



The Judiciary, State of Hawai‘i

Testimony to the Thirtieth State Legislature, 2020 Session

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Tuesday, February 25, 2020, 11:00 a.m. (Agenda #1)
State Capitol, Conference Room 308

by
Michael K. Soong
Deputy Chief Judge
District Court of the Fifth Circuit

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Deputy Chief Court Administrator
District Court of the First Circuit

Bill No. and Title: House Bill No. 2751, H.D. 1, Relating to Financial Hardship.

Purpose: Expands the conditions for authorizing a restricted license. Provides judges with greater discretion to adjust the amount owed by a person who violates certain traffic offenses based on the person’s inability to pay. Increases the amount of credit given to a contumacious person committed for nonpayment. Provides Hawai‘i residents with the option of paying for the registration of their motor vehicles and associated taxes and fees on a biannual basis. Restricts the amount of delinquency tax due to the current tax due plus one year. Removes language allowing storage costs and costs incident to seizure of a vehicle from inclusion in the amount the owner of a vehicle must pay in order to redeem the vehicle after seizure. Effective 7/1/2050. (HD1)

Judiciary's Position:

The Judiciary strongly supports Part I (Sections 1-4) of this measure as it is consistent with the recommendations of the Act 112 Financial Hardship Task Force (Task Force), and takes no position on Part II (Sections 5-10).



Chief Justice Mark E. Recktenwald established the Task Force pursuant to Act 112 to examine the financial disparity imposed on low-income individuals in the court system and analyze other mechanisms regarding nonpayment of fines rather than suspending driver's licenses. The Task Force then engaged in a comprehensive review of the current civil traffic infraction and criminal traffic procedures, what options are available for a cited motorist who is experiencing financial hardship, and what changes can be made to improve the current traffic system.

Efforts to improve the current traffic system in Hawai'i began as early as 1978 with the decriminalization of certain traffic offenses deemed non-serious, and continued through 1993 when a streamlined process was established to resolve non-criminal traffic infractions without the need for cited motorists to come to court for in-person appearances. Today, Hawai'i's traffic offenses remain categorized into two basic categories: traffic infractions and traffic crimes.

Current Financial Hardship Options

The Task Force found that the courts currently have the authority to utilize several frequently used options that help a motorist satisfy their legal financial obligation if the motorist is experiencing financial hardship. Among these various options includes the ability to convert traffic fines to community service, adjust down monetary assessments when requested by a motorist facing financial hardship, enlarge the period of time that a motorist has to pay the monetary assessment, and enroll motorists in the HRS § 286-109(c) restricted license program, which allows a motorist to continue to drive while paying down outstanding traffic monetary assessments, much like a payment plan.

More information about these financial hardship options and others are summarized in greater detail in the Final Report of the Act 112 Financial Hardship Task Force.¹

Recommendations of the Act 112 Financial Hardship Task Force

While these are frequently used options available to help address the needs of those motorists who engage with the court, there are also limitations and areas the Task Force identified as ripe for improvement. The Task Force's final report included a comprehensive list of recommended ways to improve the current traffic system for those cited motorists experiencing financial hardship.

After meeting several times, reviewing the impact that the traffic process has on motorists, especially those motorists who are unable to pay monetary assessments due to financial hardship, analyzing barriers that may prevent motorists from benefitting from the current financial hardship

¹ The Final Report of the Act 112 Financial Hardship Task Force is available here:
https://www.courts.state.hi.us/wp-content/uploads/2019/12/Act-112_SLH2019_report-to-post_FINAL.pdf



options, and discussing programs that are available in other jurisdictions, the Act 112 Financial Hardship Task Force respectfully made the following recommendations:

