



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 10, 2020, 10:00 a.m.

State Capitol, Conference Room 016

by

Calvin C. Ching

Deputy Chief Court Administrator

District Court of the First Circuit

WRITTEN TESTIMONY

Bill No. and Title: House Bill No. 2679, HD2, Relating to Penalties.

Purpose: Requires the Judiciary to conduct a study to determine how to most easily implement a system of income-based fines as a pilot project for an appropriate offense or offenses and examine how other jurisdictions have treated habitual offenders in income-based systems. Takes effect on 1/1/2050. (HD2)

Judiciary’s Position:

The Judiciary supports this measure and believes that a study on income-based fines will allow for the continued development of recommendations on how an income-based pilot program could be achieved.

The Final Report of the Financial Hardship Task Force authorized by Act 112 of the 2019 Legislative Session found that the courts currently have the authority to utilize several frequently used options that help a motorist satisfy their legal financial obligation if the motorist is experiencing financial hardship. Among these various options includes the ability to convert traffic fines to community service, adjust down monetary assessments when requested by a motorist facing financial hardship, enlarge the period of time that a motorist has to pay the monetary assessment, and enroll motorists in the HRS § 286-109(c) restricted license program,



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which allows a motorist to continue to drive while paying down outstanding traffic monetary assessments.

While not a Task Force recommendation, the Judiciary supports the opportunity to examine how to implement a system of income-based fines as a pilot project. Under this measure, the final report of findings and recommendations is due at least 20 days before the start of the 2022 regular legislative session, which should be enough time for a meaningful examination to occur.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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

March 9, 2020

H.B. No. 2679, H.D. 2: RELATING TO PENALTIES

Hearing: March 10, 2020, 10:00 a.m.

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender supports HB 2679 and offers comments for the Committee’s consideration. We appreciate that this bill proposes to study income-based fine systems, but we are concerned that the bill may be ineffective in combating the harshest consequence of our regressive system: license stoppers. Furthermore, we are concerned that delaying action on this critical issue will result in more local residents slipping into deeper debt and houselessness. For this reason, our Office prefers the changes proposed by HB No. 2750. The Office of the Public Defender is strongly in support of re-thinking this state’s regressive traffic fine system and finding a way to move forward.

Thank you for the opportunity to comment on H.B. No. 2679, H.D. 2.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Tuesday, March 10, 2020

10 am – Room 016

STRONG SUPPORT for HB 2679 – PENALTIES

Aloha Chair Rhoads, Vice Chair Keohokalole 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 HD2 requires the Judiciary to conduct a study regarding income-based fines and how other states address habitual offenders who have low incomes. Takes effect on 1/1/2050. (HD2). The purpose of HB 2679 was to consider the income and economic circumstances of the person being assessed traffic fines and fees. Research has shown that by making fines and fee affordable increases the likelihood of collection.

Community Alliance on Prisons stands in strong support of addressing fees and fines – especially traffic fines and fees – a HUGE barrier for those reentering their communities to restart their lives. This is especially important on the outer islands, where a car is a necessity to get to and from work. Traffic stoppers for unpaid fines are one of the biggest barriers to reentering the community after incarceration. The Harvard Criminal Justice Public Policy Program released a report¹ on proportionate fines and made recommendations consistent with the proposed pilot program in the original bill, 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](http://cjpp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf)

Our system of justice 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 US 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

San Francisco was the first city in the nation to launch a Financial Justice Project to assess and reform fees and fines that have a disproportionate and adverse impact on low-income residents and communities of color. The website of the City and County of San Francisco Treasurer and Tax Collector - <https://sftreasurer.org/financial-justice-project> - describes the project:

Local governments and courts have long levied fines and fees, as sanction for unlawful behavior and to cover costs. There is often an insidious unintended impact of this practice---to push people into poverty. These fines and fees can knock people down so hard they can't get back up. Poor people and people of color are usually hit the hardest. These financial penalties can make government a driver of inequality, not an equalizer.

The Financial Justice Project was launched in November 2016 with the publication of an [op-ed](#) in the San Francisco Chronicle³. The Financial Justice Project is housed in the Office of the San Francisco Treasurer, the entity in charge of revenue collection for the City and County. Together we work with city and county departments, the courts and community organizations to enact reforms that result in meaningful change for low-income San Franciscans. Since our launch we have eliminated or adjusted dozens of fees of fines and lifted tens of millions of dollars in debt off of tens of thousands of people. These accomplishments are not ours alone. We achieved them through working in partnership with many others.



