



## *The Judiciary, State of Hawai‘i*

### **Testimony to the Thirty-First Legislature, 2022 Regular Session**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 17, 2022 at 9:35 a.m.  
State Capitol, Conference Room 016 & Videoconference

by  
Andrew T. Park  
Judge, District Family Court  
Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1459, H.D. 1, Relating to Juvenile Restitution.

**Purpose:** Requires victim restitution in certain juvenile cases. Clarifies the definition of "victim" for purposes of victim restitution in these cases. Effective 1/1/2222. (HD1)

### **Judiciary's Position:**

The Judiciary respectfully opposes a portion of this bill. Allowing adult correction practices to seep into the juvenile justice system is contrary to the purposes of the family court. It does not further rehabilitation, which in turn is not in the community's best interest.

The testimony of the Crime Victim Compensation Commission and Department of the Prosecuting Attorney of the City and County of Honolulu before the House Committee on Judiciary and Hawaiian Affairs focused on the needs of the victim. Family court has the same compassion for victims of juvenile offenders. We also strongly believe that encouraging accountability to and empathy for the victims of their actions are vital to juvenile rehabilitation. However, trying to use the adult template for the juvenile system is counterproductive for both the juveniles and the victims and, therefore, the community.



House Bill No. 1459 H.D.1, Relating to Juvenile Restitution  
Senate Committee on Judiciary  
Tuesday, March 17, 2022 at 9:35 a.m.  
Page 2

Let us first focus on the victims. One glaring truth for both the adult and juvenile systems is that victims are not generally well served by restitution programs. As noted in a September 30, 2020, report from the U.S. Government Accountability Office to Congress:

“The collection of federal criminal restitution has been a longstanding challenge. In 2001, we reported that the amount of uncollected criminal debt—of which restitution is a component—had more than doubled from September 30, 1995 through September 30, 1999. [footnote omitted] Specifically, we found that DOJ had not collected most of the outstanding criminal debt due to, among other factors, the nature of the debt—in that it involves criminals who may be incarcerated or deported or who have minimal earning capacity, and a lack of coordination between relevant DOJ components.”

*<https://www.gao.gov/assets/gao-20-676r.pdf> (accessed March 14, 2022).*

“Realistically, however, the chance of full recovery is very low. Many defendants will not have sufficient assets to repay their victims. Many defendants owe very large amounts of restitution to a large number of victims. In federal cases, restitution in the hundreds of thousands or millions of dollars is not unusual. While defendants may make partial payments toward the full restitution owed, it is rare that defendants are able to fully pay the entire restitution amount owed. If and when the defendant pays, you most likely will receive a number of small payments over a long period of time.”

Official site of the U.S. Department of Justice, General Information Criminal Division Victim Notification Program. *<https://www.justice.gov/criminal-vns/restitution-process#:~:text=Realistically%2C%20however%2C%20the%20chance%20of,of%20dollars%20is%20not%20unusual>* (page updated September 18, 2020) (accessed March 14, 2022).

In other words, notwithstanding established procedures in the courts and corrections and the best intentions and hard work of the programs’ staff, victims have a difficult time actually receiving payment.



Despite our wish to make victims whole, we are not able to do that if we solely rely on restitution orders. In addition to money, our compassion for their suffering must drive us to find other methods to alleviate that suffering (in this area, we have much to learn from Pacific Islander cultures).

Let us now focus on the juvenile offender. Family court has been given the responsibility of helping juvenile offenders to mature into adults who contribute to the community. It is more difficult to do this if yet another judicial discretionary decision is denied at the time of disposition.

Another concern is the wholesale grafting of the expansive definition of “victim” from H.R.S. § 706-646(1). Our compassion for individual victims should not lead to endless efforts to collect on behalf of corporations and the crime victim compensation commission. Brain research gives us insight into the inability of adolescents (particularly boys) to form the higher-level concepts that might nurture accountability and empathy if the “victim” is an organization.

The family court is in support of the amendment of sub-section (12) clarifying that a minor’s order of disposition can include both restitution and community service.

We would be supportive of a provision requiring all existing restitution orders to be converted to independent orders at the time the court terminates jurisdiction. This would mimic the adult system whereby the victim can seek civil enforcement of that order.

The family court respectfully recommends the following amendments to H.R.S. §571-48:

- (11) The court may order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim who suffers loss as a result of the child’s action [~~or to render community service~~];
- (12) The court may order any person adjudicated pursuant to section [~~571-11(2)~~] 571—11(1) or (2) to participate in community service; and
- (13) The court may order the parents of an adjudicated child to make restitution of money or services to any victim, person, or party who has incurred a loss or damages as a result of the child’s action.



House Bill No. 1459 H.D.1, Relating to Juvenile Restitution  
Senate Committee on Judiciary  
Tuesday, March 17, 2022 at 9:35 a.m.  
Page 4

(14) When the court terminates jurisdiction, any outstanding restitution orders, including any orders made against parents of an adjudicated child, shall be converted to an independent order or judgment and a certified copy shall be given to the victim to allow the victim to seek enforcement in proceedings provided by law for judgments.

