



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

The Honorable Sylvia Luke, Chair

The Honorable Scott Y. Nishimoto, Vice Chair

The Honorable Aaron Ling Johanson, Vice Chair

Wednesday, March 27, 2013, 4:45 p.m.

State Capitol, Conference Room 308

By

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Bill No. and Title: Senate Bill No. 873, S.D. 2, H.D. 1, RELATING TO 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 victims' 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. Effective July 1, 2013.

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 potentially will have an adverse impact on Judiciary operations.

By design, the bill is to help ensure that the offender satisfies his restitution obligations to his/her victims by requiring employers to withhold income for payment of restitution. While the Judiciary believes that it is important for offenders to comply with their restitution payments there are several challenges regarding resources to carry these recommendations forward.



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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 have no means of obtaining the necessary information as to the defendants' current and future employers. 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.

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. The employer must remit amounts withheld within five days and the court's fiscal office must disburse the amount to the victim within two days of receipt of amounts withheld. Currently the Judiciary Fiscal Office only accepts cash, a cashier's check or money orders for payments to ensure payment collection. The current bill does not allow adequate time for a check to clear and in the event a business may have insufficient funds in their account, the check could bounce and the Judiciary would sustain the loss.

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

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 adversely contributing to his/her ability to pay restitution.

The bill allows access to the adult probation records by the victim to determine the compliance record of the defendant with court-ordered payments, the amounts paid by the defendant, the dates of the payments made by the defendant, the payee of payments made by the defendant, and the balance unpaid. In order to accommodate these requests the already significant workload of the probation staff will increase.

It is unclear who would be responsible to ensure service of the initial order upon the employer. Also, 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. 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



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bill, it is estimated to cost \$866,360.68 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.

Thank you for the opportunity to testify on Senate Bill No. 873, S. D. 2, H. D. 1.