

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary**

February 10, 2020

H.B. No. 2679: RELATING TO PENALTIES

Hearing: February 11, 2020, 2:05 p.m.

Chair Lee, Vice Chair Buenaventura, and Members of the Committee:

The Office of the Public Defender supports the intent of HB 2679 and offers comments for the Committee’s consideration. We appreciate core aspects of the bill, such as the income-based fine system and the public education component, but we are concerned that the bill may be ineffective in combating the harshest consequence of our regressive system: license stoppers. For this reason, our Office prefers the changes proposed by HB No. 2750.

Time and time again, our District Court attorneys hear the same story during intake interviews with our clients charged with Driving Without a Valid Driver’s License (“DWOL”): they received a citation for a minor traffic infraction that turned into a stopper on their driver’s license. Sometimes the client could not afford to pay that first citation, and sometimes they did not realize the importance of a timely payment. Either way, by the time clients reach us, it is too late for us to give them the advice that might have helped them avoid falling into their unfortunate situation.

The vast majority of our DWOL clients have no other non-traffic charges. If it were not for their financial difficulties, these clients would never have to risk a damaging criminal conviction on their records. With each additional DWOL citation, the fines grow higher, and the chance of those clients being able to claw their way back into the black grows dimmer. Our office is prohibited from assisting with non-jailable offenses, so our only recourse with most clients is to refer them to a non-profit group for assistance in converting unpaid infractions to community service work. We have no capacity to follow-up on these referrals, and we often find that our office turns into a revolving door for our DWOL clients.

While we understand that there is a public education component to HB No. 2679, it is unlikely to reach every single member of the public, especially not the most vulnerable segments of the population. While there might be some form of instructions on the physical citation, there are a number of ways that one could lose their copy of the citation. Someone who is arrested at the time of their traffic infraction may not receive a copy of the citation upon their release from custody. Someone could have their vehicle towed and be unable to afford the fee to retrieve it out of impound. Someone working multiple jobs may put the citation off to the side, intending to deal with it at a later date, until the time to send in a request for an income-based payment has passed.

Under the system described in this bill, that resident's fine can still be sent to collections and become a stopper on someone's license. This will be a serious roadblock in ending the regressive nature of our traffic fine collection system, which is why our office favors the proposed reforms in HB No. 2750. The Office of the Public Defender is strongly in support of re-thinking this regressive system and finding a way to move forward.

Thank you for the opportunity to comment on H.B. No. 2679.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 11, 2020, 2:05 p.m.

State Capitol, Conference Room 325

by

Calvin C. Ching

Deputy Chief Court Administrator

First Circuit

Bill No. and Title: House Bill No. 2679, HD1, Relating to Penalties.

Purpose: Establishes on January 1, 2021, a three-year pilot project within the traffic violations bureau of the district court of the first circuit that requires the court to adjust court-imposed monetary assessments resulting from motor vehicle moving violations. Establishes income-based adjustments for traffic fines. Appropriates funds. Sunset the pilot project on December 31, 2023. Takes effect on January 1, 2050. (HD1)

Judiciary’s Position:

The Judiciary understands the intent of this bill, but notes that from an operational standpoint and given the specific mandates in the bill, significant funding, resources, and time will be needed to pilot development, implementation, and reporting for this project.

Furthermore, the Judiciary is concerned that this measure will have unintended negative impacts on cited motorists if passed and would place an undue burden on the court when there are other options that exist that can be better utilized to accomplish the goals of this legislation.

A. Act 112 Financial Hardship Task Force: Current Financial Hardship Options and Recommendations

The Judiciary notes that the issue at the heart of this bill -- creating alternatives for resolution of traffic infractions and lifting license and registration stoppers so that persons of



limited financial means are not precluded from driving -- was explored and discussed in depth by the Final Report of the Financial Hardship Task Force to the Thirtieth Legislature of the State of Hawai'i. Many of the task force recommendations appear to be covered by other proposed bills, such as HB2751 (relating to financial hardship). The Judiciary suggests that before significant and substantial funds are appropriated to create a pilot program for the First Circuit, the alternatives proposed by that bill and the Financial Hardship Task Force be examined to determine whether they might achieve the same goal at a lower cost.