We believe these recommended amendments will strike a balance appropriate to both victims and the court's responsibility to juvenile offenders and the community.

Thank you for the opportunity to provide testimony on this matter.

STATE OF HAWAI‘I  
OFFICE OF THE PUBLIC DEFENDER

**LATE**

Testimony of the Office of the Public Defender,  
State of Hawai‘i to the Senate Committee on Judiciary

March 17, 2022

H.B. No. 1459 HD1: RELATING TO JUVENILE RESTITUTION

Chair Rhoads, Vice-Chair Keohokalole and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 1459 HD1.

When the Legislature enacted HRS § 571-1, they had the foresight to create and design the Family Court to ***“promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency.”*** In addition, to these principles, HRS § 571-1 states that “all children found responsible for offenses shall receive dispositions that provide incentive for reform or deterrence from further misconduct, or both.” The Intermediate Court of Appeals acknowledged the purpose and the goals of the Family Court in its decision in In Re CM, 141 Hawai‘i 348, 409 P.3d 752 (2017), when it stated the following:

Unlike the penal code statute, the family court restitution statute is permissive or discretionary and does not mandate an order for restitution in every case in which restitution is requested. ... HRS § 571-48(11) provides even greater flexibility, however, authorizing a family court to order a minor law violator to make restitution by way of services to the victim, or to render community service instead, and does not specifically require reimbursement of the “full amount” of the victim’s loss. These options stand in sharp contrast to the HRS § 706-646(3) mandate that “[r]estitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses[.]” HRS § 571-48(11) does not prohibit, for example, a family court’s consideration of a young teen’s ability to pay full restitution or the impact of a restitution order on a distressed family.

H.B. No. 1459 HD1 is clearly aimed at making restitution mandatory and would in effect remove the family court's ability to consider a young teen's ability to pay, the impact of restitution on a distressed family, and would eliminate the current ability of the family court to order services or community service in lieu of restitution. We have children in the Juvenile Court system who are as 12 years old. Some of these children are the most vulnerable – living in poverty, living in foster care, struggling with mental health issues.

The Office of the Public Defender is deeply concerned that the Legislature is moving away from the core principles and goals espoused in HRS § 571-1 and the purpose of the family court. Juveniles in distress may include juveniles who are victims of physical and sexual abuse, juveniles who have experienced traumas and who may be suffering from mental health challenges as a result of these traumas – including suicidal thoughts and actions, and juveniles in our foster care system who do not have loving a responsible parent to care for them. Many of our juveniles involved in the court system are struggling with homelessness, extreme poverty, and serious mental health issues. Everything from access to food and basic amenities, access to transportation, and access to a computer or a working phone are daily challenges.

We ask that the Legislature allow the Family Court to retain the flexibility to work with distressed juveniles (and their families or their foster care social workers) and to consider alternatives, like community service, as a means for an adjudicated juvenile to learn, make amends, provide service, and learn from past negative behaviors. Obviously, the family courts would still retain the option of ordering monetary restitution. We ask that they continue to have the option of community service in lieu of restitution, when appropriate, and the option of a full review of the totality of the circumstances when determining a disposition for a minor in the juvenile justice system. Juveniles living in shelters, living in residential treatment programs for substance abuse issues, mental health issues, or sexual abuse issues, should be given some flexibility as they navigate the muddy waters of childhood while also navigating the juvenile justice system.

We do acknowledge the important principles and purpose of restitution and compensating victims for losses. We submit that restitution may also be claimed through the Crime Victim Compensation fund established in HRS § 351 which has the authority to award compensation to victims of crimes. Victims may also seek remedies through insurance and through the civil courts against parents or guardians for full restitution. In cases where the victim's financial losses are made whole through other options, we believe flexibility with distressed juveniles is appropriate

and in line with the basic Family Court principle of determining what is in the best interest of a child and what may help a distressed child succeed.

We are concerned that juvenile restitution, as proposed by this measure, does not include the checks and balances that adult restitution has built in to avoid the situation where the Courts becomes a *de facto* debt collection agency that can last for years after a juvenile turns 18 years old. In essence, the Family Court will become an unlimited debt collection agency that can last a lifetime with the added threat of a bench warrant for non-compliance with court orders. In adult court, restitution may be ordered as a “free-standing order” and enforceable in civil court. But this sentencing alternative does not exist for juvenile restitution. It is our position that without the flexibility that the Family Court currently has, juvenile restitution is more punitive than adult restitution.

