

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State of
Hawaii to the Senate Committee on Judiciary**

April 20, 2023

S.R. No. 202: REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS OF THE HAWAII STATE JUDICIARY TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS

Chair Rhoads, Vice-Chair Gabbard and Members of the Committee:

The Office of the Public Defender supports S.R. No. 202.

The Office of the Public Defender represents indigent juveniles in the criminal justice system. Most of our juvenile clients come from families with limited incomes and live in poverty. Many of our clients are not only entangled in the criminal justice system but may also be in foster care and have limited access to resources that many in our community take for granted.

We strongly support the purpose of S.R. No. 202, which is to gather information and collect data on when and how fines, fees, court costs, and restitution are ordered, collected, and monitored in the juvenile justice system Statewide. This data collection will help us better understand how to improve the process and improve fairness Statewide.

We have joined in the call for the prohibition of fines, fees, and court costs against any person adjudicated for an offense committed during the person's minority, or against the person's parent or guardian. We also join in the call for restitution collection reform for juvenile adjudications to allow for the option of free-standing orders enforceable as civil judgments, in lieu of the possibility of a lifetime of hearings in the juvenile courts for the payment of restitution in small increments. We strongly agree that, when it comes to restitution, our juvenile courts may be "spend[ing] more money trying to collect those outstanding debts than they receive in revenue." (See S.R. No. 202, lines 23-25). We suggest that the resolution also include data collection on annual staffing positions dedicated to restitution collection to determine the complete financial landscape for these issues.

The core principles and goals espoused in HRS § 571-1, which established the Family Courts, read in part as follows:

This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be assisted and protected, and secured in those rights through action by the court; that the court may formulate a plan adapted to the requirements of the child and the child's family and the necessary protection of the community, and may utilize all state and community resources to the extent possible in its implementation.

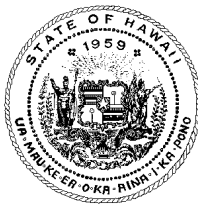
This chapter created within the State a system of family courts and *it shall be a policy and purpose of said courts to promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency.*

Many of our juveniles involved in the court system are struggling with everything – from access to food and basic amenities, access to a safe place to live, access to transportation, and access to a computer and internet access, and access to a working phone. Juveniles in distress include children who are victims of physical and sexual abuse, children who have experienced traumas and face mental health challenges resulting from those traumas. They include children in our foster care system who do not have a loving responsible parent to care and provide for them.

S.R. No. 202 will help juveniles and their families concentrate their financial resources on accessing other services more in line with rehabilitation: providing basic needs, maintaining housing, accessing counseling services, educational services, mental health services, and reducing some of the daily pressures on families living in poverty by eliminating court-imposed debt that does nothing to promote rehabilitation, education, or the personal growth of youth in the criminal justice system.

Thank you for the opportunity to comment on this resolution.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

Ke Komikina Uku Luaahi Kalaima

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Executive Director

TESTIMONY ON SR 202

REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE
COURTS OF THE HAWAII STATE JUDICIARY TO COLLECT, COMPILE, AND
SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND
RESTITUTION IN CASES AGAINST MINORS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, April 20, 2023; 10:00 AM
State Capitol Conference Room 225 & Videoconference

Good morning Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (Commission) with the opportunity to testify before you today regarding Senate Resolution 202. The Commission supports SR 202, with amendments to ensure that the victims' right to restitution is an integral part of any recommendation, and that an independent agency or committee develop the recommendations to the Legislature based on the data collected by the Judiciary.

The Commission provides compensation for violent crime victims to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims.

The Commission's testimony relates only to the Resolution's reference to restitution. SR 202 proposes to make recommendations regarding the appropriateness of ordering restitution from juvenile offenders without considering the impact on victims, survivors, and their families.

In Hawai‘i, victims have a statutory right to restitution (HRS § 706-646). Why is the question “how can juvenile offenders afford to pay for the crime-related expenses that they caused?” and not “how can the victims, survivors, or their families afford to pay for the crime-related expenses caused by the juvenile offender?” Why is it fair to shift the burden of crime-related losses caused by the juvenile offender to the victims, survivors, or their families who are now burdened with the financial impact of the loss?