1. Current Financial Hardship Options Available

Currently, there are options available if a motorist is unable to pay a traffic related monetary assessment or is otherwise experiencing financial hardship. A traffic monetary assessment includes fines, fees and surcharges. When a motorist is required to pay a traffic monetary assessment, there are two schedules for payment. If the assessment is up to \$500, a party has up to three months to pay; if the assessment is more than \$500, a party has up to six months to pay. At the end of the applicable period, the unpaid portion is referred to a private collection service. Any arrangement for payment can be made with the collection service, including paying the assessment in installments.

Additionally, upon request, the court can convert the monetary assessment to community service and has the ability to adjust monetary assessments when a motorist is experiencing financial hardship. The court may also extend the time to pay the monetary assessment; issue a restricted license so the motorist can continue to drive while paying down the monetary assessment, similar to a payment plan; recall the amount owed from collections; or make other adjustments. Programs such as the Volunteer Legal Service's Re-entry and Community Service Program (RACS) and Community Outreach Court can help participating motorists navigate this process.

All fines collected are deposited into the State General Fund, unless otherwise designated. Therefore, the courts are not funded through the collection of traffic fines. It is important to note that most traffic infractions have relatively low fines. Pursuant to statute, the court must impose additional fees and surcharges to the fines, such as the Driver Education fee, Safe Route to Schools surcharge, Neurotrauma System surcharge; these mandatory fees are required by statute and contribute to the total amount a motorist must pay. By statute, these mandatory fees and surcharges that cannot be waived by the court, and therefore add to the total amount a motorist owes, without providing the motorist with many options to adjust the penalties owed.



2. Recommendations of the Act 112 Financial Hardship Task Force

Thus, although the current system provides options for cited motorists who are experiencing financial hardship, the Financial Hardship Task Force recommended ways to build upon these options to improve the traffic system and remove barriers for motorists:

1. Give the courts greater judicial discretion in setting traffic penalties, particularly for those traffic offenses that commonly lead to high monetary assessment amounts.
2. Expand the restricted license program under Hawai'i Revised Statutes (HRS) § 286-109(c)(1), which is similar to a payment plan, to allow more motorists to qualify for the program.
3. Increase the community service conversion rates.
4. Create uniform procedures for taking into consideration a motorist's ability to pay a monetary assessment.
5. Further decriminalize traffic crimes that are deemed non-serious in nature.
6. Increase imprisonment conversion rates for those defendants with traffic crime cases who opt to satisfy their legal financial obligations as credit for time served.
7. Increase visibility of all financial hardship options that are available.

B. Concerns about House Bill No. 2679, HD1

1. **This measure may increase the number of in-person court appearances that motorists need to make and require bench warrants or penal summons in the event of non-payment**

The purpose section of this measure provides:

People of limited means rarely have the time, opportunity, or knowledge necessary to appear before court and contest a traffic penalty or request a downward departure from an assessed amount. As a result, courts frequently issue default judgments against people with no meaningful opportunity to pay.

However, the current non-criminal traffic infraction process does not require an in-court appearance. A motorist can contest a citation or request a downward adjustment via mail. Thus, the changes contemplated in HB2679, HD1, as written, have the possibility to increase the number of in-court appearances that motorists will have to make in order for the court to make determinations of ability to pay as well as findings of whether a motorist's failure to pay was or



was not willful. This will require that motorists take time off work, find childcare, and find parking downtown or arrange alternative transportation, which ultimately hurts rather than helps motorists, especially when the currently non-criminal infraction process has mechanisms already built into it to address these issues.

For example, this measure would require that the court make a “finding on the record that the failure to pay was willful” before imposing a penalty for non-payment. This would appear to require the court to conduct an in-person hearing to determine an individual’s income, expenses, and ability to pay before imposing a penalty for failure to pay a traffic fine. If documentation is not provided, the ability to pay hearings will likely require motorists to answer questions in court under oath about their employment, wages, retirement benefits, annuities, public assistance benefits, child or spousal support, assets, savings and checking account balances, mortgage payments, rent, utilities, car payments, transportation expenses, medical expenses, educational expenses, childcare expenses, and the like. Therefore, motorists who have failed to satisfy their financial obligations may be required to come to court for a hearing, whereas the current non-criminal traffic infraction process does not require an in-court appearance and all matters can be handled via mail. If a motorist fails to appear, a bench warrant could be issued for their arrest under the process contemplated in this measure.