We would like to submit four examples of situations where a juvenile may need flexibility – especially where restitution may be provided through other means:

1. A young female – age 15 – who was the victim of human trafficking in the sex trade – she may owe some restitution, but she is in need of sex abuse counseling, mental health treatment (to and including treatment for depressions and anger), and who is also in need of specialized housing (i.e., a residential program designed to help and care for victims of sexual abuse). We would want this young person to focus on her health, safety, and recovery.
2. A young male – age 17 – who grew up in foster care because he had parents who have either given up their parental rights or who had their rights terminated – living in an urban area prone to youth gang activity – but who is participating in the Youth Challenge Program with the Hawai‘i National Guard and who is seeking to join the military to take charge of his future. He may owe some restitution, but we would want this young male to focus on building a future and finding a career without being held back from an opportunity to join the military because of restitution (that may be recoverable through other means) to successfully become a productive adult and member of the military.
3. A young male – age 14 – living with homeless parents and siblings – trying to attend school and not fall behind – trying to navigate school, living in an unstable environment, trying to avoid joining a gang, trying to avoid slipping into drug abuse, and struggling with depression

because the present is bleak and the future doesn't look much better. He may owe restitution but may benefit from community service, in lieu of restitution (especially when restitution may be recovered through other means) and opportunities to participate in a supervised and positive community service experience could benefit this youth.

4. A young male – age 16 – struggling with serious mental health issues – including thoughts of suicide – this young male has already made a serious suicide attempt – and is in need of long term residential mental health treatment. We would want this young person to focus on his health, safety, and recovery and not money (especially when restitution may be recovered through other means).

We would remind this Committee that this bill is not about adults. It is about children, teens and our youth.

Thank you for the opportunity to comment on this measure.



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**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-First State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

March 17, 2022

**RE: H.B. 1459, H.D. 1; RELATING TO RESITUTION.**

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1459, H.D. 1. This bill is part of the Department's 2022 legislative package, and we thank you for hearing it.

The purpose of this bill is to support, encourage and ensure restitution to victims of crime in juvenile cases, by requiring courts to order restitution when applicable. While restitution (if any) is always ordered by courts in adult cases, it is not required to be ordered in juvenile cases, and victims are then left to "fend for themselves" via private civil action against a juvenile defendant. In this sense, the current system greatly decreases the chances that defendants will be held accountable to their victims, which further demoralizes or "re-victimizes" these victims of crime, discounting the very benefits that restitution is intended to provide.

Victim restitution is perhaps the only core victims' right that addresses such a wide range of the—often devastating—effects of crime, including physical, emotional, psychological, financial and social impacts. As stated by the House Judiciary Committee, upon passing the language that later became Section 706-605, Hawaii Revised Statutes ("HRS"):

*Reparation and/or restitution by wrongdoers to their victims is basic to justice and fair play...[B]y imposing the requirement that a criminal repay not only "society" but the person injured by the criminal acts, society benefits not once, but twice. The victim of the crime not only receives reparation and restitution, but the criminal should develop or regain a degree of self respect and pride in knowing that he or she righted, to as great a degree as possible, the wrong that he or she has committed.*

House Stand. Comm. Rep. No. 425, in 1975 House Journal.

Currently, some judges are interpreting HRS §571-48 to mean that the court is only authorized to order restitution as an alternative to community service, rather than having the authority to order either or both. The amendments proposed in H.B. 1459, H.D. 1 would clarify this by moving the option for community service (in law violator cases, brought under HRS §517-11(1)) from subsection HRS §571-48(11) to -48(12). Thus, victims of juvenile law violators would be placed on the same level as those who are victimized by an adult offender. Courts do assess every offenders' "ability to pay" before specifying a monthly payment that is appropriate for that individual. Also, HRS §571-48(13) specifically and separately allows courts to order that the parents of a juvenile law violator pay the restitution, if and when the court finds it appropriate.

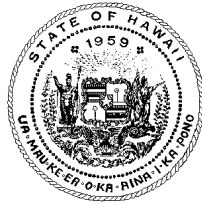
Lastly, the Department appreciates the amendments made by the House Committee on Judiciary and Hawaiian Affairs, which addresses the Intermediate Court of Appeals ("ICA") decision in *In the Interest of DM*.<sup>1</sup> These amendments will ensure the clarity and continuity within the Hawaii Revised Statutes when addressing victim restitution in adult and juvenile criminal cases.

The Department understands that juvenile and adult offender may have vastly different financial situations. Nevertheless, we believe that juveniles should also be held accountable for their actions when they directly affect victims. For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of H.B. 1459, H.D. 1. Thank you for this opportunity to testify.

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<sup>1</sup> Available online at <https://www.courts.state.hi.us/wp-content/uploads/2022/01/CAAP-20-0000485mop.pdf>; last accessed January 31, 2022.

DAVID Y. IGE  
GOVERNOR



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Executive Director

TESTIMONY ON HB 1459 HD1  
RELATING TO JUVENILE RESTITUTION

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 17, 2022; 9:35 AM  
Conference Room 016 & Videoconference

Good morning Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the “Commission”) with the opportunity to testify before you today. The Commission strongly supports the passage of House Bill 1459, House Draft 1.

The Hawai‘i State Legislature established the Crime Victim Compensation Commission in 1967 as a safety net for violent crime victims. The Commission assists victims of violent crimes with medical costs, counseling costs, lost wages, and funeral and burial expenses not covered by other sources. Many victims would not be able to receive rehabilitation services, counseling services, or bury a loved one without compensation awarded by the Commission.

