

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
Transportation and Culture and the Arts

February 9, 2023

LATE

S.B. No. 1092: RELATING TO PENALTIES

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

The Office of the Public Defender strongly supports S.B. No 1092.

This measure proposes to make the offense of driving without a license (“DWOL”) a civil violation, punishable by fines of not less than \$50 and not more than \$300.

Currently, the offense of DWOL is a petty misdemeanor and is punishable by a fine of no more than \$1,000, or jail no more than thirty days, or both. DWOL is charged as a misdemeanor if the person who has two prior DWOL convictions in the preceding five-year period; a third conviction is punishable by a minimum fine of \$500 and maximum fine of \$1000, or by jail, or jail no more than one year, or both.

Because the possibility of jail may be imposed on a conviction for DWOL, the alleged offender is entitled to court-appointed counsel. *See* article I, section 14 of the Hawai‘i Constitution. Therefore, judges are hesitant to accept guilty or no contest pleas at arraignment (i.e., the initial court appearance) from defendants who are not represented by counsel. Therefore, DWOL cases are routinely scheduled for a second court date, which requires the defendants to appear in court (or by Zoom). (On Oahu, the second court date is a pre-trial conference hearing). Those who cannot afford counsel are referred to the Office of the Public Defender. Those who can afford counsel often must seek to hire attorneys.

The vast majority of DWOL cases are settled via plea bargain. On Oahu, defendants enter guilty or no contest pleas in exchange for a sentence that is usually a monetary fine ranging from \$50 to \$300. Those who cannot afford the fine will opt to perform community service in lieu of paying a fine. Hardly anyone is sentenced to a jail term. Furthermore, many of those who are charged with a DWOL misdemeanor are able to plea bargain their cases to a DWOL petty misdemeanor to avoid the minimum \$500 fine. Essentially, *DWOL crimes are already treated as civil infractions.*

The impact of criminal prosecution, rather than civil litigation, for DWOL offenses has severely strained the criminal justice system. The resources expended by the county prosecutor offices, our office, and the judiciary to charge, prosecute, defend, and try defendants on DWOL offenses are substantial. The criminal traffic calendar is filled with DWOL cases, each case involving a prosecutor and a defense attorney. It is estimated that DWOL cases make up one-third to one-half of the criminal traffic calendar on all islands. And the end result of the majority of cases would be the same as if these cases were treated as civil infractions – a monetary fine is imposed.

Judicial efficiency would be better served by creating a civil infraction, similar to minor traffic offenses, emergency period infractions, jaywalking or seat belt violation. Rather than setting mandatory court hearings for these citations, the onus would be on the individual to request a hearing if they wanted to challenge a citation. The majority of the civil infraction citations will be unchallenged; the cited individuals will simply pay the amount of the fine written on the citation either by mail, in person, by phone, or online. And for those who disregard the citations, their unpaid citations will be turned into default judgments rather than bench warrants. This would also reduce law enforcement resources spent on tracking down individuals with a bench warrant for the crime of DWOL.

Thank you for the opportunity to comment on S.B. No. 1092.

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 9, 2023
3:00 P.M.

State Capitol, Conference Room 224 and Teleconference

S.B. 1092
Driver's License Penalties

Senate Committee on Transportation and Culture and the Arts

The Department of Transportation (DOT) **opposes** S.B. 1092, which reduces the penalty for driving without a license to a civil violation.

If passed, this measure would invalidate the importance of properly obtaining, maintaining, and possessing a driver's license, which is an essential component to the privilege of operating a vehicle.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE CHRIS LEE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION
AND CULTURE AND THE ARTS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai'i

February 9, 2023

LATE

RE: S.B. 1092; RELATING TO PENALTIES.

Chair Lee, Vice-Chair Inouye and members of the Senate Committee on Transportation and Culture and the Arts, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in **opposition** to S.B. 1092.

While the Department certainly appreciates any effort to decrease the number of traffic crimes cases in our court system, we cannot support such efforts at the cost of increasing the number of hazardous drivers on our roadways. Lowering the offense of Driving without a License (DWOL) to a traffic infraction—as proposed in S.B. 1092—may seem like a simple cost-savings measure in the short-run, but the Department is concerned that this would significantly decrease any incentive for potential drivers to obtain a valid license before driving. That said, if the Committee would like to eliminate the “step-up” penalties that currently make a third conviction for DWOL a misdemeanor offense—thereby eliminating any need or option for jury trial, and also decreasing the number of hearings necessary to process those cases—the Department would not object to that type of amendment.

The Department readily acknowledges that it can be extremely inconvenient for would-be drivers to have to make two separate appointments and pass two separate tests with the Department of Motor Vehicles (“DMV”) (i.e. written test and road test), before they can obtain a drivers license. However, these tests—and the general requirement that all drivers on our roads possess a valid driver’s license—were put in place to ensure that drivers who enter our roadways actually know how to drive safely. Over the past 4 years, over 19% of all traffic fatalities in Hawaii involved unlicensed drivers (i.e. license was expired, suspended, revoked, or never obtained).¹ While having

¹ Based on data from the Hawaii State Department of Transportation’s FARS system, for 2019-2022.

a driver's license certainly does not preclude anyone from being involved in a traffic collision, it is a vital step to ensuring that everyone driving on our roads does so in accordance with our laws.

Decreasing the offense of DWOL to an infraction would inherently decrease the significance of obtaining a driver's license, not only for purposes of enforcement by police and prosecutors, but also for the general public. Indeed, the very purpose of having a range of traffic offenses, starting from infractions and going all the way up to felonies, is for the Legislature to inform us of the relative significance and/or dangerousness of each offense. And the Department would maintain that a motor vehicle is extremely dangerous in the hands of someone who does not know how to drive one properly.

As previously stated, the Department would have no objections to eliminating any step-up penalties, as we note a first or second conviction for DWOL is currently a petty misdemeanor, and the third (or more) conviction is a full misdemeanor that carries a right to jury trial (which is a much more time- and resource-consuming process). We are also open to suggestions for setting minimum and maximum fines.

To the extent this Committee is concerned about "license stoppers" prohibiting some individuals from obtaining or renewing their license, the Department notes that multiple programs have been implemented by the Judiciary in recent years – Restricted Driver's License Program, waiver of fines and fees by the Lead District Court Judge, Volunteer Legal Services Hawaii assisting with fine conversion – to remove license stoppers. Similarly, the Department would support other programs that are designed to incentivize and assist individuals who actively strive to get a valid license.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **opposes** the passage of S.B. 1092. Thank you for the opportunity to testify on this matter.



Committees: Senate Committee on Transportation and Culture
and the Arts

Hearing Date/Time: Thursday, February 9, 2023, 3:00 P.M.

Place: Via videoconference
Conference Room 224
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Testimony of the ACLU of Hawai'i in Support of S.B. 1092 relating to penalties

Dear Chair Lee, Vice Chair Inouye and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **support of S.B. 1092** which makes driving without a license a civil violation, punishable by fines between \$50-\$300. Debt-based driver's license suspension laws do not ensure driver compliance with the law. They instead harm vulnerable residents and waste valuable resources that should be invested elsewhere. They increase unnecessary law-enforcement interactions, trap drivers in a cycle of poverty, and fail to improve debt repayment rates. S.B. 1092 will save the state money and stop a harmful practice that pushes vulnerable communities into a never-ending cycle of poverty and involvement with the criminal legal system.

Fines and fees imposed for driving without a license often result in driver's license stoppers or suspensions which are extremely destructive. Roughly half of Hawaii's families struggle to afford basic needs and stoppers exacerbate this problem.¹ Since the vast majority of Hawaii's workforce drives to work,² that puts many of our residents at serious risk of losing their jobs if they lose their ability to legally drive. And if they have children, their ability to transport their children to school or to medical appointments is also threatened. Many states, in response to these negative impacts to residents' livelihood and family health and well-being, have already enacted reforms similar to S.B.1092.³ The American Bar Association recently denounced the use

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

² U.S. Census Bureau, 2018. American Community Survey, *Hawaii 5-Year Estimates Data Profiles*.

³ Illinois ended license suspensions for unpaid parking tickets. In 2019, Montana ended license suspensions for unpaid court debt. In 2018, Idaho ended license suspensions for unpaid court fines and fees, and decriminalized driving on a suspended license. In 2017, California ended license suspensions for unpaid traffic fines. New York and Colorado are both considering similar legislation this year.

Chair Lee and Members of the Committee on Transportation and Culture and the Arts

February 9, 2023, 3:00 P.M.

Page 2 of 2

of license revocations for nonpayment and instead recommends proportionate income-based fines.⁴

S.B. 1092 prevents exorbitant traffic debt from funneling vulnerable residents into the criminal legal system. The ACLU of Hawai‘i has heard from public defenders across the state that much of their workload involves removing stoppers placed on the defendant’s record as a result of unpaid tickets for driving without a license. This trend generates a significant waste of taxpayer money in prosecuting and defending criminal cases that stem from these unreasonable fines. Other jurisdictions have found that the money spent enforcing unpaid tickets exceeded the value of the debt itself. S.B. 1092 will save money that would otherwise be spent on prosecuting and defending these cases, and would allow the judiciary more discretion in ways to address motorists’ inability to pay a ticket.

For the above reasons, the ACLU of Hawai‘i requests that the Committee support this measure. Thank you for the opportunity to testify.

Sincerely,

George Cordero

George Cordero
Legal and Legislative Assistant
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 over 50 years.

⁴ *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>.

American Civil Liberties Union of Hawai‘i
P.O. Box 3410
Honolulu, Hawai‘i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org