A detailed description of the Financial Justice Project's accomplishments can be found at: <https://sftreasurer.org/sites/default/files/201909/Financial%20Justice%20Project%20Accomplishments%20to%20Date%202019.08.12%20%281%29.pdf>

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 San Francisco has become a predatory government, *The San Francisco Chronicle*, By Jose Cisneros, November 29, 2016. <https://www.sfchronicle.com/opinion/openforum/article/San-Francisco-has-become-a-predatory-government-10641316.php>

A recent article⁴ about the true cost of court debt brings this argument home with this excerpt: *“Here are two graphic examples of how “court costs” effectively turn a fine into an onerous financial burden for defendants already at the lowest end of the income scale*

- *A judge fined a defendant **\$25** for a traffic offense. Fines, fees, costs and surcharges added up to \$125.50. **Total amount billed: \$150.50***
- *A defendant was assessed a **\$300 fine** for disorderly conduct. Additional fees, costs and surcharges amounted to \$165. Then the defendant was also ordered to pay \$160.70 as a “server fee” for the times a constable tried to deliver a warrant and was unsuccessful. **Total bill: \$625.70***

According to Pittsburgh Magisterial District Judge Richard King, lawmakers are leaning on court costs instead of taxes.

“Legislators haven’t had the wherewithal to actually raise taxes on everybody,” he said. “It’s the adage: do you want to get a nickel from everyone, or do you want to get a quarter off of certain people?”

A May 2017 report⁵ from Insight Center for Community Economic Development entitled, 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.⁶

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.⁷ 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.

Community Alliance on Prisons implores the legislature to take a hard look at what our policies are doing to the struggling families and individuals in our communities. Please ensure that we don’t bury our people under mounds of unaffordable debt and that we help people transitioning from incarceration back to their communities.

San Francisco considered their people first. Please Please Please put Hawai‘i’s people first.

Hawai‘i does not have to reinvent the wheel; there are examples of other jurisdictions responding to the needs of their people along with numerous studies calling for proportional fees and fines. How much more do we need to know? We are driving people into poverty. Please encourage the Judiciary to just do it!

Mahalo for this opportunity to testify.

⁴ The True Cost of Justice Debt: How a \$25 Traffic Fine Can Cost \$150, By Juliette Rihl/PublicSource | Monday, February 17, 2020. <https://thecrimereport.org/2020/02/17/the-true-cost-of-justice-debt-how-a-25-traffic-fine-can-cost-150/>

⁵ DRIVING INTO DEBT: THE NEED FOR TRAFFIC TICKET FEE REFORM, Insight Center, by Annette Case and Jhumpa Bhattacharya. https://insightcced.org/wp-content/uploads/2017/07/May2017_DrivingintoDebt-Final.pdf

⁶ 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>

⁷ 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

TESTIMONY IN SUPPORT OF HB 2679, HD 2

TO: Chair Rhoads, Vice-Chair Keohokalole, and Senate Judiciary Committee Members

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: March 10, 2020 (10:00 AM)

Hawai'i Health & Harm Reduction Center (HHHRC) supports HB 2679, HD 2, which would require the Judiciary to conduct a study regarding income-based fines.

While we support any legislative effort to move forward on this subject, please bear in mind that the American Bar Association has already evaluated this subject, as have numerous non-profit groups, including the [Fines & Fees Justice Center](#) (FFJC) and the [Brennan Center for Justice](#). FFJC notes that in the past two years, Montana, Texas, Virginia, Mississippi, California, Idaho, Maine, and the District of Columbia have enacted legislative reforms to limit or eliminate the suspension of driver's licenses due to unpaid fines and fees.

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."

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.

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.



LATE

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, March 10, 2020, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in support of H.B. 2679, H.D. 2, Relating to Penalties

Dear Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

The American Civil Liberties of Hawai'i (ACLU of Hawai'i) writes **in support of** H.B. 2679, H.D. 2, which would require the judiciary to study the implementation of an income-based fine adjustment pilot project. Income-based fine adjustment programs have been shown to reduce harm on vulnerable communities and increase rates of payment. While the ACLU of Hawai'i prefers the pilot project created by H.B. 2679, H.D. 1, we appreciate that a study is a measured approach that will allow the judiciary to craft solutions based on existing need while balancing feasibility of implementation.

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.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 losing their job, or not getting their children to the doctor. Because the vast majority of Hawai'i'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 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. Conversely, a wealthy person may view a \$200 ticket as a drop in the bucket. When fines are

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, your case is sent to collections. HCTR Rule 20(C). The collections agency charges an additional **twenty-one percent** as a fee. *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>.

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 flat fines system. A 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. If the judiciary is not presently able to administer a pilot project like the one created by H.B. 2679, H.D. 1, then a study to examine the parameters and feasibility of a pilot is a good start. For the above reasons, the ACLU of Hawai'i respectfully requests that your Committee support H.B. 2679, H.D. 2.

Thank you for the opportunity to testify.

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-2

Submitted on: 3/6/2020 3:34:51 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments: