



The Judiciary, State of Hawai‘i

**Testimony to the
Senate Committee on Judiciary**
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

and

Senate Committee on Transportation and Energy
Senator Lorraine R. Inouye, Chair
Senator Will Espero, Vice Chair

Tuesday, February 13, 2018, 9:30 a.m.
State Capitol, Conference Room 016

by
Calvin C. Ching
Deputy Chief Court Administrator

Bill No. and Title: Senate Bill No. 3018, Relating to the Judiciary.

Purpose: Requires the Judiciary to implement a payment plan program that offers any person who is unable to pay any court-ordered fines, fees, surcharges, costs, or monetary assessments the option of entering into a payment plan. Prohibits the courts from taking certain actions against a person solely because of that person's inability to pay. Reinstates driver's licenses that were suspended for nonpayment under certain circumstances.

Judiciary's Position:

The Judiciary appreciates the intent of Senate Bill No. 3018, but respectfully opposes this bill.

Traffic payment plans in the past did not work and required a proof of compliance calendar where nonpayment of fines turned the Judiciary into a “debtor court.” Nonappearance on the payment calendar generated bench warrants for contempt of court and the issuance of



Senate Bill No. 3018, Relating to the Judiciary
Senate Committees on Judiciary and Transportation and Energy
Tuesday, February 13, 2018
Page 2

penal summons for failing to appear. This should not be function of the court which is why the collection of outstanding fees and fines were referred to a private collection agency.

Implementation of this bill will require reversal of all accounts already referred to collection agencies and reinstatement of those accounts into Judiciary accounting systems for monitoring of payment. This will create increased costs for additional personnel, courtrooms and judges to assess, monitor, collect and control payments. The Judiciary would need a new financial department to create payment plans based on a person's ability to pay.

Currently, when a penalty is assessed for a traffic violation, whether decriminalized or a criminal offense, there are two schedules for payment. If the penalty is up to \$500, a party has up to three months to pay and up to six months if the penalty is more than \$500; otherwise, the unpaid portion is referred to a private collection service. Any arrangement for payment can be made with the collection service. Additionally, the Judiciary also allows fines to be converted to community service at the rate of \$10 per hour of community service and the ability to waive all administrative fees for financial hardship.

Furthermore, license suspensions are not imposed for nonpayment. A license stopper is activated for nonpayment which needs to be addressed when renewing a driver's license. However, even in that circumstance, the court may permit the issuance of a restricted driver's license when necessary for a party to maintain employment. See HRS 286-109(c).

In sum, the Judiciary believes that the creation of a Judiciary managed payment plan would not further the intent of this bill, but would welcome the opportunity to work with the Legislature to discuss other alternatives.

Thank you for the opportunity to testify on this measure.



Hawai'i

Committee: Senate Committee on Transportation and Energy
Senate Committee on Judiciary
Hearing Date/Time: Tuesday, February 13, 2018, 9:30 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 3018
Relating to the Judiciary


Dear Chair Inouye, Chair Taniguchi, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes **in support** of S.B. 3018, which allows the payment of any court-ordered fines, fees, surcharges, costs, or monetary assessments through court-implemented payment plans and prohibits that a person's driver's license be suspended solely because of that person's inability to pay so long as the person has entered into a payment plan.

S.B. 3018 would help address the unequal treatment of individuals who cannot afford to pay court ordered fines and fees in Hawai'i and whose situation is made worse by the revocation of their driver's license. S.B. 3018 is a step in the right direction in that it attempts to break the vicious cycle in which a person, who cannot afford a fine, loses his or her license and as result, his or her job, and therefore, is less likely to be able to afford the initial fine. Additionally, S.B. 3018 should help with public safety as it may curb the sometimes-desperate practice of driving without a license, which is punishable by a fine of up to \$1,000 or up to 30 days in jail. H.R.S. §§ 286-136; 286-132.

We note that S.B. 3018 does not explicitly provide for missing payments under the payment plan. We suggest S.B. 3018 be amended to provide that if the person misses a number of payments under the plan (two or three, for example) that the person be summoned by the court to explain the missing payments and be allowed in the court's discretion to enter into a new payment plan.

Thank you for the opportunity to testify.

Sincerely,

Mateo Caballero
Legal 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.

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COMMITTEE ON JUDICIARY

Senator Brian Taniguchi, Chair

Senator Karl Rhoads, Vice Chair

COMMITTEE ON TRANSPORTATION AND ENERGY

Senator Lorraine Inouye, Chair

Senator Donovan DelaCruz, Vice Chair

Tuesday, February 13, 2018

9:30 am

Room 16

SUPPORT - SB 3018 - RELATING TO THE JUDICIARY

Aloha Chairs Taniguchi and Inouye, Vice Chairs Rhoads and DelaCruz and Members of the Committees!

