

ACT 206

S.B. NO. 2966

A Bill for an Act Relating to Criminal Injuries Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to establish a system of compensation fees for the criminal injuries compensation commission that will eventually eliminate the need for appropriations from the state general fund. This Act provides for the transition from general fund to special fund. The compensation fees will be used by the commission for crime victim compensation payments and for operating costs, and by other governmental agencies that are involved in the collection of compensation fees. Of the fifty states with a compensation program, thirty-four are able to maintain self-sufficiency through funding from compensation fees, fines,

penalties, civil recoveries, and restitution. They are not dependent on state appropriations to fund their compensation and operating costs.

Through the imposition of compensation fees, a criminal offender repays not only society, but also persons injured by the offender's act. Society thus benefits not once, but twice. This system will be supported by convicted defendants, and taxpayers would be relieved of this burden.

SECTION 2. Chapter 351, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§351- Compensation fee. (a) The court shall impose a compensation fee upon every convicted defendant who is or will be able to pay the compensation fee. The amount of the compensation fee shall be commensurate with the seriousness of the offense as follows:

- (1) Not less than \$100 nor more than \$500 for conviction of a felony;
- (2) \$50 for conviction of a misdemeanor; and
- (3) \$25 for conviction of a petty misdemeanor.

The compensation fee shall be separate from any fine that may be imposed under section 706-640 and shall be in addition to any other disposition under this chapter; provided that the court shall waive the imposition of a compensation fee if the defendant is unable to pay the compensation fee. Moneys from the compensation fees shall be deposited into the criminal injuries compensation fund under section 351-62.5.

(b) The criteria of section 706-641 may apply to this section. In setting the amount of the compensation fee to be imposed, the court shall consider all relevant factors, including but not limited to:

- (1) The seriousness of the offense;
 - (2) The circumstances of the commission of the offense;
 - (3) The economic gain, if any, realized by the defendant;
 - (4) The number of victims; and
 - (5) The defendant's earning capacity, including future earning capacity.
- (c) The compensation fee shall be considered a civil judgment.”

SECTION 3. Section 351-62.5, Hawaii Revised Statutes, is amended to read as follows:

“§351-62.5 Criminal injuries compensation special fund; when payments authorized. (a) There is established a criminal injuries compensation special fund from which the [criminal injuries compensation] commission may make payments as provided in subsection (b). [The director of finance shall be custodian of the fund, and all payments therefrom shall be paid by the director upon orders by the commission.] The fund shall be administered by the director of public safety for purposes of this chapter. Interest and investment earnings credited to the assets of the fund shall become part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward for the next fiscal year.

(b) Where the commission has made an award pursuant to this chapter, the commission shall make the payments to or on behalf of the victim or one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim's injury or death. Victims or dependents entitled to receive awards shall be notified of the option to have payments made on their behalf to other designated persons. Payments made pursuant to this section shall not exceed the total amount of the award.

(c) The amount appropriated under section 351-70 shall be redeposited into the fund and applied to other payments as authorized by the commission.

(d) Funds received pursuant to section 354D-12(b)(1) and amounts received pursuant to sections 351-35 [and], 351-63, 351-____, and 706-605 shall be deposited into the criminal injuries compensation special fund. Moneys received shall be used for compensation payments and operating expenses, of which not more than thirty per cent shall be used for operating expenses and to fund positions as authorized by the legislature. The criminal injuries compensation commission may enter into memorandums of agreement with the judiciary for the collection of fees by the judiciary; provided that no funds shall be deposited by the judiciary into the criminal injuries compensation special fund until collected.”

SECTION 4. Section 706-605, Hawaii Revised Statutes, is amended to read as follows:

“§706-605 Authorized disposition of convicted defendants. (1) Except as provided in parts II and IV of this chapter and [subsection (2)] subsections (2) and (6) of this section and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II of this chapter;
- (b) To pay a fine as authorized by part III and section 706-624 of this chapter;
- (c) To be imprisoned for a term as authorized by part IV of this chapter;
- (d) To make restitution in an amount the defendant can afford to pay; provided that the court may order any restitution to be paid to the criminal injuries compensation [commission] special fund in the event that the victim has been given an award for compensation under chapter 351 and, if the court orders, in addition to restitution, payment of fine in accordance with paragraph (b), the payment of restitution and a compensation fee shall have priority over the payment of the fine; payment of restitution shall have priority over payment of a compensation fee; or
- (e) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor, provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.

(2) The court shall not sentence a defendant to probation and imprisonment except as authorized by part II of this chapter.

(3) In addition to any disposition authorized in subsection (1) of this section, the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence.

(4) The court may sentence a person who has been convicted of a violation to any disposition authorized in subsection (1) of this section except imprisonment.

(5) The court shall sentence a corporation or unincorporated association which has been convicted of an offense in accordance with section 706-608.

(6) The court shall impose a compensation fee upon every person convicted of a criminal offense pursuant to section 351-____; provided that the court shall waive the imposition of a compensation fee if it finds that the defendant is unable to pay the compensation fee.

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[(6)] (7) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.’’

SECTION 5. This Act shall apply to any case in which a sentence is imposed after the effective date of this Act.

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

SECTION 7. This Act shall take effect on July 1, 1998.

(Approved July 17, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.