The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. In January 2021, the Commission and the Council of State Governments released an article titled “*Victim Restitution Matters: Four Lessons from Hawai‘i to Ensure Financial Justice for Crime Victims.*” The Commission is developing a restitution data dashboard that will provide a valuable tool for criminal justice practitioners, leadership, and policy makers to evaluate the impact of efforts to improve restitution collection.

The right of a victim to receive restitution for financial losses suffered as the result of a crime is a core value of our criminal justice system. As noted in Senate Standing Committee Report No. 789, in 1975 Senate Journal #1132, commentary on the Senate's intent in passing HRS section 706-605(1)(e) which authorizes Courts to order restitution:

*"...in the criminal justice system, the victim of crime is almost always neglected. By requiring the convicted person to make restitution and reparation to the victim, justice is served. In so doing, the criminal repays not only "society" but the persons injured in the criminal's act. There is a dual benefit to this concept: the victim is repaid for his loss and the criminal may develop a degree of self-respect and pride in knowing that he or she righted the wrong committed."*

The goal of restitution is to not only repay the victim for their financial losses but to also rehabilitate offenders by requiring them to take responsibility for the consequences of their criminal acts. Restitution has been established as a factor in reducing recidivism amongst juveniles. See e.g. Butts, Jeffrey A. & Snyder, Howard "Restitution and Juvenile Recidivism" *Juvenile Justice Bulletin* (September 1992); Zehr, Howard "Restitution Reduces Recidivism", *Crime and Justice Network Newsletter* (Oct. 1990-March 1991); Ruback, R. Barry "Restitution in Pennsylvania: A Multimethod Investigation" *Final Grant Report Submitted to Pennsylvania Commission on Crime and Delinquency* (August 2002).

While restitution is mandated to be ordered by the courts in adult cases, it is not required to be ordered in juvenile cases, and juvenile crime victims are then left to "fend for themselves" and to absorb the financial losses from the crime.

### **Clarifying the Definition of Victim**

The Commission supports the changes in HB 1459, HD1, to conform the definition of victim in juvenile restitution cases with the definition of victim in adult restitution cases. This change addresses the issues created by a recent opinion that was filed by the Intermediate Court of Appeals ("ICA") on February 28, 2022.

In *In the Interest of DM*, a juvenile victim was stabbed by a juvenile law violator and received substantial assistance from the Commission for medical bills since the juvenile victim did not have medical insurance. Because of this decision, the juvenile law violator was not ordered to repay the Commission and was not held responsible for the physical and financial harm created by his actions.

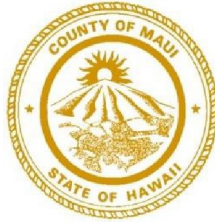
The ICA ruled that the definition of "victim," as used in HRS §571-48(11) and (13), does not include the Commission, even though the Commission is included in the definition of "victim" for purposes of victim restitution in adult cases under HRS §706-646(1)(c),

Thank you for providing the Commission with the opportunity to testify in strong support of mandatory juvenile restitution in House Bill 1459, House Draft 1.

**MICHAEL P. VICTORINO**  
Mayor

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Prosecuting Attorney

**MICHAEL S. KAGAMI**  
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TESTIMONY  
ON  
H.B. 1459 HD1 RELATING TO  
JUVENILE RESTITUTION

March 16, 2022

The Honorable Karl Rhoads  
Chair  
The Honorable Jarrett Keohokalole  
Vice Chair  
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments in support of H.B. 1459 HD1, Relating to Juvenile Restitution.

Currently, courts are required by statute to order restitution in adult offender cases, but are not required to do so in juvenile offender cases. This results in the demoralization or re-victimization of crime victims by denial of benefits intended to compensate them for the injuries they have suffered. It also results in inconsistent penalties for offenders based upon their age at the time of the offense.

Furthermore, a recent Intermediate Court of Appeals of Hawai'i court opinion<sup>1</sup> interpreted HRS §571-48(11) and (13) to exclude support agencies like the Crime Victim Compensation Commission ("CVCC") from receiving restitution payments from juvenile offenders, even if the CVCC has already reimbursed a victim for their expenses relating to the offense. This interpretation reduces the amount of support available for all crime victims.

H.B. 1459 HD1 addresses these inconsistencies by requiring courts to order restitution in appropriate scenarios, regardless of the age of the offender, and by revising the definition of "victim" in HRS §571-48(11) and (13) to be consistent with the definition of "victim" in HRS §706-646(1)(c), which allows restitution payments to be made to agencies like the CVCC. In other words, this bill creates a consistent and fair restitution process for all offenders, regardless of their age, and ensures that an offender makes reparations to their community for the harm that they have caused.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports

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<sup>1</sup>Interest of DM, 150 Hawai'i 402, 502 P.3d 1025 (2022) (mem.)

the passage of H.B. 1459 HD1. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 10:13:27 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Diana Gausepohl-White	Testifying for County of Kauai Victim/Witness Program	Support	Written Testimony Only

Comments:

I strongly support HB1459 HD1. I respectfully ask that your Committee PASS the Bill. Thank you for your time in this matter.

