
A BILL FOR AN ACT

RELATING TO COURT-ORDERED PAYMENTS.

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

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

3 "**\$601-17.5 Collection of delinquent court-ordered**
4 **payments.** The judiciary [~~may~~] shall contract with a collection
5 agency bonded under chapter 443B or with a licensed attorney to
6 collect any delinquent court-ordered [~~penalties,~~] fees, fines,
7 [~~restitution,~~] sanctions, and court costs[~~, including juvenile~~
8 ~~monetary assessments~~]. Any fees or costs associated with the
9 collection efforts shall be added to the amount due and retained
10 by the collection agency as its payment; provided that no fees
11 or costs shall exceed fifty per cent of the amount collected."

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

14 "**\$706-642 Time and method of payment.** (1) When a
15 defendant is sentenced to pay a fee, fine, or restitution, the
16 court may grant permission for the payment to be made within a
17 specified period of time or in specified installments. If no



1 such permission is embodied in the sentence, the fee, fine, or
2 restitution shall be payable forthwith by cash, check, or ~~[by]~~ a
3 credit card approved by the court.

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

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

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

19 "**§706-644 Consequences of nonpayment; imprisonment for**
20 **contumacious nonpayment; summary collection.** (1) When a
21 defendant in district court is sentenced pursuant to section



1 706-605, granted a conditional discharge pursuant to section
2 712-1255, or granted a deferred plea pursuant to chapter 853,
3 and the defendant is ordered to pay a fee, fine, or restitution,
4 whether as an independent order, as part of a judgment and
5 sentence, or as a condition of probation or deferred plea[
6 and]:

7 (a) If the defendant was ordered to pay restitution, the
8 court shall set a proof of compliance hearing for the
9 defendant; provided that the court may further order
10 that the defendant need not appear for the proof of
11 compliance hearing if all restitution has been paid in
12 full before a designated date that may be earlier than
13 the proof of compliance hearing date. At each proof
14 of compliance hearing for the defendant, if the
15 defendant appears and is in compliance with the court-
16 ordered payments but has not yet paid all restitution
17 in full, the court shall order a further proof of
18 compliance hearing within one year or as soon as
19 practicable until the restitution has been paid in
20 full. If the defendant defaults in the payment
21 thereof [or of any installment], the court[~~, upon the~~



1 ~~motion of the prosecuting attorney or upon its own~~
2 ~~motion, may]~~ shall require the defendant to show cause
3 why the defendant's default should not be treated as
4 contumacious, and ~~[may]~~, if the defendant fails to
5 appear, the court shall issue a summons or a warrant
6 of arrest for the defendant's appearance. Unless the
7 defendant shows that the defendant's default was not
8 attributable to an intentional refusal to obey the
9 order of the court, or to a failure on the defendant's
10 part to make a good faith effort to obtain the funds
11 required for the payment, the court shall find that
12 the defendant's default was contumacious and may order
13 the defendant committed until the ~~[fee, fine,]~~
14 restitution~~[7]~~ or a specified part thereof is paid.
15 Regardless of whether the court finds that defendant's
16 default was contumacious, the court shall order
17 further proof of compliance hearings every six months
18 or less until the court is satisfied that the
19 defendant will appear and remain in compliance with
20 the court-ordered payments. Once satisfied, the court
21 shall resume ordering a further proof of compliance



1 hearing within one year or as soon as practicable

2 until the restitution has been paid in full; or

3 (b) If the defendant was ordered to pay fees, fines, or

4 both, the court may set a proof of compliance hearing

5 for the defendant; provided that the court may further

6 order that the defendant need not appear for the proof

7 of compliance hearing if all fees and fines have been

8 paid in full before a designated date that may be

9 earlier than the proof of compliance hearing date. If

10 a proof of compliance hearing is set and the defendant

11 defaults in the payment of fees or fines, the court

12 may:

13 (i) Refer the outstanding fees, fines, or both to the

14 collection agency or licensed attorney contracted

15 pursuant to section 601-17.5; or

16 (ii) Require the defendant to show cause why the

17 defendant's default should not be treated as

18 contumacious, and, if the defendant fails to

19 appear, the court may issue a summons or a

20 warrant of arrest for the defendant's appearance.

21 Unless the defendant shows that the defendant's



1 default was not attributable to an intentional
2 refusal to obey the order of the court, or to a
3 failure on the defendant's part to make a good
4 faith effort to obtain the funds required for the
5 payment, the court may find that the defendant's
6 default was contumacious and may order the
7 defendant committed until the fee, fine, or a
8 specified part thereof is paid.

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~~] that their
15 failure was not attributable to an intentional refusal to obey
16 the order of the court, or to a failure to make a good faith
17 effort to obtain the funds required for the payment. If the
18 corporation or unincorporated association was sentenced as a
19 defendant in district court, the proceedings shall be as
20 provided in subsection (1).



1 (3) The term of imprisonment for nonpayment of fee, fine,
2 or restitution shall be specified in the order of commitment,
3 and shall not exceed one day for each \$250 of the fee [~~or~~],
4 fine, or restitution, thirty days if the fee [~~or~~], fine, or
5 restitution was imposed upon conviction of a violation or a
6 petty misdemeanor, or one year in any other case, whichever is
7 the shorter period. A person committed for nonpayment of a fee
8 or fine shall be given credit toward payment of the fee or fine
9 for each day of imprisonment, at the rate of \$250 per day.

10 (4) If it appears that the defendant's default in the
11 payment of a fee, fine, or restitution is not contumacious, the
12 court may make an order allowing the defendant additional time
13 for payment, reducing the amount of each installment, or
14 revoking the fee, fine, or the unpaid portion thereof in whole
15 or in part, or converting the unpaid portion of the fee or fine
16 to community service. A defendant shall not be discharged from
17 an order to pay restitution until the full amount of the
18 restitution has [~~actually~~] been [~~collected or~~] paid in full and
19 accounted for.

20 (5) Unless discharged by payment or, in the case of a fee
21 or fine, service of imprisonment pursuant to subsection (3), an



1 order to pay a fee, fine, or restitution, whether as an
2 independent order, as a part of a judgment and sentence, or as a
3 condition of probation or deferred plea pursuant to chapter 853,
4 may be collected in the same manner as a judgment in a civil
5 action. The State or the victim named in the order may collect
6 the restitution, [~~including costs, interest, and attorney's~~
7 ~~fees, pursuant to section 706-646. The~~] and the State may
8 collect the fee or fine, [~~including~~] in addition to any costs,
9 interest, and attorney's fees, pursuant to section 706-647.

10 (6) Attorney's fees, costs, and interest shall not be
11 deemed [~~part of the penalty,~~] a fee, fine, or restitution for
12 purposes of this section, and no person shall be imprisoned
13 under this section in default of payment of attorney's fees,
14 costs, [~~and~~] or interest.

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

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



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

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

11 (A) An adult probation officer, a court officer, a
12 social worker of a Hawaii state adult probation
13 unit, or a family court officer who is preparing
14 a report for the courts; or

15 (B) A state or federal criminal justice agency, or
16 state or federal court program that[+] is:

17 (i) [~~Is providing~~] Providing supervision of a
18 defendant or offender convicted and
19 sentenced by the courts of Hawaii; or

20 (ii) [~~Is responsible~~] Responsible for the
21 preparation of a report for a court;



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

4 (A) A law enforcement officer as defined in section
5 710-1000 to locate the probationer for the
6 purpose of serving a summons or bench warrant in
7 a civil, criminal, or deportation hearing, or for
8 the purpose of a criminal investigation; or

9 (B) A collection agency or licensed attorney
10 contracted by the judiciary to collect any
11 delinquent court-ordered [~~penalties~~] fees,
12 fines, [~~restitution~~] sanctions, and court costs
13 pursuant to section 601-17.5;

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

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

17 (B) The Hawaii paroling authority;

18 (C) Any psychiatrist, psychologist, or other
19 treatment practitioner who is treating the
20 defendant pursuant to a court order or parole
21 order for that treatment;



(D) The intake service centers;

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

(F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who[+] is engaged in the:

(i) [~~Is engaged in the supervision~~] Supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or

(ii) [~~Is engaged in the preparation~~] Preparation of a report for a court regarding a defendant or 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;



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

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

3 (F) Remaining unpaid balance,

4 without the assessment of a filing fee or surcharge;

5 (5) Upon written request, the victim, or the parent or
6 guardian of a minor victim or incapacitated victim, of
7 a defendant who has been placed on probation for an
8 offense under section 580-10(d)(1), 586-4(e),
9 586-11(a), or 709-906 may be notified by the
10 defendant's probation officer when the probation
11 officer has any information relating to the safety and
12 welfare of the victim;

13 (6) Notwithstanding paragraph (3) and upon notice to the
14 defendant, records and information relating to the
15 defendant's risk assessment and need for treatment
16 services; information related to the defendant's past
17 treatment and assessments, with the prior written
18 consent of the defendant for information from a
19 treatment service provider; provided that ~~[for]~~
20 release of any substance abuse records ~~[such release]~~
21 shall be subject to title 42 Code of Federal



1 Regulations part 2, relating to the confidentiality of
2 alcohol and drug abuse patient records; and
3 information that has therapeutic or rehabilitative
4 benefit, may be provided to:

5 (A) A case management, assessment, or treatment
6 service provider assigned by adult probation to
7 service the defendant; provided that ~~[such]~~ the
8 information shall be given only upon the
9 acceptance or admittance of the defendant into a
10 treatment program;

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

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

16 (7) Probation drug test results may be released with prior
17 written consent of a defendant to the defendant's
18 treating physician when test results indicate
19 substance use ~~[which]~~ that may be compromising the
20 defendant's medical care or treatment;



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

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

8 (10) Any person who uses the information covered by this
9 subsection for purposes inconsistent with the intent
10 of this subsection or outside of the scope of the
11 person's official duties shall be fined no more than
12 \$500."

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

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Penal Code; Fees, Fines, and Restitution; Collections;
Consequences of Non-Payment

Description:

Requires the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs. Clarifies the collection and prioritization of court-ordered fees, fines, and restitution. Establishes procedures for proof of compliance hearings and consequences for nonpayment. Effective 7/1/3000. (HD1)

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

