



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Friday, February 1, 2019 2:00 PM
Conference Room 325

WRITTEN TESTIMONY ONLY

by
Calvin Ching
Deputy Chief Court Administrator

Bill No. and Title: House Bill No. 903, Relating to the Judiciary.

Purpose: Requires the Judiciary to implement a program that offers any qualifying person the option to fulfill any court-ordered financial obligation through: (1) installment payments in a payment plan; or (2) the performance of community service. Prohibits the courts from taking certain actions against a person solely because of that person's inability to pay if the person has entered into and is in compliance with the programs. Reinstates driver's licenses that were suspended for nonpayment under certain circumstances.

Judiciary's Position:

The Judiciary appreciates the intent of House Bill No. 903, but respectfully opposes this bill.

The Judiciary offered traffic payment plans in the past, and they did not work. Instead, the Judiciary-managed program 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 or the issuance of a 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 instead referred to a private collection agency.

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,



House Bill No. 903, Relating to the Judiciary
House Committee on Judiciary
Friday, February 1, 2019
Page 2

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 already 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.

Notably, the Judiciary recently updated its traffic citation booklets statewide to state that, if the court imposes a monetary assessment as a result of the citation and the defendant is unable to pay because of financial hardship, the defendant may request that the court consider his or her ability to pay. The citation also informs defendants that the court may permit community service instead of payment or may make other adjustments to the monetary assessment.

Furthermore, in Hawai'i, license suspensions are not imposed for nonpayment. Instead, when a defendant fails to comply with court-ordered fines or fees in the required time period, the court issues a license "stopper," which "stops" issuance of a new or renewal of a current Hawai'i license until the non-compliance is addressed. See HRS 291D-10a. 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).

Implementation of this bill would 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 tailored payment plans based on a person's ability to pay.

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

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 SanBuenaventura, Vice Chair

Friday, February 1, 2019

2:00 pm

Room 325

SUPPORT for HB 903 - HARDSHIP PROGRAM; FINES AND FEES

Aloha Chair Lee, Vice Chair SanBuenaventura 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 **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 5,400 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 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 903 requires the Judiciary to implement a program that offers any qualifying person the option to fulfill any court-ordered financial obligation through: (1) installment payments in a payment plan; or (2) the performance of community service. Prohibits the courts from taking certain actions against a person solely because of that person's inability to pay if the person has entered into and is in compliance with the programs. Reinstates driver's licenses that were suspended for nonpayment under certain circumstances. Mahalo for hearing this important bill that Community Alliance on Prisons strongly supports.

In the United States, debtors' prisons were banned under federal law in 1833. A century and a half later, in 1983, the Supreme Court affirmed that incarcerating indigent debtors was unconstitutional under the Fourteenth Amendment's Equal Protection clause.

During the 20th century, on 3 separate occasions, the Supreme Court affirmed the unconstitutionality of incarcerating those too poor to repay debt. In 1970, in *Williams v. Illinois*, the high court decided that a maximum prison term could not be extended because the defendant failed to pay court costs or fines. A year later, in *Tate v. Short*, the justices ruled that a defendant may not be jailed solely because he or she is too indigent to pay a fine.

The 1983 decision in *Bearden v. Georgia* compelled local judges to distinguish between debtors who are too poor to pay and those who have the financial ability but “willfully” refuse to do so.

All 50 states impose court fees on defendants. Some states jail people for being unable – that’s “unable,” not “unwilling” – to pay fines. That used to be the case in Georgia, Missouri, and Alabama – until courts set them straight. Now a federal district court in another conservative state, Louisiana, has also eliminated that barbaric practice.

Judge Sarah Vance found “undisputed evidence” of “a policy or practice of not inquiring into criminal defendants’ ability to pay before those individuals are imprisoned for nonpayment of court debts.”

Judge Vance also found that the judges’ refusal to “provide a neutral forum for determination of such persons’ ability to pay is unconstitutional.” From now on, judges must provide a neutral forum in which defendants can “plead poverty,” or show they can’t pay. That’s a big deal.

If a defendant can prove they’ve tried to pay and/or can’t pay, they’ve got the protection of the Supreme Court, which described imprisoning people for their inability to pay without more – that is, without a valid reason that the person should be imprisoned “would be little more than punishing a person for his poverty.”

This is a case where the holding’s worth reading:

If the [defendant] could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment. Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.

What’s sad about this victory – and it is a victory – is that rather than advancing the law, it’s reminding courts to follow the law.