**HB-1459-HD-1**

Submitted on: 3/16/2022 9:00:07 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kupuna for the Mo'opuna	Testifying for Kupuna for the Mo'opuna	Oppose	Written Testimony Only

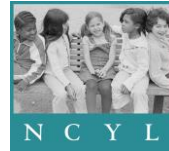
Comments:

We are **OPPOSED** to HB 1459 HD1.

Please allow the Family Court to retain the flexibility of beneficial options for all when considering juvenile cases.

Mahalo.





**THE HONORABLE KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY  
Thirty-First State Legislature  
Regular Session of 2022  
State of Hawai'i**

March 17, 2022

**RE: H.B. No. 1459: RELATING TO JUVENILE RESTITUTION**

Dear Chair Roads, Vice-Chair Keohokalole, and Members of the Committee:

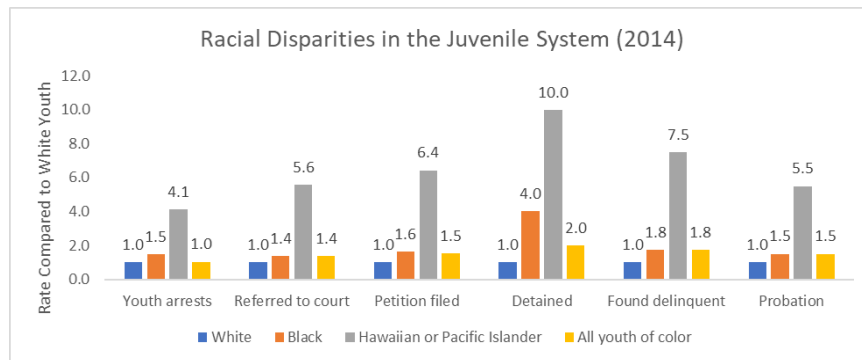
Juvenile Law Center,<sup>1</sup> the Policy Advocacy Clinic at Berkeley Law,<sup>2</sup> and the National Center for Youth Law<sup>3</sup> submit the following testimony to express our concerns with H.B. No 1459.

Mandatory juvenile restitution would result in high harm to youth and their families and minimal gains for victims. Furthermore, it would make Hawai'i an outlier among other states, only 11 of which have imposed mandatory juvenile restitution policies.<sup>4</sup>

**Restitution is unaffordable for the youth and families who make up Hawai'i's juvenile legal system.**

The vast majority of youth have little to no income, assets, or money of their own, rendering mandatory restitution for youth impracticable. Some youth in the juvenile system are not old enough to work at all, or at least cannot work full time under federal law.<sup>5</sup> Most are also of compulsory school age.<sup>6</sup> Youth living in poverty who are old enough to work tend to face even greater difficulties than their peers in finding employment. According to a report from the Center for Labor Market Studies at Northeastern University, only 21% of teenagers from low-income families worked at all, while 38% of wealthier teens had jobs.<sup>7</sup>

Therefore, the de facto burden of restitution falls largely on the families of youth. Because Native Hawaiian and indigenous youth from the Micronesian Islands are disproportionately represented in the juvenile legal system, this burden tends to fall more heavily on those families.<sup>8</sup> Youth from these communities are 4.1 times more likely to be arrested, 5.6 times more likely to be referred to court, 10 times more likely to be detained, and 7.5 times more likely to be found delinquent than White youth.<sup>9</sup>



Native Hawaiian youth are also more likely to live in low-income households with parents who cannot afford their restitution bill.<sup>10</sup> Native Hawaiians face the lowest median income of all major ethnic groups throughout the state.<sup>11</sup> Outside of these major ethnic groups, a 2018 report found that the Marshallese community had the lowest per capita income, although it is important to note these data left out thousands from other Micronesian Islands, such as Chuuk and Kosrae.<sup>12</sup>

With Native Hawaiian and indigenous youth from the Micronesian Islands both more likely to be impacted by the juvenile system and poverty, youth restitution creates a perfect storm of monetary extraction from families least likely to be able to afford it.

**Debt incurred by restitution undermines rehabilitation, increases recidivism, and leaves psychological scars.**

Restitution orders force families to choose between paying for necessities and paying the court, leading to increased recidivism and straining relationships between system-involved youth and their parents and siblings.<sup>13</sup>

Not only does mandatory restitution undermine Hawai'i's decades-long commitment to rehabilitating youth who enter the juvenile system, evidence shows it increases recidivism. An empirical study on the effect of fines, fees, and restitution in Pennsylvania found that youth, specifically youth of color, who had restitution imposed on them had a significantly higher likelihood of recidivism, even when controlling for demographics and case characteristics.<sup>14</sup> As the amount of costs increased, so did the youth's chances of recidivism.<sup>15</sup> In fact, research shows that youth who are ordered to pay restitution as juveniles are still making payments on that debt well into adulthood.<sup>16</sup>

During the course of our research in Hawai'i, we have spoken with various stakeholders on the Islands who are concerned with restitution's long-lasting effects on youth into adulthood. We have learned that youth who cannot pay restitution are haunted by their outstanding balance indefinitely. They are saddled with compliance hearings into adulthood and missing these hearings can lead to bench warrants and further incarceration. Under a mandatory restitution scheme, even more youth who cannot afford their restitution payments are likely to be funneled into the adult system.

