

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Ways and Means**

April 1, 2021

H.B. No. 631, H.D. 1, S.D. 1: RELATING TO FINANCIAL HARDSHIP

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Office of the Public Defender strongly supports the changes proposed by H.B. No. 631, H.D. 1, S.D. 1.

Our office has witnessed firsthand how traffic fines can disrupt the lives of otherwise law-abiding residents. When money is tight (and money *is* tight), a resident might have to choose between paying the rent, putting food on the table, or paying several hundred dollars to register their vehicle. With a lapsed registration, the resident is also unable to update their safety check, even if their car is in perfectly working order. This resident still needs to be able to get to work, often to more than one job, and take the kids to school while they save up the money to pay for the registration, the safety check, and the late fees that will attach. While driving to work one day, the resident is pulled over due to their expired stickers, and suddenly they find themselves with a citation for another several hundred of dollars, which they are also unable to pay. Thirty days later, the fine is sent to a collection agency on the mainland, and a stopper is placed on the resident’s license. As long as the stopper is in place, the resident will be unable to legally register their car. In practical terms, this often means that the resident will continue to pick up similar citations while they are saving up to pay the penalty from the first citation. This resident could save up money for months to pay off their delinquent registration, safety check, and court fines, only to discover that they do not have the money to cover the interest charged by the collection agency. Finally, because of the stopper on the resident’s license, eventually the resident’s driver’s license will expire, and the next time that they are pulled over for expired safety and registration, they also receive a criminal citation for Driving Without a Valid License (“DWOL”).

This is the story that our District Court attorneys hear time and time again during intake interviews with our clients. By the time clients reach us, it is too late for us to give them the advice that might have helped them avoid falling into this situation.

A first-time offense for DWOL offense will cost \$137, including fines and fees, and a second offense costs \$337. It is common practice in District Court to allow unrepresented individuals to plead guilty to these charges at the initial court appearance. It is not until their third offense, when the severity of the charge is upgraded to a misdemeanor, that these individuals are referred to our office for representation.

The vast majority of our DWOL clients have no criminal record. If it were not for their financial difficulties, these clients would never have to risk having a damaging criminal conviction on their records. With each additional DWOL citation, the fines grow higher, and the chances of those clients being able to claw their way back into the black grow dimmer. A third offense will cost \$562 with court fees, and judges have no discretion to lower that amount based on an individual's financial circumstances. Even a straight conversion to community service work is not practicable for our clients who work one or more jobs. Community service worksites are limited in many areas, and they have been in even shorter supply due to health and safety precautions during the COVID-19 pandemic.

Our only objection to this bill is the current effective date of July 1, 2050, which will not provide the immediate relief that Hawai'i residents desperately need now. 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 are treating them like criminals due to unpaid fees. The Office of the Public Defender strongly supports the re-thinking of this regressive system and finding a way to move forward. Allowing judges the discretion to tailor the fines or community service work due to an individual's financial hardship is an excellent step in the right direction.

Thank you for the opportunity to comment on H.B. No. 631, H.D. 1, S.D. 1.

HB-631-SD-1

Submitted on: 3/29/2021 6:38:18 PM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea K. Blakemore	Testifying for Neighborhood Place of Puna	Support	No

Comments:

We support families struggling in poverty in Hawai'i. Many local families struggle with paying for basics like food and housing. The ALICE United Way report found that an astonishing number of Hawai'i residents cannot afford basics to survive. This is because Hawai'i's cost of living is so high, and minimum wage has not increased to meet inflation or living costs. We are facing a continuing and expanding mass housing crisis, keiki going to sleep hungry, and increased risks of abuse and neglect when we allow for economic inequalities in Hawai'i to continue.

Please continue to do all that you can to protect the poor and working class amidst a pandemic, a housing crisis, stark historical injustices and unprecedented wealth inequality impacting children and families.

Mahalo for hearing this testimony and for supporting important and compassionate bills such as these.

Kaikea Kaleikini Blakemore

Community Development Specialist

Neighborhood Place of Puna

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COMMITTEE ON WAYS AND MEANS

Senator Donovan Delacruz, Chair

Senator Gil Keith-Agaran, Vice Chair

Thursday, April 1, 2021

9:30 a.m.

STRONG SUPPORT FOR HB 631 HD1 SD1 FINANCIAL HARDSHIP - TRAFFIC FINES

Aloha Chair Dela Cruz, Vice Chair Agaran, 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 4,100 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 1,075 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 Kanaka Maoli, far, far from their ancestral lands.

Community Alliance is in strong support this measure that will prevent driving people into poverty, especially at this challenging time when so many individuals and families are struggling just to stay afloat.

People who are exiting incarceration leave with no identification documents, little to no money, and sometimes mounds of traffic fines. This is a huge barrier to successful reentry. 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."