In addition to the trauma of being victimized, forty percent (40%) of the general population cannot afford an emergency expense of a few hundred dollars. Studies have found that the victims of juvenile offenders are disproportionately the impoverished, young people, and people of color, and that the unexpected financial burden resulting from the crime falls on them.

Additionally, the Resolution calls upon the Judiciary to not only collect and report the data but also to provide recommendations regarding the imposition of restitution. The Commission recommends that an independent organization that does not have the administrative burden of collecting restitution provide independent recommendations on this matter. The recommendations should ensure that the interests of juvenile offenders and the victims’ right to restitution are both considered.

Thank you for providing the Commission with the opportunity to testify in support of SR 202, with amendments to ensure that the victims’ right to restitution is an integral part of any recommendation, and that an independent agency or committee develop the recommendations to the Legislature based on the data collected by the Judiciary.

SR-202

Submitted on: 4/18/2023 2:01:05 PM

Testimony for JDC on 4/20/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Loren Walker	Testifying for Hawai'i Friends of Restorative Justice	Support	Written Testimony Only

Comments:



SR-202

Submitted on: 4/18/2023 6:51:40 PM

Testimony for JDC on 4/20/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Testifying for Hawaii Health & Harm Reduction Center	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Gabbard, & Committee Members:

Hawai'i Health & Harm Reduction Center strongly supports SR 202.

No Hawai'i courts actively track information on youth monetary sanctions to help inform policymaking and executive practices.

The First Circuit, which operates an Accountability Program offers youth the opportunity to engage in community service to pay off their debt, only tracks data regarding restitution amounts. Data **does not** include demographic markers or charged offenses.

This lack of data is especially troubling given the hard reality that [Hawai'i leads the nation in the criminalization of schoolchildren](#).

Mahalo for the opportunity to provide testimony.



Hawai'i

Committee: Judiciary
Hearing Date/Time: Thursday, April 20, 2023 at 10:00 a.m.
Place: Conference Room 225 & Videoconference
Re: Testimony of the ACLU of Hawai'i in Support of S.R. 202

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **support of S.R. 202, Requesting the Office of the Administrative Director of the Courts of the Hawai'i Judiciary to Collect, Compile and Share Data on the Assessment of Fees, Court Costs, Fines and Restitution in Cases Against Minors.** .

The ACLU of Hawai'i is committed to advancing Smart Justice policies in Hawai'i. First and foremost, we advocate for strategies to reduce the number of youth in our carceral system and shift spending priorities away from criminalization and incarceration that disparately impacts Native Hawaiian, Pacific Islander and Black youth towards housing, health care, education and human services within under resourced communities.

S.R. 202 aligns with principle of using data and evidence-based practices to foster the rehabilitation of youth involved in the juvenile system. The collection of data relating to the assessment of fees, court costs, fines and restitution would provide critical information to build upon intentional strategies that have significantly reduced youth incarceration and reforming the juvenile system in Hawai'i.

Despite reductions in youth incarceration in Hawai'i, racial disparities in our juvenile system persist. **Native Hawaiian and indigenous youth from the Micronesian Islands are 4.1. times more likely to be arrested, 5.6 times more likely to be referred to court, 10 times more likely to be detained and 7.5 times more likely to be found delinquent compared to White youth.**¹

Gathering data relating to monetary sanction within our juvenile system will allow governmental and community based stakeholders to assess the efficacy of monetary sanctions. In short, **are youth monetary sanctions effective? Or does the assessment of youth monetary sanctions create a Debtor's Prison** for children and their 'ohana, that disproportionately burdens families of color, particularly Native Hawaiians and Pacific Islanders?

¹ *United States of Disparities: National Map: Hawaii*, Burns Institute (2014).

Thank you for the opportunity to submit testimony in support of **S.R. 202** that will gather critically important data to assess the efficacy of youth monetary sanctions within our juvenile system.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
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 over 50 years.