Research from the continent finds youth who have restitution imposed are more likely to be adjudicated for a new offense than youth that do not.<sup>17</sup> They also face longer juvenile court involvement and more punishment— whether because they fail to meet the terms of diversion programs, violate probation, or are detained due to nonpayment.<sup>18</sup> In some cases, unpaid restitution can prevent youth from expunging their record, creating long-term barriers to housing and employment.<sup>19</sup> It can also lead to long-term financial issues, such as the imposition of extra costs, fees, and interest, as well as the conversion of such debt into civil judgments which can be enforced through bank levies, wage garnishment, and tax refund intercepts.<sup>20</sup>

Restitution harms not only youth, but their families' financial and psychological well-being.<sup>21</sup> Parents may take on extra jobs and loans or sell their possessions to pay off restitution, sinking them further into poverty and emotional distress.<sup>22</sup> High restitution can even prompt parents to give up custody of their children who are saddled with high court debts, tearing apart families and leaving lasting psychological scars.<sup>23</sup>

## **Because most youth are unable to afford restitution, victims are unlikely to be made whole.**

Despite a narrative that simply cracking down on restitution payments will yield more payments, people owed juvenile restitution rarely get the funds they need, when they need them. Not only is restitution unaffordable for the vast majority of families with youth in the system, but restitution orders can take months or years to fully disburse.<sup>24</sup> There is evidence in several states that courts and localities often spend more money trying to collect fees, fines, and restitution than they receive.<sup>25</sup>

Although restitution is often framed as an individual compensating another individual for harm done, this is not always the case. The definition of “victim” in Hawai‘i includes not only individuals who have been harmed but also business entities, trusts, and governmental entities.<sup>26</sup> Even in cases where individual victims receive some meaningful compensation through restitution, it may not be what they want or need to feel whole after a traumatic event. Many victims, when given a choice, seek out symbolic reparations or a service for the justice-involved youth, rather than monetary restitution.<sup>27</sup> For some victims, receiving a check in the mail for a few dollars every month can actually retrigger the trauma of the event and add insult to injury that their harm is compensable through small change.<sup>28</sup> Although it is of vital importance that victims feel safe from future harm and are supported in the future, driving youth into debt accomplishes neither of these goals.

If the state truly wants to ensure people are appropriately compensated for the harm they experienced, then it cannot rely on youth who have little to no income. There is no guarantee youth will be able to pay and, in the meantime, none of the parties receive any support. The state should look to more equitable and sustainable sources of funding, such as the general fund, to support compensation for harm or injury endured by victims, rather than rely on extracting what little money youth and their families, particularly low-income families and families of color, have.

## **There are more effective, equitable, and sustainable mechanisms for making victims whole.**

This bill runs counter to Hawai‘i’s trailblazing efforts to become a model of restorative justice practices for youth. Over the past several decades, Hawai‘i has taken meaningful steps toward reducing youth incarceration and reforming the juvenile system.<sup>29</sup> In 2021, the Kawaiiloa Youth & Family Wellness Center won a Kellogg Grant to overhaul juvenile incarceration in Hawai‘i.

Restorative justice practices have long been a part of Native Hawaiian practices and indigenous systems of justice. These restorative models acknowledge that both parties are experiencing harm and that acknowledgement of shared pain is necessary for youth and their families to heal and move forward.<sup>30</sup> Through varying degrees of involvement of stakeholders, restorative justice not only gives the victim the opportunity to address and share the harm they experienced, but it also gives an opportunity for the youth who caused harm to reflect on their actions and make amends.<sup>31</sup> Rather than making amends to society at large, restorative justice models focus on the parties directly involved in an incident and healing their collective pain.<sup>32</sup> Money cannot repair relationships or heal trauma, and relying on that alone can drive youth into a cycle of recidivism.

Although community service is often a method of unchecked labor extraction on the continent, Native Hawaiians’ connection to the ‘āina means that culturally sensitive community service programs offer a unique opportunity for youth to reconnect with their heritage.<sup>33</sup> If care is taken to avoid the pitfalls of community service such as assigning full-time hours and making

youth travel long distances to their community service site, community service could be an alternative to restitution that would lower the chances of recidivism and increase youth's connection to their culture and community.

### **Hawai'i would be an outlier amidst state and national momentum toward Debt Free Justice.**

By making restitution mandatory, H.B. 1459 would position Hawai'i as an outlier nationally. Only 11 other states impose mandatory restitution upon youth.<sup>34</sup> Additionally, most states are moving towards a more flexible restitution approach for youth or even considering eliminating it all together in favor of a more restorative justice model.<sup>35</sup>

National associations, such as the National Juvenile Defender Center (NJDC), have emphasized the importance of judicial discretion in alleviating harm and preventing recidivism.<sup>36</sup> Furthermore, the National Council of Juvenile and Family Court Judges (NCJFCJ) supports giving youth the option to pay restitution through meaningful community service.<sup>37</sup> Judicial discretion is particularly important in Hawai'i to account for the unique cultural needs of Native Hawaiian youth. The judiciary should be able to consider other more culturally sensitive and restorative mechanisms that can make victims whole.