- 1. Give the courts greater judicial discretion in setting traffic penalties, particularly for those traffic offenses that commonly lead to high monetary assessment amounts.** The Task Force respectfully recommended that the Legislature enact statutory amendments to give the court more discretion to impose alternative sentences rather than mandatory penalties. For example, the Task Force found that the design of penalties, such as HRS §§ 431:10C-117 (No Motor Insurance Policy) and HRS § 286-136 (penalties for Driving Without a License and Driving While License Suspended/Revoked), could be amended to give judges greater discretion to fine defendants who violate those traffic offenses at a reduced rate if the individual is unable to pay, or to impose other appropriate penalties based on the defendant's circumstances and ability to pay. These offenses were identified as carrying particularly significant penalty schemes, pursuant to statute, that the court has limited discretion to adjust down or provide for alternative penalties.
- 2. Expand the restricted license program under Hawai'i Revised Statutes (HRS) § 286-109(c)(1) to allow more motorists to qualify for the program.** The district court currently has a restricted license program pursuant to HRS 286-109(c) that permits a person to continue to drive while paying down the monetary assessment amount in installments, much like a payment plan, if (a) a motorist is gainfully employed in a position that requires driving and will be discharged if the motorist is unable to drive, or (b) the motorist has no access to alternative transportation and therefore must drive to work. At any time while enrolled in the program, a motorist may ask for an adjustment of remaining monetary assessment amounts. The Task Force recommended expanding the scope of the program by amending HRS § 286-109(c)(1) to apply to situations other than just employment so that more motorists qualify for the program.
- 3. Increase the community service conversion rates.** HRS § 291D-9(d) and HRS § 706-644 provide that the court may impose community service in lieu of payment of court-imposed monetary assessments. The community service conversion rate is set by the district courts. Since the convening of the first Task Force meeting in August 2019, the First, Second, and Fifth judicial circuits have increased their community conversion rates from \$10 per hour to the current rate of \$15 per hour, which benefits motorists convicted of both traffic infractions and traffic crimes.
- 4. Create uniform procedures for taking into consideration a motorist's ability to pay a monetary assessment.** The court has the authority to take a defendant's ability to pay into consideration when assessing or reducing monetary assessments that are not mandatory by statute, and currently does so. However, to improve this process for the public, the Task Force recommended that the Judiciary establish a uniform procedure to adjust a defendant's monetary assessment when a defendant claims financial hardship. The Task Force noted that this procedure could include developing a uniform petition for ability to pay determinations, or a petition for non-hearing assessments of fine conversions. The Judiciary has begun discussing ways to implement a uniform ability pay procedure.



5. **Further decriminalize traffic crimes that are deemed non-serious in nature.** There are several traffic offenses that have not been decriminalized through the 1993 decriminalization effort and subsequent reviews, and therefore still include imprisonment as a potential penalty. The Task Force recommended that the Legislature consider further decriminalizing those traffic crimes that the Legislature deems not serious in nature. Decriminalization would allow a defendant to utilize the civil traffic infraction procedures under HRS Chapter 291D, which does not require an in-court appearance upon issuance of the citation.
6. **Increase imprisonment conversion rates for those defendants with traffic crime cases who opt to satisfy their legal financial obligations as credit for time served (traffic crimes only).** The Task Force recommended that the statutory rate for converting a fine to imprisonment should be increased from its current rate of \$25 per day. These types of conversions are only available upon request from defendants convicted of traffic crimes – not civil traffic infractions – and help defendants satisfy outstanding traffic monetary assessments as credit for time served while being imprisoned for other criminal offenses. While imprisonment is not the ideal way for defendants to satisfy legal financial obligations, a conversion rate higher than the current \$25 a day rate would be appreciated by those who opt to satisfy their outstanding legal financial obligations in this way.
7. **Increase visibility of all financial hardship options that are available.** While there are many options available for motorists who face financial hardship and are unable to pay traffic monetary assessment (e.g., ability to pay determinations, community service conversion, restricted license, etc.), those options are not always known to the wider public. Information is currently available on the Judiciary website and on the citations themselves, but the public may benefit if information about the financial hardship options were made even more visible. The Task Force recommended having more information made available on the Judiciary and partner websites, at district court, and in correspondence with motorists.

Additional Suggestions from the Judiciary for Consideration

The Judiciary offers the following technical edits as highlighted in bold for the committee's consideration to aid implementation of the measure. Page 5, lines 9-19, and page 8, line 15 to page 9, line 6:

Any person cited under this section shall be given an opportunity to **petition the court to** demonstrate that the person's nonpayment or inability to pay is not wilful. **If a person petitions the court,** ~~t[he]~~ the judge shall make an individualized assessment of the person's ability to pay based on the totality of the circumstances, including but not limited to the person's disposable income, financial obligations, and liquid assets. If the judge determines that the person's nonpayment or inability to pay is not wilful, the judge **[shall]** **may** enter an order that allows the person additional time for payment,



reduces the amount of each installment, ~~or~~ revokes the fee or fine, or unpaid portion thereof, in whole or in part~~], or converts any outstanding fine to community service;~~