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THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE MIKE GABBARD, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai‘i

April 20, 2023

RE: S.R. No. 202: REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS OF THE HAWAII STATE JUDICIARY TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS.

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

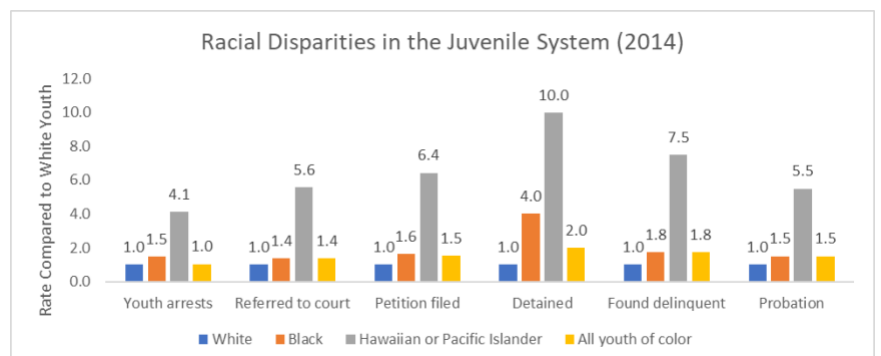
The Policy Advocacy Clinic at Berkeley Law, as a member of the national Debt Free Justice campaign,¹ submits the following testimony to express our support for S.R. No. 202.

Fees, court costs, fines, and restitution (hereafter, “monetary sanctions”) assessed against youth in the juvenile system are punitive and impose long-lasting financial and emotional harm on youth and their families. These monetary sanctions exacerbate existing economic inequality and disproportionately harm low-income, and Native Hawaiian and Pacific Islander families. Requiring the collection of data would provide insight into how many youth in the state are harmed by monetary sanctions and help inform policymakers about areas of the law that may warrant future legislation.

Evidence from other jurisdictions suggest that monetary sanctions are ineffective, criminogenic, and unaffordable for the youth and families who make up Hawai‘i’s juvenile legal system.

Research shows that monetary sanctions are ineffective at supporting youth rehabilitation and may instead increase the likelihood that youth reoffend in the future. In 2017, researchers examining over 1,000 juvenile court cases in Pennsylvania found that monetary sanctions “significantly increased the odds of a youth recidivating . . . even after controlling for relevant youth demographics and case characteristics variables.”² Earlier this year, a study of over 12,000 juvenile court cases in Florida revealed that youth who are assessed monetary sanctions are more likely to recidivate than youth who receive no monetary sanctions.³

Because Native Hawaiian and Pacific Islander youth are disproportionately represented in the juvenile legal system, this burden tends to fall more heavily on those families.⁴ According to data from the Office of Juvenile Justice and Delinquency



Prevention, Native Hawaiian and Pacific Islander youth are 4.1 times more likely to be arrested, 5.6 times more likely to be referred to court, 10 times more likely to be detained, and 7.5 times more likely to be found delinquent than White youth.⁵ With Native Hawaiian and Pacific Islander youth both more likely to be impacted by the juvenile system and poverty, youth monetary sanctions create a perfect storm of monetary extraction from families least likely to be able to afford it.

Data on youth monetary sanctions is not being comprehensively collected.

Over the last two years, we have conducted legal and legislative research, requested data from the family courts, and engaged with a variety of stakeholders including community leaders, advocacy groups, attorneys, judges, and court staff in Hawai‘i.

In our conversations with family courts across the state, we learned that no court is actively tracking information on fees and fines. Only the First Circuit, which also operates an Accountability Program that allows youth to do community service to pay off their debt,⁶ was able to provide data on restitution. From 2017 to 2022, the First Circuit ordered over \$152,000 in restitution against 230 youth and collected approximately \$53,000.⁷ Nearly 100 of those youth have paid less than 25% of the total amount ordered.⁸ Collecting data over time will not only allow family courts to identify juvenile case trends but also to understand the effectiveness of existing programs like the Accountability Program.

It is necessary to understand the current landscape of youth monetary sanctions as Hawai‘i begins to make substantive juvenile legal system reforms.