### **Imposing mandatory restitution on youth is an overly punitive policy that runs counter to Hawai'i's dedication to holistic and culturally informed youth rehabilitation practices in every way.**

Thank you for the opportunity to express our concerns on this measure.

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<sup>1</sup> Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the foster care and justice systems.

<sup>2</sup> The Policy Advocacy Clinic at Berkeley Law pursues non-litigation strategies to address systemic racial, economic, and social injustice.

<sup>3</sup> The National Center for Youth Law is a non-profit law firm that helps low-income children achieve their potential by transforming the public agencies that serve them. NCYL leads high impact campaigns that weave together litigation, research, public awareness, policy development, and technical assistance.

<sup>4</sup> Juvenile Law Center, Debtor's Prison for Kids, <https://debtorsprison.jlc.org/#/map>.

<sup>5</sup> The Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural work. 29 C.F.R. § 570.2 (2012); *see also* U.S. Dept. Labor, Fact Sheet # 43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations (2016), <https://www.dol.gov/whd/regs/compliance/whdfs43.pdf>.

<sup>6</sup> *See* National Center for Education Statistics; Table 5.1: Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State (2017), [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp).

<sup>7</sup> "The Dismal State of the Nation's Teen Summer Job Market, 2008- 2012, and The Employment Outlook for the Summer of 2013," 4 (2013), <http://hdl.handle.net/2047/D20208995>.

<sup>8</sup> *United States of Disparities: National Map: Hawaii*, Burns Institute. (2014). <https://usdata.burnsinstitute.org/decision-points/12/hawaii#comparison=2&placement=1&racess=2,3,4,5,6&offenses=5,2,8,1,9,11,10&odc=0&dmp=1&dmp-comparison=2&dmp-decisions=2,3,4,6,5,7,10,8,9&dmp-county=-1&dmp-races=1,2,3,4,7,5,6&dmp-year=2014>.

<sup>9</sup> *Id.*

<sup>10</sup> *Demographic, Social, Economic, and Housing Characteristics for Selected Race Groups in Hawaii*. Hawaii Department of Business, Economic Development and Tourism 12 (2018). [https://files.hawaii.gov/dbedt/economic/reports/SelectedRacesCharacteristics\\_HawaiiReport.pdf](https://files.hawaii.gov/dbedt/economic/reports/SelectedRacesCharacteristics_HawaiiReport.pdf).

<sup>11</sup> *Income Inequality and Native Hawaiian Communities in the Wake of the Great Recession: 2005 to 2013*. Office of Hawaiian Affairs Research Division 2 (2014), <https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

<sup>12</sup> Anita Hofschneider. "Hawaii Inequality Study Overlooked Thousands of Micronesians," Honolulu Civil Beat. (2018), <https://www.civilbeat.org/2018/05/hawaii-inequality-study-overlooked-thousands-of-micronesians/>.