Though court debt is often justified as a means of shifting the costs of the criminal justice system to those who "use" that system, that justification is flawed: the legal system is a public good that benefits all members of the community and thus should be funded

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

from general revenue. Moreover, funding the court system through monetary sanctions can create pressure to raise increasing revenue through the courts. When states and localities use courts to fill gaps in their budgets, this leads to perverse incentives and erodes public trust in the judicial system.²

The financial and social costs associated with criminal justice debt have had a disparate impact on the poor and people of color.³

Because a well-functioning justice system generates broad-based social benefits, funding that system should be prioritized through ordinary budgetary processes rather than reliance on financial obligations enforced by courts or police. Yet the perceived necessity of deriving revenue through criminal justice debt raises a cautionary note for reformers: solutions that eliminate real or perceived funding streams for important governmental functions will have to include viable fiscal alternatives.⁴

These cases also are a large part of the workloads of Hawai'i's Public Defenders when they could be addressed with compassion, humanity, and concern for the health of our communities, especially who are facing many challenges right now.

A May 2017 report from Insight Center for Community Economic Development entitled, "DRIVING INTO DEBT: THE NEED FOR TRAFFIC TICKET FEE REFORM"⁵ discussed the effects of mounting debt on those struggling to make ends meet...

Losing a license also creates barriers to meeting basic needs such as getting to and from medical appointments, school, child care, grocery shopping, and even court appointments. When the only adult or one adult in the household cannot drive, others close to the family must help coordinate logistics. Without additional support getting to work, the driver can

² See Dep't of Justice, Office of Justice Programs Diagnostic Ctr., Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees 3 (2015).

³ See, e.g., Am. Civil Liberties Union, Written Statement Before the U.S. Commission on Civil Rights, Hearing on Municipal Policing and Courts: A Search for Justice or a Quest for Revenue 2 (Mar. 18, 2016), available at https://www.aclu.org/sites/default/files/field_document/aclu_statement_usccr_03182016_municipal_courts_and_police_choudhury.pdf

(describing how practices around criminal justice debt are "racially-skewed due to the dual impact of racial disparities in the criminal justice system and the racial wealth gap").

⁴ CONFRONTING CRIMINAL JUSTICE DEBT - A GUIDE FOR POLICY REFORM Harvard Law School – Criminal Justice Policy Program, September 2016. <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>

⁵ DRIVING INTO DEBT: THE NEED FOR TRAFFIC TICKET REFORM, by Annette Case, Senior Policy Consultant, Insight Center for Community Economic Development Jhumpa Bhattacharya, Director of Racial Equity and Strategy, Insight Center for Community Economic Development, May 2017. https://insightccd.org/wp-content/uploads/2017/05/insight_drivingintodebt.pdf

lose his/her job. In one study, 42 percent of people lost their jobs after license suspension and 45 percent of those people could not find another job. The majority of those who did regain employment found work paying a lower wage.⁶

Joblessness creates a number of social and health effects for individuals and their children, including the loss or reduction of income available to cover basic necessities. The longer a person cannot find employment the more likely their future earnings will be lower. Unemployment affects overall family well-being through poor health and lower academic outcomes for children.⁷ Without employment, people are much less likely to be able to pay court-ordered debt. When people do lose income or a job due to a suspended license, those resources are also extracted from the community in the form of lower consumption and a smaller tax base.

Here are recommendations from this report:

RECOMMENDATIONS: REBALANCING THE SCALES OF JUSTICE

- Implement a uniform statewide ability-to-pay assessment that determines reasonable fines and fees based on a “make ends meet” standard of living.
- End license suspensions intended to compel payment.
- Discharge uncollectible debts.
- Re-evaluate the funding structure of the judicial system.

It’s time for traffic court to look at the individual’s ability to pay in proportion to the offense. It is patently wrong for two people with the same offense to be disproportionately impacted based on their wealth. That is not justice.

A more humane and compassionate approach would go a long way to restoring trust in the system.

Mahalo for this opportunity to testify.

*True compassion means not only feeling another's pain
but also being moved to help relieve it.*

Daniel Goleman

⁶Outlining important principles of a justice system. Martin, Karin D., Smith, Sandra Susan, and Still, Wendy. “Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create.” New Thinking in Community Corrections Bulletin, U.S. Department of Justice, National Institute of Justice, 2017, Washington D.C. NCJ 249976. See also, Beckett, Katherine and Harris, Alexes. “On cash and conviction: Monetary sanctions as misguided policy.” Criminology & Public Policy Volume 10, Issue 3 August 2011, <http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-31.pdf>

⁷ Kantorowicz, E.. “Day-Fines: Should the Rich Pay More?” Working Paper Series No. 2014/12, Rotterdam Institute of Law and Economics, 2014.

HB-631-SD-1

Submitted on: 3/29/2021 11:08:04 AM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support.

HB-631-SD-1

Submitted on: 3/29/2021 11:47:34 AM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Fern Anuenue Holland	Individual	Support	No

Comments:

Mahalo Senators for hearing HB631. This is an important social justice issue in our community and my 'ohana and I strongly support this measure. Please pass HB631. Mahalo!

Fern A€ Holland

HB-631-SD-1

Submitted on: 3/29/2021 2:44:23 PM

Testimony for WAM on 4/1/2021 9:30:00 AM

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

Comments:

I strongly support HB631 because it gives a person a chance to petition the court when they are not able to pay fees and fines and includes many options, such as community service, to pay a debt. This bill is especially important now as people in our community are experiencing significant financial hardships. In addition, some people formerly incarcerated may be returning to the community with large debt from traffic violations. The fees make it difficult to obtain a drivers license, find housing and look for work. This bill will allow judges to have greater discretion when determining if a person is suffering from a hardship and is unable to pay. Please support our community by supporting HB631. Thank you