In addition, the Judiciary would support further expanding the scope of who qualifies for the restricted license program by eliminating the conditions required for participation in the program. This would open up the program and provide a means for all motorists to engage with the court and take care of their legal financial obligations in a manageable way, while maintaining the ability to drive legally. Because non-compliance with the restricted license program would result in lifting the restricted license, participants would not risk obtaining a bench warrant for failure to appear at a proof of compliance hearing under this program or otherwise for failing to meet the requirements of the program. Furthermore, a motorist who falls out of compliance has the option to reapply for participation in the program.

To accomplish this, HRS § 286-109(c), which is also addressed in Section 1 of this measure, could be amended as provided:

§286-109 General provision governing the issuance of licenses.

....

(c) Statutes of limitations and other provisions of this chapter notwithstanding, no driver's license or instruction permit shall be issued or renewed under this section, where the examiner of drivers is notified by the district judge, traffic violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons, or failed to appear in court after an arrest for the violation of any traffic laws of a county, this chapter or chapter 286G, 287, 290, 291, or 291C, or of any motor vehicle insurance laws under article 10C of chapter 431, or of any motorcycle or motor scooter insurance laws under article 10G of chapter 431, and the same remains delinquent and outstanding, or the applicant, has as of the time of the application, failed to comply in full with all orders of the court; provided that the district court with whose order an applicant has failed to comply in full, may approve the issuance or renewal of a driver's license or instruction permit other than a commercial driver's license upon conditions imposed by the court for the satisfaction of the outstanding court order and any other conditions as may be imposed by the court, ~~[if one or more of the following conditions are met: The applicant is gainfully employed in a position that requires driving and will be discharged if the applicant is unable to drive; or~~

~~—(1)— The applicant is gainfully employed in a position that requires driving and will be discharged if the applicant is unable to drive; or~~

~~—(2)— The applicant has no access to alternative transportation and therefor must drive to work;]~~



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Provided ~~[further]~~ that if the applicant has failed to comply in full with orders of the district court of more than one circuit, the applicant shall obtain the approval of the district court of each circuit in which the applicant has an outstanding court order before a driver's license or instruction permit may be issued or renewed under this subsection.

A driver's license or instruction permit issued or renewed under this subsection shall be subject to immediate suspension by the court upon the applicant's failure to remain in full compliance with all conditions imposed by the court for the issuance or renewal of the driver's license or instruction permit. The examiner of drivers may place an indication of restriction upon a driver's license or instruction permit issued or renewed under this subsection. Proof of financial responsibility under section 287-20 shall not apply to the issuance or renewal of driver's licenses or instruction permits under this subsection."

Lastly, as noted previously, the district court currently has the authority to take into consideration a person's ability to pay to adjust down an assessed monetary fine, convert a fine to community service, or extend the period of time that a person has to pay a fine, and frequently does so. To further clarify to the public that this type of modification is permissible and to codify the process that the courts currently undertake when a person raises a claim of inability to pay, the following edits could be made to HRS § 291D-9. These edits would also clarify the court's authority to adjust a monetary assessment at any time prior to payment, which could provide clarity for those who enter in the restricted license program, pay in installments, and wish to request an adjustment:

§291D-9] Monetary assessments. (a) A person found to have committed a traffic infraction shall be assessed a monetary assessment not to exceed the maximum fine specified in the statute defining the traffic infraction. **The court shall consider a person's financial circumstances, if disclosed, in determining the monetary assessment.**

(b) Notwithstanding section 291C-161 or any other law to the contrary, the district court of each circuit shall prescribe a schedule of monetary assessments for ents for all traffic infractions, and any additional assessments to be imposed pursuant to subsection (c). The particular assessment to be entered on the notice of traffic infraction pursuant to section 291D-5 shall correspond to the schedule prescribed by the district court. Except after proceedings conducted pursuant to section 291D- 8 or a trial conducted pursuant to section 291D-13, monetary assessments assessed pursuant to this chapter shall not vary from the schedule prescribed by the district court having jurisdiction over the traffic infraction.

