

S.B. NO. 1316

JAN 23 2025

A BILL FOR AN ACT

RELATING TO COURT-ORDERED PAYMENTS.

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

SECTION 1. Section 601-17.5, Hawaii Revised Statutes, is amended to read as follows:

"§601-17.5 Collection of delinquent court-ordered payments. The judiciary ~~[may]~~ shall contract with a collection agency bonded under chapter 443B or with a licensed attorney to collect any delinquent court-ordered ~~[penalties,]~~ fees, fines, ~~[restitution,]~~ sanctions, and court costs ~~[including juvenile monetary assessments]~~. Any fees or costs associated with the collection efforts shall be added to the amount due and retained by the collection agency as its payment; provided that no fees or costs shall exceed fifty per cent of the amount collected."

SECTION 2. Section 706-642, Hawaii Revised Statutes, is amended to read as follows:

"§706-642 Time and method of payment. (1) When a defendant is sentenced to pay a fee, fine, or restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fee, fine, or

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1 restitution shall be payable forthwith by cash, check, or by a
2 credit card approved by the court.

3 (2) When a defendant sentenced to pay a fee, fine, or
4 restitution is also sentenced to probation, the court may make
5 the payment of the fee, fine, or restitution a condition of
6 probation.

7 (3) When a defendant sentenced to pay a fee or fine is
8 also ordered to make restitution or reparation to the victim or
9 victims, or to the person or party who has incurred loss or
10 damage because of the defendant's crime, the payment of
11 restitution or reparation shall have priority over the payment
12 of the fee or fine, pursuant to section 706-651. No fee or fine
13 shall be collected until the restitution or reparation order has
14 been satisfied."

15 SECTION 3. Section 706-644, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§706-644 Consequences of nonpayment; imprisonment for**
18 **contumacious nonpayment; summary collection.** (1) When a
19 defendant is sentenced pursuant to section 706-605, granted a
20 conditional discharge pursuant to section 712-1255, or granted a
21 deferred plea pursuant to chapter 853, and the defendant is
22 ordered to pay a fee, fine, or restitution, whether as an

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1 independent order, as part of a judgment and sentence, or as a
2 condition of probation or deferred plea, ~~[and]~~ the court shall
3 set a proof of compliance hearing; provided that the court may
4 further order that the defendant need not appear for the proof
5 of compliance hearing if all fees, fines, and restitution have
6 been paid in full and all other sentencing requirements have
7 been met before a designated date, which may be earlier than the
8 proof of compliance date. At each proof of compliance hearing,
9 if the defendant appears and is in compliance, but has not yet
10 paid all fees, fines, and restitution in full, the court shall
11 order a further proof of compliance hearing within one year or
12 as soon as practicable until the fees, fines, or restitution
13 have been paid in full. If the defendant defaults in the
14 payment thereof ~~[or of any installment]~~, the court ~~[, upon the~~
15 ~~motion of the prosecuting attorney or upon its own motion, may]~~
16 shall require the defendant to show cause why the defendant's
17 default should not be treated as contumacious, and ~~[may]~~, if the
18 defendant fails to appear, the court shall issue a summons or a
19 warrant of arrest for the defendant's appearance. Unless the
20 defendant shows that the defendant's default was not
21 attributable to an intentional refusal to obey the order of the
22 court, or to a failure on the defendant's part to make a good

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1 faith effort to obtain the funds required for the payment, the
2 court shall find that the defendant's default was contumacious
3 and may order the defendant committed until the fee, fine,
4 restitution, or a specified part thereof is paid[-]; provided
5 that if the fees, fines, and restitution are not paid in full
6 the court shall order further proof of compliance hearings every
7 six months or less until the court is satisfied that the
8 defendant will appear and remain in compliance.

9 (2) When a fee, fine, or restitution is imposed on a
10 corporation or unincorporated association, it [~~is~~] shall be the
11 duty of the person or persons authorized to make disbursement
12 from the assets of the corporation or association to pay it from
13 those assets, and their failure to do so may be held
14 contumacious unless they make the showing required in subsection
15 (1).

16 (3) The term of imprisonment for nonpayment of fee, fine,
17 or restitution shall be specified in the order of commitment,
18 and shall not exceed one day for each \$250 of the fee or fine,
19 thirty days if the fee or fine was imposed upon conviction of a
20 violation or a petty misdemeanor, or one year in any other case,
21 whichever is the shorter period. A person committed for
22 nonpayment of a fee or fine shall be given credit toward payment

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1 of the fee or fine for each day of imprisonment, at the rate of
2 \$250 per day.

3 (4) If it appears that the defendant's default in the
4 payment of a fee, fine, or restitution is not contumacious, the
5 court may make an order allowing the defendant additional time
6 for payment, reducing the amount of each installment, or
7 revoking the fee, fine, or the unpaid portion thereof in whole
8 or in part, or converting the unpaid portion of the fee or fine
9 to community service. A defendant shall not be discharged from
10 an order to pay restitution until the full amount of the
11 restitution has actually been collected or accounted for.

12 (5) Unless discharged by payment or, in the case of a fee
13 or fine, service of imprisonment pursuant to subsection (3), an
14 order to pay a fee, fine, or restitution, whether as an
15 independent order, as a part of a judgment and sentence, or as a
16 condition of probation or deferred plea pursuant to chapter 853,
17 may be collected in the same manner as a judgment in a civil
18 action. The State or the victim named in the order may collect
19 the restitution, including costs, interest, and attorney's fees,
20 pursuant to section 706-646. The State may collect the fee or
21 fine, including costs, interest, and attorney's fees, pursuant
22 to section 706-647.

