



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Labor and Public Employment

Representative Aaron Ling Johanson , Chair
Representative Stacelynn K.M. Eli, Vice Chair

Tuesday, February 4, 2020, 9:30 a.m.
State Capitol, Conference Room 309

WRITTEN TESTIMONY ONLY

by
Calvin C. Ching
Deputy Chief Court Administrator
First Circuit

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

Purpose: Establishes on January 1, 2021, a three-year pilot project within the traffic violations bureau of the district court of the first circuit that requires the court to adjust court-imposed monetary assessments resulting from motor vehicle moving violations. Establishes income-based adjustments for traffic fines. Appropriates funds. Repeals the pilot project on December 31, 2023.

Judiciary's Position:

The Judiciary supports the intent of this bill to the extent that they are consistent with the recommendations of the Act 112 Financial Hardship Task Force, but notes that from an operational standpoint and given the specific mandates in the bill, significant funding, resources, and time will be needed to pilot development, implementation, and reporting for this project.

The Judiciary notes that the issue at the heart of this bill -- creating alternatives for resolution of traffic infractions and lifting license and registration stoppers so that persons of limited financial means are not precluded from driving -- was explored and discussed in depth by the Final Report of the Financial Hardship Task Force to the Thirtieth Legislature of the State of Hawai‘i. Many of the task force recommendations appear to be covered by other proposed bills,



such as HB2751 (relating to financial hardship). The Judiciary suggests that before significant and substantial funds are appropriated to create a pilot program for the First Circuit, perhaps the alternatives proposed by those bills could be examined to determine whether they might achieve the same goal at a lower cost through mechanisms that could be utilized by drivers residing on all islands, not just those on O‘ahu.

Citations for traffic infractions account for a large portion of cases processed and adjudicated by the District Courts. During the 2018-2019 fiscal year, more than 238,000 traffic infraction citations were issued in the First Circuit alone. The proposed pilot program would require an overhaul of the Traffic Violations Bureau, and its effects would reverberate throughout the district court.

First, the proposed bill would require the creation and production of new notices of the right to an income-based adjustment. The design and production these notices would require a financial appropriation that would be at least four times the amount currently spent each year on producing traffic citation forms, as the bill contemplates that the notices would be disseminated at least four times in a single case. Postage costs would likewise increase four-fold.

Second, the proposed bill would require the court to conduct in-person hearings to determine an individual’s income, expenses, and ability to pay. While individuals have the option of providing documentation of their income and expenses prior to any ability to pay determination, they are not required to do so. If documentation is not provided, ability to pay hearings will likely require each individual to answer questions in court under oath about their employment, wages, retirement benefits, annuities, public assistance benefits, child or spousal support, assets, savings and checking account balances, mortgage payments, rent, utilities, car payments, transportation expenses, medical expenses, educational expenses, childcare expenses, and the like.

Ability to pay hearings would also require the appropriation of funds to create new positions for a three year period for additional personnel to process the documents; for additional court clerks, bailiffs, and judges to staff the courtrooms in which the ability to pay hearings would be held; for additional fiscal staff to process, post, and monitor payments for cases in which ability to pay hearings are conducted; and for additional technical staff to integrate ability to pay hearings with JIMS (the Judiciary Management Information System).

Third, the proposed bill would require the court to conduct online hearings to determine an individual’s income, expenses, and ability to pay. Currently, the Judiciary does not conduct any hearings online. Extensive research and development would be needed to design and implement such a system. The cost of the design, implementation, and maintenance of such a



House Bill No. 2679, Relating to Penalties
House Committee on Labor and Public Employment
Tuesday, February 4, 2020
Page 3

system is unknown. In addition, existing statutes and rules might need to be revised to allow for online ability to pay hearings.

Finally, the proposed bill would require the court to accept requests for ability to pay hearings by fax and e-mail. Currently, all requests for hearings -- including, but not limited to, hearings on motions to set aside default judgments, motions to convert fines to community service, motions to amend judgments, and motions to recall cases from collection -- must be made in person or by mail. Existing statutes and rules would need to be revised to allow individuals to request ability to pay hearings by fax or e-mail.