Furthermore, if a payment plan is established by the court calling for payment of a fine in 12 equal monthly payments and modification in the event financial circumstances change along the way, the court must set status hearings to monitor the case. Many years ago, the Judiciary had a payment plan system similar to the purposed measure. At the time, all traffic offenses were treated as criminal offenses. Managing, reconciling payments, and complying with default provisions were problematic for the courts and for motorists. Back then, the court had a daily payment calendar, which meant motorists would have to appear in court monthly, sometimes paying as little as \$5 on the days they appeared. The trade off, however, was that many motorists had to take time off from work, find parking, and sit in a packed courtroom with up to two hundred other motorists who were also waiting for their cases to be called. Nonappearance on the payment calendar generated bench warrants for contempt of court or the issuance of a penal summons for failing to appear. In 1993, the Legislature decriminalized minor traffic offenses to make it easier for people to pay for fines without the criminal ramifications. The Legislature also allowed the Judiciary to send unpaid monetary assessments in traffic cases to collection; by doing so, the Legislature abolished the “debtor court” model that exposed motorists to bench warrants and/or penal summons. And, for motorists who could not pay their monetary assessments outright, the Legislature created a process for the issuance of restricted licenses to certain categories of motorists so they could continue to drive while paying down their outstanding financial obligations, as described more fully below. *See* Haw. Rev. Stat. § 286-109(c).



Currently, the district courts have a restricted license program that permits individuals to continue to drive while paying down monetary assessments in installments, much like a payment plan. To qualify for the restricted license program, under HRS § 286-109(c)(1), an individual must (a) be gainfully employed in a position that requires driving and will be discharged if the person is unable to drive, or (b) have no access to alternative transportation and therefore must drive to work. The option for restricted licenses is available for both traffic infraction and traffic crimes, and the Financial Hardship Task Force recently recommended expansion of this program so that more motorists qualify. Significantly, if an individual fails to remain in full compliance with all conditions imposed by the court, such as timely payments, the individual's restricted license is revoked by the court, but no bench warrant will issue for non-payment.

2. Significant resources will be needed for implementation, and other statutory and rule changes will be required

First, the bill states that the pilot program would be operated by the District Court of the First Circuit's Traffic Violations Bureau (TVB). However, TVB is responsible only for those citations issued in the Honolulu district. This would mean that motorists receiving citations in Honolulu and Kaneohe, for example, would have to contend with different procedures causing confusion. There are many other departments that handle traffic infractions.

Second, this measure would require the Judiciary to notify a motorist regarding income-based adjustments four (4) different times. The development of these notices and the implementation of them would require the Judiciary to hire additional clerks. During the 2018-2019 fiscal year, more than 238,000 traffic infraction citations were issued in the First Circuit alone. The design and production these notices would require a financial appropriation that would be at least four times the amount currently spent each year on producing traffic citation forms, as the bill contemplates that the notices would be disseminated at least four times in a single case. Postage costs would likewise increase four-fold.

Third, the ability to pay process, as envisioned in HB 2679, HD 1, would also require the appropriation of funds to create new positions for a three year period for additional personnel to process the documents; for additional court clerks, bailiffs, and judges to staff the courtrooms in which the hearings would be held; for additional fiscal staff to process, post, and monitor payments for cases in which hearings are conducted; and for additional technical staff to integrate hearings with JIMS (the Judiciary Management Information System).

Fourth, HB 2679, HD1 would require the court to conduct online hearings to determine an individual's income, expenses, and ability to pay. Currently, the Judiciary does not conduct any hearings online. Extensive research and development would be needed to design and implement such a system. The cost of the design, implementation, and maintenance of such a



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system is unknown. In addition, existing statutes and rules will need to be revised to allow for online ability to pay hearings.

Finally, the proposed bill would require the court to accept requests for ability to pay hearings by fax and e-mail. Currently, all requests for hearings -- including, but not limited to, hearings on motions to set aside default judgments, motions to convert fines to community service, motions to amend judgments, and motions to recall cases from collection -- can be made in person or by mail. Existing statutes and rules will need to be revised to allow individuals to request ability to pay hearings by fax or e-mail.

If the pilot program contemplated by this bill proceeds, the Judiciary would request that the effective date for this pilot program be extended to give the Judiciary ample time to develop and implement the program on the front end, as well as analyze the data and prepare the written report on the back end. Given that the pilot program would require an overhaul of the entire Traffic Violation Bureau and could potentially involve hundreds of thousands of ability to pay determinations, a commencement date of January 1, 2021 is not feasible and significant resources would be needed.

For these reasons, we respectfully request that the recommendations and reasonings from the Final Report of the Act 112 Financial Hardship Task Force, and the proposed legislative changes found in HB 2751 be considered as a more efficient way to achieve the goals of this measure.

