



The Judiciary, State of Hawaii

Testimony to the Committee on Ways and Means

Senator David Y. Ige, Chair

Senator Michelle N. Kidani, Vice Chair

Thursday, February 21, 2013, 9:00 a.m.

State Capitol, Conference Room 211

By

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First Circuit

WRITTEN COMMENTS ONLY

Bill No. and Title: Senate Bill No. 873, S.D. 1, RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS

Purpose: Amends the definition of "debt" in section 231-52, HRS, to include court-ordered restitution subject to civil enforcement. Removes court's authority to revoke restitution once ordered. Creates standards and procedures for income-withholding, for purposes of enforcing restitution orders. Extends victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case.

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 will have potentially adverse impact on Judiciary operations.

By design, the bill is to help ensure that the offender satisfies his restitution obligations to his/her victims in that it requires employers to withhold income for the restitution which the Judiciary supports. In addition, the Judiciary also supports increased access by the victims to



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compliance information regarding the restitution orders. With this provision; however, are several challenges regarding resources to carry these recommendations forward.

It appears that this provision applies to all offenders who have received a judgment/order of a restitution obligation. There are many cases in which restitution will be ordered for a defendant who is not on probation and may not be under the supervision of any criminal justice entity. In these situations, the court will not have the means of obtaining the necessary information as to the defendants' current and future employers. It is also unclear who would be responsible to ensure service of the initial order upon the employer. It would be impractical and unrealistic for the "clerk of the court" to be responsible to notify new employers should the defendant change jobs without additional staffing and without access to the necessary information regarding the defendants' employment status.

The bill requires stringent deadlines by which the employer must remit the amounts withheld to the clerk of the court and by which the fiscal office must disburse the amount to the victim. This would place a strain on the Judiciary's fiscal operations.

The mandatory minimum of \$50 per month in restitution payment plus the \$2 per month administrative fee may be prohibitive for some defendants and there is no flexibility in the bill for the minimum amount to be withheld.

Although the bill determines that discrimination in the hiring or retention of a defendant based on the income withholding order to be a misdemeanor offense, this may make employers reluctant in hiring offenders which could adversely affect an offender from obtaining employment and to his/her ability to pay restitution.

As a final point, some defendants have a tax clearance and operate on a cash basis. The bill does not address this situation.

If Senate Bill No. 873 is enacted, the Judiciary will face a significant increase in the court's workload. In order to administer/implement procedures to accommodate the provisions in this bill, it is estimated that it would cost more than \$850,000 annually for the existing population that is supervised by probation. The estimated cost is inclusive of the projected staffing requirements needed statewide. The positions include 2 Social Worker (SW) IVs, 2 Judicial Clerk III's, and 1 Accountant I for Oahu; 1 SW IV, 1 Judicial Clerk III, and 1 Accountant I for Maui; 2 SW IV's, 2 Judicial Clerk III's, and 1 Accountant I for Hawaii; and 1 SW IV, 1 Judicial Clerk III, and 1 Accountant I for Kauai. Collectively, this is 6 SW IV's, 6 Judicial Clerk III's and 4 Accountant I's, to service statewide.



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For the defendants that are currently unsupervised by the Judiciary, but would require tracking oversight, it is recommended that the Victim Witness Program administered out of the Prosecutors Office, be responsible for these cases.

Thank you for the opportunity to testify on Senate Bill No. 873, S.D. 1.