The Hawaii Supreme Court has yet to pass on the question of what constitutes “excessiveness”. But it has relied on the Equal Protection Clauses of the United States and Hawaii Constitutions to declare unconstitutional a statute providing for imprisonment where the person could not afford to pay the fine. The Hawaii Penal Code is in keeping with this decision, and does not permit imprisonment where there is an inability to pay.

Community Alliance on Prisons urges the committee to pass this important bill.

Mahalo for this opportunity to testify.

HB-903

Submitted on: 1/31/2019 1:32:39 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

HB-903

Submitted on: 1/30/2019 9:54:24 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Brown III	Individual	Support	No

Comments:

HB-903

Submitted on: 1/30/2019 11:11:55 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tadia Rice	Individual	Support	No

Comments:

HB-903

Submitted on: 1/31/2019 11:24:49 AM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Aria Juliet Castillo	Individual	Support	No

Comments:

HB-903

Submitted on: 1/31/2019 11:36:59 AM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Emerald Gates	Individual	Support	No

Comments:

Aloha! I am writing this testimony in support of this bill. As a single mother living in Hawaii it is already hard to get by comfortably. With rent, and bills we the people need a break from the state. I have had a stopper on my license for many years now, and as much as I would love to pay everything off, I just can't. Which forces me to do what I have to do, weather it's driving without a license at times just to provide for my family so that we don't become homeless, food less, etc. It is such a sad case to see that the state has not given the people such an opportunity like this bill is requesting a long time ago, knowing the hardship we already face trying to survive in this colonized island. Please please please have mercy on us! We are trying our best to do the best with what we have. I believe if this bill is passed, more people would start paying off their so called debts with the state. If not many are going to brush it off and die with a bill to their name. If you all really care for the people, please pass this bill.

Mahalo!

Emerald Gates

HB-903

Submitted on: 1/31/2019 11:49:52 AM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez	Individual	Support	No

Comments:

I strongly support HB903!!

A hardship is a hardship!

Sincerely,

D. Ramirez

HB 903 Late

LATE

HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON JUDICIARY

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TESTIMONY HB903

POSITION: SUPPORT

The concept of fines is in practice to usually to deter a person from a certain behavior that the state finds to be unsafe and or prohibited by in society. This is true with persons that are caught up in traffic violations which incur a traffic citation. Again, the penalty is to deter persons from that unwanted behavior. Yet, for some the penalty has wide ranging affects especially those with limited means. The situation is no longer about disposable income but a choice between paying the fine in full or not having enough for the means of support (housing) or sustenance (food).

It is when persons may have to choose between those things that the penalty no longer severs the purpose of being a deterrent but becomes a deterrent. In turn this puts persons with little means to pay in a cycle where because of the inability to pay they fall into debt whereas the original amount is increased due to late fees and other forms of punitive actions which exacerbates the situation. As the bill states:

“[Persons with] limited or no income, individuals are even less likely to pay fines or fees, which may lead to greater penalties simply because those individuals are unable to pay initial fines or fees in one lump sum. individuals with suspended driver's licenses who are unable to find alternative means of transportation may lose their employment.”

This bill allows and understand that not everyone can pay these fines in one lump sum and calls for the prudent measure that a person with a traffic citation be allowed to pay in installments. This bill should be passed without reservation and be seen as part of the polices which try see the justice system as a means of correction rather than that to destroy lives. Thank you for giving this hearing and the opportunity to voice my support for this bill.

I speak in support of this bill not for my board but as an individual and Board Member.

Mahalo,

Ken Farm

Board Member, Member, CAC OMPO
Neighborhood Board No. 15
Kalihi-Palama

LATE

HB-903

Submitted on: 1/31/2019 6:16:43 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tyrell K Silva	Individual	Support	No

Comments:

I agree and support this bill so much , there are a large percentage of civilians who can not afford to pay fines/fees upfront and in full. But they are willing and able to comply , but without the full amount of funds they are not able to pay. I think this will make a positive impact for us local people. Considering so much rates/taxes are going up and nothing is affordable anymore. I think this is a great , smart and positive thing.

LATE

HB-903

Submitted on: 1/31/2019 6:19:45 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments:

Innovative bill that creates win-win situation. I like it. Urge legislators to pass out of committee.

HB-903

Submitted on: 2/1/2019 10:12:16 AM

Testimony for JUD on 2/1/2019 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Julia Fernandez	Individual	Support	No

Comments:

I couldn't get a duplicate license after I lost mine due to a hold for a minor traffic infraction that I had forgotten. It was for a burnt headlight. \$47 which has been sent to a collection agency. I don't think holding my license "hostage" for a \$47 infraction is fair.