Thank you for the opportunity to testify on this measure.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy San Buenaventura, Vice Chair

Wednesday, February 5, 2020

3:30 pm – Room 325

SUPPORT for HB 2679 HD1 – TRAFFIC FEES AND FINES

Aloha Chair Lee, Vice Chair San Buenaventura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 2679 HD1 establishes on January 1, 2021, a three-year pilot project within the traffic violations bureau of the district court of the first circuit that requires the court to adjust court-imposed monetary assessments resulting from motor vehicle moving violations. Establishes income-based adjustments for traffic fines. Appropriates funds. Sunset the pilot project on 12/31/2023. Takes effect on 1/1/2050. (HD1)

Community Alliance on Prisons supports this bill. People who are exiting incarceration generally leave with no identification documents, little to no money, and sometimes mounds of traffic fines. This is a huge barrier to successful reentry.

The Harvard Criminal Justice Public Policy Program released a report¹ on proportionate fines and made recommendations consistent with the proposed pilot program, including:

"Fines should not swallow up all of a person's disposable monthly income, and payment should not be required for years on end. Jurisdictions should set a reasonable percentage of net income that can be used to pay a portion of the fine every month."

¹ PROPORTIONATE FINANCIAL SANCTIONS - Policy Prescriptions for Judicial Reform, by Sharon Brett and Mitali Nagrecha, Criminal Justice Policy Program, Harvard Law School, September 2019.
http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf

Our justice system should not be a two-tiered system based on economic wealth. Other jurisdictions have shown that by making fines proportionate to an individual's income, the likelihood of collection is increased.

In 2016, the United States Department of Justice issued a letter clarifying that courts have an affirmative obligation to "ensure fair and accurate assessments of defendants' ability to pay," and in November 2016 again urged basic respect for the principle that people should not be punished – that is, not arrested, jailed, or given a suspended license – just because they cannot afford to pay.²

A May 2017 report from Insight Center for Community Economic Development entitled, "DRIVING INTO DEBT: THE NEED FOR TRAFFIC TICKET FEE REFORM" discussed the effects of mounting debt on those struggling to make ends meet:

Losing a license also creates barriers to meeting basic needs such as getting to and from medical appointments, school, child care, grocery shopping, and even court appointments. When the only adult or one adult in the household cannot drive, others close to the family must help coordinate logistics. Without additional support getting to work, the driver can lose his/her job. In one study, 42 percent of people lost their jobs after license suspension and 45 percent of those people could not find another job. The majority of those who did regain employment found work paying a lower wage.³

Joblessness creates a number of social and health effects for individuals and their children, including the loss or reduction of income available to cover basic necessities. The longer a person cannot find employment the more likely their future earnings will be lower. Unemployment affects overall family well-being through poor health and lower academic outcomes for children.⁴ Without employment, people are much less likely to be able to pay court-ordered debt. When people do lose income or a job due to a suspended license, those resources are also extracted from the community in the form of lower consumption and a smaller tax base.

It's time for traffic court to look at the individual's ability to pay in proportion to the offense. It is patently wrong for 2 people with the same offense to disproportionately impacted based on their wealth. That is not justice.

Community Alliance on Prisons asks the committee to pass this bill. Mahalo for this opportunity to testify.

² Vanita Gupta & Lisa Foster, Dear Colleague Letter (Mar. 14, 2016), U.S. Department of Justice, Civil Rights Division; Statement of Interest of the United States, *Stinnie v. Holcomb*, No. 3:16-cv-00044-NKM (W.D. Va. filed July 6, 2016).

³ Gustitus, Sandra, Simmons, Melody and Waller, Margy. "Access to Driving and License Suspension Policies for the Twenty-First Century Economy." *The Mobility Agenda*. May 2008, <http://www.kidscount.org/news/fes/sep2008/driverslicense.pdf>

⁴ Nichols, Austin, Mitchell, Josh and Lindner, Stephan. "Consequences of Long-Term Unemployment." Urban Institute, August 20, 2013, http://www.urban.org/research/publication/consequences-long-term-unemployment/view/full_report



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 11, 2020, 2:05 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i in support of H.B. 2679, H.D. 1, Relating to Penalties

Dear Chair Lee, Vice Chair San Buenaventura, and Committee Members:

The American Civil Liberties of Hawai'i (ACLU of Hawai'i) writes **in support of** H.B. 2679, H.D. 1, which would establish a three-year pilot project to require courts in the First Circuit to adjust traffic fines based on a motorist's income when requested to do so. The bill would also require the Traffic Violations Bureau of the First Circuit to develop additional procedures to increase awareness of motorists' right to have their fines adjusted if they cannot afford to pay. Income-based fine adjustment programs have been shown to reduce harm on vulnerable communities and increase rates of payment.