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 Ashley Grey, Daisy Kasitati, Joey O'Malley, Jessica Fortson and all the people who have died under the "care and custody" of the state as well as the approximately 5,500 Hawai'i individuals living behind bars or under the supervision of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 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.

SB 3018 requires the Judiciary to implement a payment plan program that offers any person who is unable to pay any court-ordered fines, fees, surcharges, costs, or monetary assessments the option of entering into a payment plan. The bill also prohibits the courts from taking certain actions against a person solely because of that person's inability to pay and reinstates driver's licenses that were suspended for nonpayment under certain circumstances.

Community Alliance on Prisons supports this measure. As the cost of living increases and wages are not keeping up with inflation, more and more people find themselves living paycheck to paycheck. Fees and fines can add up quickly and place a person and family in the debt spiral, sending them into poverty as interest owed compounds and the weight of the debt becomes overwhelming. This bill requires the Judiciary to start a payment plan so people don't sink into debt.

Lucky we live Hawai'i; our Constitution, Article 1 Bill of Rights states: **1.19 Imprisonment for debt** "There shall be no imprisonment for debt." [Ren Const Con 1978 and election Nov 7, 1978]. Please pass this compassionate measure. Mahalo for the opportunity to testify.

"As long as poverty, injustice and gross inequality exist in our world, none of us can truly rest."

Nelson Mandela

SB-3018

Submitted on: 2/12/2018 3:17:39 AM

Testimony for JDC on 2/13/2018 9:30:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-------------------------|--------------|--------------------|--------------------|
| Raelyn Reyno Yeomans | | Support | No |

Comments:

I am submitting testimony in SUPPORT of SB3018 as well as suggested amendments or clarifications.

Suspending a drivers license solely because of a person's inability to pay fees and fines does not make sense!

There are many reports and studies that have been done that detail how Fees and Fines and the “punishments” applied to those who cannot afford these fees and fines has a disparate impact on the poor and on certain racial groups. Drivers license suspension keeps the poor in a cycle of debt while making it harder to stay employed, get to school, care for family, or pursue medical care.

<https://www.brennancenter.org/blog/drivers-license-suspensions-perpetuate-challenges-criminal-justice-debt>

In the above linked **Brennan Center For Justice At New York University School Of Law** article, the following is noted:

“Protests in Ferguson, Mo. led to investigations that uncovered a deeply problematic justice system that pulled thousands of people into a web of criminal justice debt and aggressive debt collection practices. Among those harsh enforcement practices: Driver’s license suspension for failure to pay court-imposed debts. Using driver’s license suspension to enforce debt payment is not unique to Ferguson. Today, driver’s license suspensions are a frequently used tool to enforce collection of criminal justice debt.”

“Suspensions are counterintuitive, as the enforcement mechanism actually inhibits future repayment of debt. Suspending a person’s license impedes one’s ability to maintain employment and earn money to satisfy the debt. It can also complicate attending court appearances.”

It is counter productive and unfair to subject those who cannot afford fees and fines to harsher penalties and punishments such as suspension of a drivers license. A significant report was produced in California which details how this practice negatively affects those who are unable to afford fees and fines. This report can be accessed here:

<http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>

In this link above, it is pointed out that:

“These suspensions make it harder for people to get and keep jobs, further impeding their ability to pay their debt. They harm credit ratings. They raise public safety concerns. Ultimately they keep people in long cycles of poverty that are difficult, if not impossible to overcome.”

In Hawaii, the practice of drivers license suspension due to one’s inability to pay fees and fines also leads to the “inequality” found in Ferguson and in California. It is time to stop giving unequal and harsher punishments to the poor and to certain racial groups in Hawaii.

For these reasons I SUPPORT this bill as well as the following amendment or clarification:

This bill should be amended or clarified so that an individual who has entered into a payment plan is not subjected to the actions prohibited by this bill in the event that the person can’t meet the terms of their payment plan. It must be accepted that a person’s circumstances can change due to loss of job, decreased income availability, or illness. There must be an option to alter the payment plan or an option for community service.

Thank you-

Raelyn Reyno Yeomans

SB-3018

Submitted on: 2/10/2018 9:56:24 PM

Testimony for JDC on 2/13/2018 9:30:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Cory Harden | | Support | No |

Comments:

Aloha legislators,

Please support this bill. It bars courts from taking some actions against people solely because they can't pay fines or fees. Justice should not be for sale!

mahalo,

Cory Harden, Hilo

SB-3018

Submitted on: 2/12/2018 3:01:00 AM

Testimony for JDC on 2/13/2018 9:30:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Shannon Rudolph | | Support | No |

Comments:

Support