If the pilot program contemplated by this bill proceeds, the Judiciary would request that the effective date for this pilot program be extended to give the Judiciary ample time to develop and implement the program on the front end, as well as analyze the data and prepare the written report on the back end. Given that the pilot program would require an overhaul of the entire Traffic Violation Bureau and could potentially involve hundreds of thousands of ability to pay determinations, a commencement date of January 1, 2021 is not feasible.

Thank you for the opportunity to testify on this measure.



Committee: Committee on Labor & Public Employment
Hearing Date/Time: Tuesday, February 4, 2020, 9:30 a.m.
Place: Conference Room 309
Re: *Testimony of the ACLU of Hawai'i in support of H.B. 2679 Relating to Penalties*

Dear Chair Johanson, Vice Chair Eli, and Committee Members:

The American Civil Liberties of Hawai'i (ACLU of Hawai'i) writes **in support of** H.B. 2679, which would establish a three-year pilot project to require courts in the First Circuit to adjust traffic fines based on a motorist's income when requested to do so. The bill would also require the Traffic Violations Bureau of the First Circuit to develop additional procedures to increase awareness of motorists' right to have their fines adjusted if they cannot afford to pay. Income-based fine adjustment programs have been shown to reduce harm on vulnerable communities and increase rates of payment.

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 like that which is proposed by H.B. 2679.³

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 risk losing their job, or not getting their children to the doctor. Because the vast majority of Hawaii'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 than their white counterparts 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

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, you can no longer make payments to courts and your case is sent to collections. HCTR Rule 20(C). Once the case goes to collections, you no longer have the option of making a payment to the court, and *must* pay the total amount owed, plus an additional **twenty-one percent** as a fee to the agency. *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>.

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 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 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 traffic fines system. A three-year 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. For the above reasons, the ACLU of Hawai'i respectfully requests that your Committee support H.B. 2679. Thank you for the opportunity to testify on this bill.

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/>.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Johanson, Chair

Rep. Stacelynn Eli, Vice Chair

Tuesday, February 4, 2020

9:30 am – Room 309

SUPPORT FOR HB 2679 – PENALTIES

Aloha Chair Johanson, Vice Chair Eli 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 including the ten people who died in the last 5 months of 2019 and for **JAMES BORLING-SALAS** who was beaten and died on January 16th. We also remember 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 establishes on January 1, 2021, a three-year pilot project within the traffic violations bureau of the district court of the first circuit that requires the court to adjust court-imposed monetary assessments resulting from motor vehicle moving violations and establishes income-based adjustments for traffic fines. This bill appropriates funds, requires an interim report before the 2023 session sunsets on December 31, 2023, and a final report before the 2024.

Community Alliance on Prisons supports this bill. The inability to pay fees and fines for traffic violations is a huge barrier to successful reentry for people exiting incarceration. People generally are released with little to no money and, despite the law mandating that people are assisted with the proper identification documents before release with the appropriation, people are still leaving with no documents.

The Harvard Criminal Justice Public Policy Program released a report¹ on proportionate fines and made recommendations consistent with the proposed pilot program, 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."

Most of the people exiting incarceration don't have *any* income, so disposable income would be a goal, not a current reality.

Mahalo for this opportunity to support this bill.

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

HB-2679

Submitted on: 2/3/2020 3:36:43 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

HB-2679

Submitted on: 2/2/2020 11:23:30 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	No

Comments:

HB-2679

Submitted on: 2/3/2020 2:26:10 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I support this bill because income adjusted fines are consistent with best practices for the imposition of fair monetary sanctions. Income-adjusted fines still impose a punishment and ensure accountability plus increase compliance with payment obligations

The Following
Testimony is
Marked Late

TESTIMONY IN SUPPORT OF HB 2679

TO: Chair Johanson, Vice-Chair Holt, and Members of the
House Labor & Public Employment Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: January 31, 2020 (10:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) supports HB 2679, which would create a pilot project that requires judges to adjust traffic fines based on an individual's income when requested to do so.

HHRC 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.

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."

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 [Hawaii 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.