Traffic fines bury people under insurmountable debt and penalties for nonpayment lead to incarceration.

Roughly half of Hawaii's families cannot afford to meet basic needs.¹ A recent study found that four in ten adults do not have access to \$400 at any given time, making them one emergency—or court-ordered fine—away from financial ruin.² “Flat” traffic fines (fines based solely on offense) create the appearance of equality, but disproportionately punish this population, who stand to lose much more than their wealthier counterparts. Recognizing this unequal burden imposed by flat fines, a growing body of research recommends that jurisdictions implement an income-based system like that which is proposed by H.B. 2679, H.D. 1.³

Those who receive a traffic citation in Hawai'i and are unable to afford to pay the ticket have few meaningful options available to them. While paper citations for civil traffic infractions

¹ ALICE, a Study of Financial Hardship in Hawai'i, 2017 Report. Aloha United Way (2017).

² Bd. of Governors of the Fed. Reserve Sys., Report on the Economic Well-Being of U.S. Households in 2017 at 2 (May 2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

³ See, e.g., Sharon Brett and Mitali Nagrecha, *Proportionate Financial Sanctions, Policy Prescriptions for Judicial Reform*, Criminal Justice Policy Program, Harvard Law School (September 2019), available at http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf.

include a notice to the motorist that they may request that the court consider their ability to pay, it is the understanding of the ACLU of Hawai'i that this option is not often utilized by motorists; even when an adjustment is requested, the decision of whether to do so is purely at the discretion of the court and there is no set formula for an adjustment of monetary assessments. If you fail to pay a citation within 30 days of a default judgment being entered, a "stopper" is placed on your driving record that prevents you from renewing or obtaining a driver's license⁴ and your case will eventually be sent to collections.⁵

A devastating cycle ensues in which an individual cannot afford to pay a traffic ticket, cannot renew or obtain their license as a consequence, then faces the impossible choice between driving without a license (a traffic crime punishable by up to a \$1,000 fine or up to one year in jail⁶) and risk losing their job, or not getting their children to the doctor. Because the vast majority of Hawaii's workers drive themselves to work,⁷ a license revocation compromises a family's ability to make ends meet.

The collateral consequences of being unable to afford traffic tickets carry financial costs for the state and drive people further into poverty. This disproportionately impacts Native Hawaiians, who are more likely than their white counterparts to live in poverty.⁸ It was in part due to this disproportionate burden on communities of color that The American Bar Association recently condemned the use of license revocations for nonpayment like those we have in Hawai'i and recommended income-based systems.⁹

Income-based fines are effective and have been shown to increase rates of payment.

Just because fines are affordable does not mean that they are not an effective punishment; indeed, our system of monetary sanctions *presumes* that people will be financially able to pay them. For a person living paycheck to paycheck, even a \$10 fine can be a significant burden.

⁴ HCTR Rule 15 (b).

⁵ If you fail to pay within 90 days (for judgments of \$500 or less) or 180 days (\$500 or more)⁵, you can no longer make payments to courts and your case is sent to collections. HCTR Rule 20(C). Once the case goes to collections, you no longer have the option of making a payment to the court, and *must* pay the total amount owed, plus an additional **twenty-one percent** as a fee to the agency. *Resolving Cases Submitted to the Collection Agency (MSB)*, Hawaii State Judiciary, https://www.courts.state.hi.us/self-help/traffic/resolving_cases_submitted_to_the_collection_agency#2.

⁶ H.R.S. § 286-136.

⁷ U.S. Census Bureau, 2018. American Community Survey, *Hawaii 5-Year Estimates Data Profiles*.

⁸ U.S. Census Bureau, 2018. 2017 American Community Survey, *1-Year Estimates*.

⁹ *ABA Ten Guidelines on Court Fines and Fees*, American Bar Association (August 2018), available at <https://finesandfeesjusticecenter.org/content/uploads/2018/12/Ten-Guidelines-on-Court-Fines-and-Fees.pdf>.