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(6) Attorney's fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of attorney's fees, costs, and interest.

(7) For purposes of this section, "default" means failure to pay a fee, fine, or restitution within a period of time specified by the court pursuant to section 706-642, or failure to pay three consecutive installments of a fee, fine, or restitution, whichever occurs first."

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

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

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

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1 (A) An adult probation officer, court officer, social
2 worker of a Hawaii state adult probation unit, or
3 a family court officer who is preparing a report
4 for the courts; or

5 (B) A state or federal criminal justice agency, or
6 state or federal court program that:

7 (i) Is providing supervision of a defendant or
8 offender convicted and sentenced by the
9 courts of Hawaii; or

10 (ii) Is responsible for the preparation of a
11 report for a court;

12 (2) The residence address, work address, home telephone
13 number, or work telephone number of a current or
14 former defendant shall be provided only to:

15 (A) A law enforcement officer as defined in section
16 710-1000 to locate the probationer for the
17 purpose of serving a summons or bench warrant in
18 a civil, criminal, or deportation hearing, or for
19 the purpose of a criminal investigation; or

20 (B) A collection agency or licensed attorney
21 contracted by the judiciary to collect any
22 delinquent court-ordered [~~penalties,~~] fees,

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1 fines, [~~restitution,~~] sanctions, and court costs
2 pursuant to section 601-17.5;

3 (3) A copy of a presentence report or investigative report
4 shall be provided only to:

5 (A) The persons or entities named in section 706-604;

6 (B) The Hawaii paroling authority;

7 (C) Any psychiatrist, psychologist, or other
8 treatment practitioner who is treating the
9 defendant pursuant to a court order or parole
10 order for that treatment;

11 (D) The intake service centers;

12 (E) In accordance with applicable law, persons or
13 entities doing research; and

14 (F) Any Hawaii state adult probation officer or adult
15 probation officer of another state or federal
16 jurisdiction who:

17 (i) Is engaged in the supervision of a defendant
18 or offender convicted and sentenced in the
19 courts of Hawaii; or

20 (ii) Is engaged in the preparation of a report
21 for a court regarding a defendant or

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offender convicted and sentenced in the
courts of Hawaii;

(4) Access to adult probation records by a victim, as
defined in section 706-646 to enforce an order filed
pursuant to section 706-647, shall be limited to the:

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

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

(C) Amounts paid by the defendant;

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

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

(F) Remaining unpaid balance,

without the assessment of a filing fee or surcharge;

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

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

(A) A case management, assessment, or treatment service provider assigned by adult probation to service the defendant; provided that such information shall be given only upon the acceptance or admittance of the defendant into a treatment program;

(B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and

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(C) In accordance with applicable law, persons or entities doing research;

(7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;

(8) Records obtained pursuant to section 704-404(9) may be made available as provided in that section;

(9) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and

(10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

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

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1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: 

6

BY REQUEST

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Report Title:

Penal Code; Fees, Fines, and Restitution; Collections;
Consequences of Nonpayment

Description:

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.

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

JUSTIFICATION SHEET

SB. NO. 1316

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO COURT-ORDERED PAYMENTS.

PURPOSE: To (1) require the Judiciary to contract with a collection agency or licensed attorney, to collect delinquent court-ordered fines, fees, sanctions, or court costs; (2) allow courts to grant a specified period of time or specified installments, for payment of fees, fines, and restitution; (3) allow courts to issue a summons or a warrant for a defendant's arrest if defendant defaults on those payments, but allow the defendant to show cause why the default should not be treated as intentionally disobedient; and (4) to clarify that probation records can be shared with a collection agency or licensed attorney for the purpose of collecting court-ordered fees, fines, sanctions, or costs.

MEANS: Amend sections 601-17.5, 706-642, 706-644, and 806-73, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill addresses a recent Supreme Court decision (*State v. Fay*, 154 Hawai'i 305 (2024)) that interpreted section 706-644, HRS, as prohibiting the courts from ordering payment compliance hearings unless and until a defendant defaults on payments. Victims of crime should not be required to file a civil lawsuit to receive court-ordered restitution from uncooperative or unapologetic defendants. Where a defendant's nonpayment of fees, fines, or restitution is due to justifiable reasons, a defendant should be permitted to present the defendant's reasons to the court and request additional time or smaller installments to reasonably satisfy the defendant's sentence.

<https://cases.justia.com/hawaii/supreme-court/2024-scwc-22-0000056-0.pdf?ts=1718660032>

This bill is needed to address these issues, and it does so by amending four sections of HRS, as follows: (1) section 601-17.5, HRS, to require, rather than authorize, the Judiciary to contract with a collection agency or licensed attorney for collections, but excludes restitution from collections; (2) section 706-642, HRS, to expressly allow courts to specify a payment period or installments for fees and restitution, in addition to fines; (3) section 706-644, HRS, to require that defendants be brought back to court if they fail to pay their fees, fines, or restitution within the specified period of time, or fail to pay three consecutive specified installments, or fail to pay forthwith, as dictated by the court at sentencing, and (4) section 806-73, HRS, to clarify that probation records can be shared with a collection agency or licensed attorney for the purpose of collecting court-ordered fees, fines, sanctions, or costs.

Impact on the public: This bill will assist victims of crime by re-establishing the court procedure of setting proof of compliance hearings that were abolished by the recent Hawaii Supreme Court decision in *State v. Fay*.

Impact on the department and other agencies: This bill will assist state and county prosecutors in enforcing payment of fines, fees and restitution. The 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 Hawaii Supreme Court's decision in *State v. Fay*.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County prosecutors, County police
departments, and the
Judiciary.

EFFECTIVE DATE: Upon approval.