Local organizations dedicated to juvenile legal system change were recently awarded the Kellogg Grant for their trauma-informed and innovative reforms.⁹ As these organizations prepare for implementation, collecting data and documenting the status quo will be necessary to understand needs and ultimately evaluate progress.

Kaua‘i County has already taken bold action to end the imposition of monetary sanctions on youth.¹⁰ The Judiciary affirmed that “family courts across the state already rarely impose fines, fees, or costs on youth and their parents.”¹¹ Collecting further data on the assessment—or lack thereof—of monetary sanctions will help identify evidence-based alternatives that promote accountability and rehabilitation and inform future reforms to the juvenile system in Hawai‘i.

Collecting data on youth in the system and outcomes, including around the assessment and collection of monetary sanctions, will lead to more informed and comprehensive reform of Hawai‘i’s juvenile legal system.

Thank you for the opportunity to share our research and feedback on this measure.

¹ Debt Free Justice is a national campaign dedicated to ending the harmful and unjust fees and fines imposed on youth in the justice system and their families. See more at <https://debtfreejustice.org/>.

² Alex R. Piquero & Wesley G. Jennings, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUSTICE 325, 334 (2017).

³ Alex Piquero, Michael Baglivio & Kevin Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity* (2023), <https://jlc.org/resources/statewide-analysis-impact-restitution-and-fees-juvenile-recidivism-florida-across-race>.

⁴ Burns Institute, *United States of Disparities: National Map: Hawaii* (2014).

<https://usdata.burnsinstitute.org/decision-points/12/hawaii#comparison=2&placement=1&aces=2,3,4,5,6&offenses=5,2,8,1,9,11,10&odc=0&dmp=1&dmp-comparison=2&dmp-decisions=2,3,4,6,5,7,10,8,9&dmp-county=-1&dmp-races=1,2,3,4,7,5,6&dmp-year=2014>.

⁵ *Id.*

⁶ Hawai'i State Judiciary, "Papa Hoike Kuleana: Accountability Program of the First Circuit Family Court," https://www.courts.state.hi.us/news_and_reports/featured_news/2016/07/papa-hoike-kuleana-accountability-program-of-the-first-circuit-family-court.

⁷ Family Court of the First Circuit, Restitution Amounts 2017-2022 (on file with authors).

⁸ *Id.*

⁹ W.K. Kellogg Foundation, "Partners in Development Foundation," <https://www.wkkf.org/grants/grant/2022/11/kawailoa-a-transformative-indigenous-model-tim-to-end-youth-incarceration-6011193> (last accessed Mar. 21, 2023).

¹⁰ Office of the Prosecuting Attorney, County of Kaua'i, State of Hawai'i, Memorandum to All Deputy Prosecuting Attorneys Re: Juvenile Monetary Sanctions (June 29, 2021), <https://www.law.berkeley.edu/wp-content/uploads/2021/07/FINAL-Fines-Fees-Kauai-DA-Policy.pdf>.

¹¹ *Relating Youth Fines and Fees: Hearing on H.B. 317 Before the House Comm. on Hum. Servs.*, 32nd Leg., Reg. Sess. (Haw. 2023) (statement of Andrew T. Park, Judge, Fam. Ct. of the First Cir., Haw. State Judiciary).

Opportunity Youth Action Hawai'i

April 20, 2023

Senate Committee on Judiciary

Hearing Time: 10:00 a.m.

Location: State Capitol

Re: SR 202, Requesting the Office of the Administrative Director of the Courts of the Hawai'i State Judiciary to Collect, Compile, and Share Data On the Assessment of Fees, Court Costs, Fines, and Restitution in Cases Against Minors

Aloha e Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

We are writing in **strong support of** SR 202, requesting the Office of the Administrative Director of the Courts of the Hawai'i State Judiciary to collect, compile, and share data on the assessment of fees, court costs, fines, and restitution in cases against minors.

The lives of minors and opportunity youth are greatly affected by Court fees and fines – costs that can act as a barrier to continuing their journeys. For children, these fees can be burdens too heavy to bear. It is of utmost importance that we study and share data on these costs and how they impact minors. We have a responsibility of helping these children learn, grow, and succeed, regardless of circumstance or position/stage in life.