Conversely, a wealthy person may view a \$200 ticket as a drop in the bucket. When fines are affordable, people are more likely to make their payments in full.¹⁰ Multiple jurisdictions have run pilot projects similar to what is proposed by H.B. 2679, H.D. 1 and found increases in payment, which led to increased revenues.¹¹ For example, San Francisco quadrupled compliance when they adjusted their payment plans for citations to decrease the minimum payment from \$60 to \$5 for low-income individuals.¹²

It is imperative that Hawai‘i reevaluate its current traffic fines system. A three-year pilot project is a great opportunity to review existing ability-to-pay procedures, collect and analyze data around the efficacy of a mandatory income-based adjustment for traffic fines, and inform future policy to create a more equitable court system. For the above reasons, the ACLU of Hawai‘i respectfully requests that your Committee support H.B. 2679, H.D. 1. Thank you for the opportunity to testify on this bill.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai‘i

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for 50 years.

¹⁰ ACLU of Pennsylvania, *Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data* (Nov. 13, 2018), available at https://aclupa.org/sites/default/files/field_documents/imposition_and_assessment_of_court_costs_in_pennsylvania_criminal_cases_final_revised.pdf.

¹¹ Beth A. Colgan, Graduating Economic Sanctions According to Ability to Pay, 103 Iowa L. Rev. 53 (2017) at 69.

¹² Joe Fitzgerald Rodriguez, *City Says Reduced Fee for Parking Citation Payment Program Boosts Revenues*, SF Examiner (May 14, 2018), <https://www.sfexaminer.com/news/city-says-reduced-fee-for-parking-citation-payment-program-boosting-revenues/>.

HB-2679-HD-1

Submitted on: 2/10/2020 1:58:55 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

LATE

TESTIMONY IN SUPPORT OF HB 2679, HD 1

TO: Chair Lee, Vice-Chair San Buenaventura, and Members of the
House Judiciary Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: February 11, 2020 (2:05 PM)

Hawai'i Health & Harm Reduction Center (HHHRC) supports HB 2679, HD 1, which would create a pilot project that requires judges to adjust traffic fines based on an individual's income when requested to do so.

HHHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance use and underlying mental health conditions.

The American Bar Association issued "[Ten Guidelines on Court Fines and Fees](#)" in 2018, and its first two guidelines provide that "No law or rule should limit or prohibit a judge's ability to waive or reduce" any fee or fine, and "a full waiver" of fees and fines "should be readily accessible to people for whom payment would cause a substantial hardship."

Civil sanctions often serve as a direct pipeline to the criminal legal system. Driving without a license because of the inability to pay fines and fees, usually including collection agency surcharges of over 20%, is an unfortunate yet foreseeable consequence for those who are struggling to make ends meet.

This includes those who live in extreme poverty and homelessness: roughly 40% of the most commonly issued citations to those persons who are eligible to participate in [Law Enforcement Assisted Diversion](#) (LEAD) were traffic related. For many living with homelessness, particularly

those suffering mental illness, the act of meeting basic, daily needs and self-preservation is so time-consuming they rarely have the time, opportunity, or knowledge necessary to appear before court and contest a traffic penalty or request a downward departure from an assessed amount. *See, e.g.,* Amy Cooper, “Time Seizures and the Self: Institutional Temporalities and Self Preservation among Homeless Women,” [Cult Med Psychiatry. 2015 Mar; 39\(1\): 162–185.](#)

The inability to pay fines and fees extends even further up the economic ladder. According to last year’s [Hawai’i Financial Health Pulse](#), “an in-depth view of the financial struggles faced by people in Hawai’i,” 69% of this state’s residents are struggling financially, 35% of state residents do not have three months of income set aside for emergencies, 54% of residents spend 50% or more of their income on housing, and 27% of residents reported being food insecure.

This bill will help ensure that those of no economic means, little economic means, and lesser economic means won’t be caught in a cycle of unpaid fines and fees that will effectively leave them without licenses or registration and subject them to possible jail sentences. Jail time for failure to pay these kinds of fines and fees exacerbates individual and familial economic instability and operates to the detriment of the state, which expends approximately \$180/day for each person jailed.

Thank you for the opportunity to testify on this measure.

HB-2679-HD-1

Submitted on: 2/10/2020 11:31:18 AM

Testimony for JUD on 2/11/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Barbara L Franklin, Esq., Attorney at Law	Support	No

Comments:

I support income based fines that are adjusted to the persons income provided that the income is stated under penalty of perjury.

HB-2679-HD-1

Submitted on: 2/10/2020 5:23:50 PM

Testimony for JUD on 2/11/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
David Shaku	Individual	Support	No

Comments: