

3 (A) Name and contact information of the defendant's
4 adult probation officer;

5 (B) Compliance record of the defendant with court-
6 ordered payments;

7 (C) Amounts paid by the defendant;

8 (D) Dates of the payments made by the defendant;

9 (E) Payee of payments made by the defendant; and

10 (F) Remaining unpaid balance;

11 without the assessment of a filing fee or surcharge;

12 (5) Upon written request, the victim, or the parent or
13 guardian of a minor victim or incapacitated victim, of
14 a defendant who has been placed on probation for an
15 offense under section 580-10(d)(1), 586-4(e), 586-
16 11(a), or 709-906 may be notified by the defendant's
17 probation officer when the probation officer has any
18 information relating to the safety and welfare of the
19 victim;

20 (6) Notwithstanding paragraph (3) and upon notice to the
21 defendant, records and information relating to the



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

- 12 (A) A case management, assessment[+], [+], or treatment
13 service provider assigned by adult probation to
14 service the defendant; provided that such
15 information shall be given only upon the
16 acceptance or admittance of the defendant into a
17 treatment program;
- 18 (B) Correctional case manager, correctional unit
19 manager, and parole officers involved with the
20 defendant's treatment or supervision; and



- 1 (C) In accordance with applicable law, persons or
2 entities doing research;
- 3 (7) Probation drug test results may be released with prior
4 written consent of a defendant to the defendant's
5 treating physician when test results indicate
6 substance use which may be compromising the
7 defendant's medical care or treatment;
- 8 (8) Records obtained pursuant to section [+] 704-404(9) [+]
9 may be made available as provided in that section;
- 10 (9) Any person, agency, or entity receiving records, or
11 contents of records, pursuant to this subsection shall
12 be subject to the same restrictions on disclosure of
13 the records as Hawaii state adult probation offices;
14 and
- 15 (10) Any person who uses the information covered by this
16 subsection for purposes inconsistent with the intent
17 of this subsection or outside of the scope of the
18 person's official duties shall be fined no more than
19 \$500."



S.B. NO. 493

1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 7. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect upon its approval.

13

INTRODUCED BY: *M. N. W.*
By Request



S.B. NO. 493

Report Title:

Honolulu Prosecuting Attorney Package; Crime Victims;
Restitution; Collection

Description:

Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Clarifies the priority of income withholding 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. 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.

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