(c) In addition to any monetary assessment imposed for a traffic



infraction, the court may impose additional assessments for:

- (1) Failure to pay a monetary assessment by the scheduled date of payment; or
- (2) The cost of service of a penal summons issued pursuant to this chapter.

(d) **Upon request of a person claiming inability to pay a monetary assessment, [T]he court may grant [to a person claiming inability to pay,] an extension of the period in which the monetary assessment shall be paid or may impose community service in lieu thereof. If the assessment is not paid or the community service is not performed on or before the date established and the court has not extended the time, the court shall take action as provided in section 291D- 10.**

(e) **At any point prior to full payment of a monetary assessment, any person who suffers a change in financial circumstances may request a hearing to modify the monetary assessment or to request community service in lieu thereof.**

In sum, the Judiciary strongly supports Part I (Sections 1-4) of this measure as it reflects the recommendations of the traffic Financial Hardship Task Force, offers technical amendments to support implementation, and offers additional suggested statutory amendments to further expand the scope of who is eligible for participation in the restricted license program and to clarify the court's current authority to adjust monetary assessments when a motorist is experiencing financial hardship. The Judiciary welcomes the opportunity to work with the Legislature and other stakeholders to discuss these issues and recommendations further.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Finance**

February 24, 2020

H.B. No. 2751, H.D. 1: RELATING TO FINANCIAL HARDSHIP

Hearing: February 25, 2020, 11:00 a.m.

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Office of the Public Defender supports H.B. No. 2751, H.D. 1 and offers comments for your consideration. While we appreciate that this bill seeks to lighten the load for low-income residents, we are concerned about the efficacy of certain aspects of the bill.

We whole-heartedly support the expansion of categories of drivers entitled to apply for a restricted license, though we feel that a public education component is necessary. The proposed categories of medical and educational¹ transport are excellent additions to HRS 286-109 and go right to the heart of the issues that many of our clients in traffic court currently face. However, these restricted license categories will not benefit anyone if applicants don’t know who to ask for permission.

Our Office is also concerned about the feasibility of proposed amendments to HRS §§ 286-136 and 431:10C-117. The new language would allow a judge to grant defendants additional time to pay fines and fees, reduce the amounts of installment payments, or revoke the unpaid portion of the fine. This would require a significant re-structuring of the District Court fine collection system that is currently in place. Unlike criminal fines, traffic fines are outsourced to a mainland collections agency 90-180 days after a person is convicted of a traffic offense. There is no set installment plan that a person is able to set up with the court, nor is there a scheduled court date for a person to request more time to pay. In order to provide the oversight that this bill suggests, the Judiciary would likely have to take back the responsibility for collecting traffic payments.

Another feasibility concern for the amendments HRS §§ 286-136 and 431:10C-117 is the availability of community service work for residents who are unable to pay their fine. Currently, a resident who is unable to pay a fine may convert their fine at a rate of \$15 per hour of community service work, with a few notable exceptions. The ability of a judge to cancel outstanding payments

¹ The two educational categories include driving a dependent to school as well as driving oneself to school. We support removing the language of “no form of public transportation” being available between a person’s home and the dependent’s school. It fails to take into account the age and physical needs of the dependent as well as the quality of the public transportation available. We would support the restriction of “no form of . . . school bus is available between the applicant’s place of residence and the educational institution”.

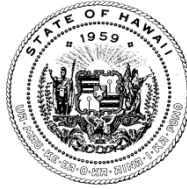
seems to create a tension with the current community service sentencing scheme, particularly for defendants sentenced under HRS § 431:10C-117. For a first offense of driving without motor vehicle insurance, the penalty is either a \$500 fine or 75-100 hours of community service work. For any subsequent offense, the penalty is either a \$1,500 fine or 200-275 hours of community service work. If judges were able to apply the standard judiciary conversion rate, a first offense would require approximately 33 hours of community service work, while a subsequent offense would require 100 hours. Under this sentencing scheme, our poorest residents are punished for their inability to pay fines or obtain insurance by forcing them to sacrifice regular work hours and complete community service work at a conversion rate far below the minimum wage. Many defendants agree to pay fines that they know they cannot afford rather than complete community service work hours that will prevent them from providing for their families.

Our final comment to HB No. 2751 relates to the conversion rate of fines to jail time. Our Office supports the increase from \$25 per day to \$50 per day, but we ask that the language of HRS §706-644(3) allow for some discretion on the part of the sentencing judge. Namely, that “[a] person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of *at least* [] \$50 per day.”