Our collective, Opportunity Youth Action Hawai'i (OYAH), works to support young people under the age of 25 who are disconnected from school and work, referred to as “opportunity youth.” This developmental time period is extremely consequential to the individual growth and overall life chances of our children. **We strongly support this resolution.**

Opportunity Youth Action Hawai'i is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs. We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth houselessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

Please support SR 202.

SR-202

Submitted on: 4/14/2023 11:10:40 PM

Testimony for JDC on 4/20/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Wast of Money . You need to Change the whole System.!!!!



INSTITUTE FOR JUSTICE

Testimony from Jaimie Cavanaugh in support of SR 202
Attorney, Institute for Justice
Senate Committee on Judiciary

April 18, 2023

Dear Chair Rhoads and Members of the Committee:

Thank you for the opportunity to submit testimony in support of SR 202, a resolution to study the effect of fines, fees, and restitution on juveniles and the judiciary. My name is Jaimie Cavanaugh and I am an attorney with the Institute for Justice (IJ). IJ is a non-profit law firm that works to protect civil liberties and individual rights. As part of our work, we fight against the use of unreasonable fines and fees and the perverse consequences that can follow. For example, in 2019, IJ won the landmark case, *Timbs v. State of Indiana*, 139 S. Ct. 682 (2019), in which the U.S. Supreme Court ruled that the Eighth Amendment's protection against excessive fines is incorporated against the states. IJ also works to ensure that government doesn't abuse the natural profit incentive associated with fines and fees. Fines and fees should not be used as a blank check to increase government budgets without raising taxes. We support this commonsense resolution.

Imposing legal financial obligations on youth is an outsized and regressive punishment. The purpose of the juvenile justice system is to rehabilitate youth and set them up for success as adults, but burdening youth with court debt can make reaching that goal difficult or impossible. Being poor isn't a crime and we should reject a justice system that treats some youth worse simply because they can't pay legal financial obligations.

I commend the drafters for recognizing that "research shows that fees and fines serve no public safety function and may instead undermine public safety by increasing the likelihood of youth recidivism." Indeed, imposing legal financial obligations does not deter crime. Just the opposite, it increases recidivism.¹ And youth who are unable to pay legal financial obligations are more likely to end up incarcerated as adults. By imposing legal financial obligations on juveniles, we are setting them up for failure and increasing risks in our communities.

Imposing legal financial obligations against juveniles can also destabilize family relationships. All parents naturally want to help their children, but for those who can't afford to, mounting court debt adds stress to the whole family. Arguably, the juvenile justice system should take actions that promote stable family relationships instead of fostering tension, guilt, or resentment at home. Alternatively, saddling young people with debt sends the message that they should drop out of school and start working instead of focusing on their education. The justice system shouldn't encourage this short-sighted goal either.

Legal financial obligations can also impact the broader community. Youth with outstanding debt remain involved in the system longer. Their cases are kept open solely for missed payments. This increases administrative costs for the courts. And failure to pay can lead to civil judgments that can ruin one's credit, making it difficult or impossible to get student loans, car loans, jobs, or housing. This prevents these youth from having stable jobs and participating in the economy when they reach adulthood. Instead of aiding in rehabilitation, legal financial obligations can trap youth in an endless debt cycle that follows them for years or decades.

Around the country, there is strong bipartisan support for eliminating youth legal financial obligations. Hawaii has the opportunity to take an important first step by gathering information from the courts and ultimately should move to eliminate youth fines and fees altogether. I encourage the committee to support this resolution. Thank you.

Sincerely,

Jaimie Cavanaugh
Attorney
Institute for Justice
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jcavanaugh@ij.org

¹ See Alex R. Piquero and Wesley G. Jennings, *Research Note: System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, Youth Violence and Juvenile Justice 1–16 (2016); Alabama Appleseed Center for Law and Justice, *Under Pressure How fines and fees hurt people, undermine public safety and drive Alabama's racial wealth divide* 31 (2018), available at <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>.