



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, 2/11/16 at 9:00 a.m.
State Capitol, Conference Room 016

By

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Bill No. and Title: Senate Bill No. 2104, Relating to the Collection of Restitution for Crime Victims.

Purpose: Creates standards and procedures for income-withholding for purposes of enforcing restitution 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. Provides priority of income withholding orders. Extends victim’s 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. Makes an unspecified appropriation to the Judiciary for the purpose of enhancing restitution collection.

Judiciary's Position:

The Judiciary supports the underlying intent of this bill which is to improve the collection of restitution for crime victims. However, the Judiciary has concerns that this bill could have an adverse impact on Judiciary operations and respectfully offers the following comments.

The main purpose of this bill is to help ensure that offenders satisfy their restitution obligations to their victims by requiring employers to withhold income for payment of restitution. While the Judiciary believes that the intent for offenders to comply with their restitution payments is important, there are several challenges and concerns regarding implementation of the provisions in this bill.



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It appears that this bill applies to all offenders who have received a judgment/order of restitution obligation. However, there are many cases where only restitution is ordered as a “straight sentence”, and the defendant does not receive direct probation supervision. In these situations, it will be difficult for the court to obtain the necessary information as to the defendant’s current and/or future employer for withholding purposes. Further, trying to monitor the compliance of defendants not on probation will be difficult unless additional court hearings are held resulting in more court time being devoted to compliance monitoring.

Senate Bill 2104 contains stringent deadlines by which the employer must remit the amount withheld to the Clerk of the Court within five business days. The fiscal office then has 10 business days after receipt of the amounts withheld to disburse the amount to the victim. Currently, the Judiciary’s Fiscal Office only accepts cash, a cashier’s check, or a money order for payment. If employers are allowed to pay with company checks, this form of payment needs to clear the employers’ bank account before the Judiciary can issue a restitution payment. The bill does not allow adequate time for a check to clear; specifically, checks processed in-state take 10 days to clear and out-of-state checks take 21 days to clear. In the event an employer has insufficient funds in its account, the Judiciary would sustain the loss.

Senate Bill 2104 requires the defendant to report any changes in employment to the Clerk of the Court and places the responsibility on the Clerk to notify the defendant’s new employer of its obligation to withhold restitution payment. Not only is this responsibility not aligned with the duties of the Clerk, but monitoring defendants will be difficult, particularly for defendants who are unsupervised and fail to notify the Clerk of his/her change in employment. Further, the bill does not address what happens when a defendant fails to report a change in employment, nor if clerks cannot verify a defendant’s change in employment or failure to report a change. Also, the purported assignment is contrary to the victim’s right to pursue civil collection of the free standing order of restitution via assignment to a collection agency, if desired, pursuant to HRS 706-644, 706-646, and 706-647.

The mandatory minimum of \$30 per month in restitution payment plus the \$2 per month administrative fee may be discouraging for some defendants who are trying to make ends meet on limited income. Further, the bill has no flexibility to allow the minimum amount to be adjusted by the court.

The requirement for employers to submit a cashier check or a money order may cost more than the \$2 monthly administrative fee that employers are able to retain, which may result in employers resisting compliance. This may also discourage employers from hiring or retaining employees that have Income Withholding Orders, especially since such an Order may alert an employer of the employee’s involvement with the Courts. This would hinder the defendant’s effort in rehabilitation and accountability, and would impede his/her ability to pay restitution.

This bill allows the victim to access the adult probation records to determine the defendant’s compliance with court-ordered payments; the amounts, dates, and payee of payments made by



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the defendant; and the balance unpaid. Accommodating these requests will increase the already significant workload of the probation staff.

If Senate Bill No. 2104 is enacted, the Judiciary will face a significant increase in the court's workload. In order to implement procedures to accommodate the provisions in this bill, it is estimated that it would cost about \$652,000 annually for the existing population that is supervised by probation. The estimated cost includes the projected staffing requirements needed statewide: two Social Worker (SW) IVs, two Judicial Clerk IIIs, and one Accountant I for Oahu; one SW IV, one Judicial Clerk III, and one Accountant I for Maui; two SW IVs, two Judicial Clerk IIIs, and one Accountant I for Hawai'i; and one SW IV, one Judicial Clerk III, and one Accountant I for Kaua'i. Collectively, this is six SW IVs, six Judicial Clerk IIIs, and four Accountants to implement the program statewide.

One-time equipment costs needed to support the staffing are estimated at about \$43,000.

The Judiciary respectfully requests that any appropriation to implement the requirements of Senate Bill No. 2104 be in addition to its FY 2016-2017 supplemental budget request contained in Senate Bill No. 2102 and House Bill No. 1649.

Thank you for the opportunity to testify on Senate Bill No. 2104.