



The Judiciary, State of Hawai'i

Testimony to the House Committee on Finance

Representative Sylvia J. Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Tuesday, 4/5/16 at 2:31 p.m.

State Capitol, Conference Room 308

By

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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2104, S. D. 2, 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 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 permanent Act 119, SLH 2011, which allows certain adult probation records to be provided to certain case management, assessment, or treatment service providers upon the screening for admission, acceptance, or admittance of the defendant into a treatment program. Extends for an additional two years the increase in percentage deducted from inmates' earnings for restitution payments pursuant to Act 139, SLH 2012. Appropriates funds. Takes effect on 7/1/2076.

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.



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for Crime Victims.

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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.

Senate Bill 2104, S.D. 2 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 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, a money order, or commercial check 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 the defendant; and the balance unpaid. Accommodating these requests will increase the already significant workload of the probation staff and fiscal office.

If Senate Bill No. 2104, S.D. 2 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



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Accountant I for Kauaʻi. Collectively, this amounts to 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, S.D. 2 be in addition to its FY 2016-2017 supplemental budget request contained in Senate Bill No. 2102, S.D. 1, H.D. 1.

Thank you for the opportunity to testify on Senate Bill No. 2104, S.D. 2.