Something has got to give. We live in the State with the lowest minimum wage when adjusted for our high cost of living. Residents working multiple jobs can barely afford to pay their rent and feed their families, yet we’re treating them like criminals due to unpaid fees. The Office of the Public Defender is strongly in support of re-thinking this regressive system and finding a way to move forward.

Thank you for the opportunity to comment on H.B. No. 2751, H.D. 1.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

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February 25, 2020
11:00 A.M.
State Capitol, Room 308

H. B. 2751, H.D. 1
RELATING TO FINANCIAL HARDSHIP

House Committee on Finance

The Department of Transportation (DOT) is providing **comments** on H.B. 2751, H.D. 1 which expands the conditions for authorizing a restricted driver's license. Provides judges with greater discretion to adjust the amount owed by a person who violates certain traffic offenses based on the person's inability to pay. Decreases the imprisonment term to contumacious nonpayment ratio. Increases the amount of credit given to a person committed for contumacious nonpayment. Provides Hawaii residents with the option of paying for the registration of their motor vehicles and associated taxes and fees on a biannual basis. Restricts the amount of delinquency tax due to the current tax due plus one year. Removes language allowing storage costs and costs incident to seizure of a vehicle from inclusion in the amount the owner of a vehicle must pay in order to redeem the vehicle after seizure.

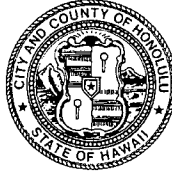
PART II, SECTION 8 of the bill allows for the non-collection of past due motor vehicle registration (MVR) taxes and fees for the owner who failed to surrender the appropriate documentation and license plates, and payment of taxes and fees to store their vehicle if longer than one-year of being delinquent. Although this bill will address those that unknowingly failed to work with the county to place their vehicle in storage, it will have the unintended consequence of providing a simple way to reduce the delinquent taxes and fees due for those that knowingly chose not to pay their MVR taxes and fees and operated their vehicles on the roadway for many years. This will result in a loss of revenue to the state highway fund which includes the state weight tax and state registration fee for the DOT.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF CUSTOMER SERVICES
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



SHERI T. KAJIWARA
DIRECTOR

RANDY M. LEONG
DEPUTY DIRECTOR

February 25, 2020

LATE

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and Members of the Committee on Transportation
The House of Representatives
State Capitol, Conference Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members of the Committee on Finance:

SUBJECT: H.B. No. 2751
Relating to Financial Hardship

The Department of Customer Services (CSD), City and County of Honolulu, stands in **opposition of H. B. No. 2751.**

Our public servicing system is already heavily burdened with the State's delegating State ID issuance to the counties, along with significant demands that materialized with the federal mandated requirements of Real ID. Allowing for the bi-annual payment of motor vehicle registration would require a reprogramming of our system and would potentially double the process and work load for the city. It would likewise double the demand on our satellite city halls with many residents potentially appearing twice each year for the same task. We are having difficulty meeting the current demand for appointments and service.

H. B. No. 2751 also suggests that delinquent motor vehicle registration fees be limited to just one year past due. I believe this move will greatly increase the number of unregistered vehicles on our public roadways. We are currently seeking measures that would better enforce vehicle registration as required by law. Unregistered vehicles are problematic for law enforcement, insurance agencies, ownership transfers and of high concern, abandoned vehicles. This change may encourage those considering a sale of their vehicle, or contemplating abandonment, to forego registration two years in advance.

The Honorable Sylvia Luke, Chair
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Technological advances have updated our registration process so that we no longer drop vehicles unregistered for five consecutive years from our files, assumed no longer in service. After the change, I was quite alarming by the number of people that contested the new process. They were successful in going undetected for five years and had hoped for a "reset" and be charged just current registration fees. Skirting five years of registration fees average \$20,000 of revenue for the State and City per vehicle. If a vehicle is utilizing public roadways, the owner should be held accountable for paying the fees set by statute and ordinance for the maintaining of such infrastructure.

For these major reasons, the CSD **opposes H. B. No. 2751.**

Thank you for this opportunity to provide testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri T. Kajiwara", with a long horizontal flourish extending to the right.

Sheri T. Kajiwara
Director