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- <sup>13</sup> Berkeley Law Policy Advocacy Clinic, *Making Families Pay* (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.
- <sup>14</sup> Alex Piquero. "Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders." *Youth Violence and Juvenile Justice*, 15(3), 325 (2017).
- <sup>15</sup> *Id.*
- <sup>16</sup> Eli Hager, "Victim restitution payments for childhood crimes often linger into adulthood, analysis finds," *The Washington Post* (June 11, 2019), [https://www.washingtonpost.com/national/victim-restitution-payments-for-childhood-crimes-often-linger-into-adulthood-analysis-finds/2019/06/11/e88de6ca-86de-11e9-a870-b9c411dc4312\\_story.html?noredirect=on](https://www.washingtonpost.com/national/victim-restitution-payments-for-childhood-crimes-often-linger-into-adulthood-analysis-finds/2019/06/11/e88de6ca-86de-11e9-a870-b9c411dc4312_story.html?noredirect=on).
- <sup>17</sup> Alex Piquero. "Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders." *Youth Violence and Juvenile Justice*, 15(3), 325 (2017).
- <sup>18</sup> Lea Parker, "Juvenile Restitution in the Literature," Drexel University (2021).
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> Leslie Paik. "Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI," 19 (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.
- <sup>22</sup> Brief Of Amici Curiae Juvenile Law Center and Forty Other Organizations in Support of Petitioners, 18. Juvenile Law Center. Sep. 11, 2018.
- <sup>23</sup> *Id.*
- <sup>24</sup> Lea Parker, "Juvenile Restitution in the Literature," Drexel University (2021).
- <sup>25</sup> Delaney Green, *Victim Compensation in the Criminal Legal System* 48 (2021) (finding that the median restitution collection rate for adults was 13%); see also Berkeley Law Policy Advocacy Clinic, *Making Families Pay* (2017) (showing that more than 70 percent of all fee revenue pays to collect money from other families).
- <sup>26</sup> Stand. Com. Rep. 784-22 (2022).
- <sup>27</sup> Lea Parker, "Juvenile Restitution in the Literature," Drexel University (2021).
- <sup>28</sup> Marcia Garcia, *Reframing Restitution: Centering the Lived Experiences of Impacted Community Members in Narrative Change* (2021).
- <sup>29</sup> Crime And Justice Institute At CRJ, *Implementing Comprehensive Juvenile Justice System Improvement In Hawaii* (2017).
- <sup>30</sup> Lezlie Kīʻaha, "Thinking Outside the Bars: Using Hawaiian Traditions and Culturally-Based Healing to Eliminate Racial Disparities Within Hawaiʻi's Criminal Justice System," *ASIAN-PACIFIC LAW & POLICY JOURNAL* 16. (2016).
- <sup>31</sup> *Id.* at 19-22.
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.* at 22-24.
- <sup>34</sup> Juvenile Law Center, *Debtor's Prison for Kids*, <https://debtorsprison.jlc.org/#!/map>.
- <sup>35</sup> King County Prosecuting Attorney (Washington), *Choose 180 Youth Program*, <https://kingcounty.gov/depts/prosecutor/youth-programs/choose-180.aspx> (describing program that offers pre-adjudication diversion program for youth and restitution fund to support victim compensation that is not dependent on youth payments); Philadelphia District Attorney's Office, *Juvenile Justice Policy*, <https://medium.com/philadelphia-justice/philadelphia-daos-juvenile-justice-policy-9c819fa6e0d3> (describing pilot program that pays off youth restitution orders with minimal eligibility and participation requirements); San Francisco County District Attorney's Office, *AFTER Program Brochure* (on file with authors) (describing community fund that pays for harm or injury caused by young people and alternative programs for youth to participate in).
- <sup>36</sup> *Ensuring Young People Are Not Criminalized for Poverty: Bail, Fees, Fines, Costs, and Restitution in Juvenile Court*. NATIONAL JUVENILE DEFENDER CENTER. [https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card\\_Final.pdf](https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf).
- <sup>37</sup> *Resolution Addressing Fines, Fees, and Costs in Juvenile Courts*. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES. [https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII\\_FinesFeesCosts\\_Resolution.pdf](https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII_FinesFeesCosts_Resolution.pdf).

**LATE**



OFFICE OF HAWAIIAN AFFAIRS

‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai

**HB1459, HD1**  
**RELATING TO MANDATING MONETARY RESTITUTION FOR JUVENILES**  
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo  
Senate Committee on Judiciary

Malaki 17, 2022

9:35 a.m.

Hālāwai Keleka‘a‘ike / Lumi 016

The Office of Hawaiian Affairs (OHA) **OPPOSES HB1459, HD1** which mandates monetary restitution for juveniles. This bill takes away the discretion of family court judges to evaluate the entirety of a case and to determine what is best for a juvenile’s rehabilitation.

OHA supports a judge’s discretion to sentence youth to restitution or community service, as opposed to mandating monetary restitution for juveniles. If a juvenile offense is determined to be a violent offense, judges may waive the case to adult court and the youth will be tried as an adult. Monetary restitution can be granted in adult court cases. Otherwise, a judge has the discretion to sentence youth to restitution or community service. The current system provides an opportunity for family court judges to meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense.

OHA is concerned that HB1459, HD1 will have significant effect on Native Hawaiian children because over one-third of adjudicated juveniles were Native Hawaiian in 2017.<sup>1</sup> There was also a total of 1,179 juvenile adjudications in 2017 with property and status offenses making up the majority of cases, 338 and 337 respectively.<sup>2</sup> HB1459, HD1 may mandate juveniles to pay monetary restitution for some property offenses, because the bill creates a new definition of “victim” to include not only individuals who have been harmed, but also business entities, trusts, government entities, and possibly medical insurers. We ask the Committee to provide clarity on which offenses would require mandatory monetary restitution for juveniles under HB1459, HD1.

OHA is concerned with any additional burdens upon Native Hawaiian households. Youth often have little to no income, assets, or money of their own and are not old enough to work, or at least cannot work full time under federal law. So, paying monetary restitution becomes the responsibility of their ‘ohana. In 2018, 54% of Native Hawaiian

<sup>1</sup> Juvenile Justice System Crime Analysis State of Hawaii Fiscal Year 2015-2017. Meripa T. Godinet and the Aloha Data under contract of Hawaii Office of Youth Services. 2020. <https://ag.hawaii.gov/cpja/files/2020/09/Juvenile-Justice-System-Crime-Analysis-State-of-Hawaii-FY-2015-2017.pdf>

<sup>2</sup> Juvenile Justice System Crime Analysis State of Hawaii Fiscal Year 2015-2017. Godinet and Aloha Data.

households lived below the ALICE (Asset Limited, Income Constrained, Employed) threshold, compared to 42% of total households in Hawai'i.<sup>3</sup> A study in California found that restitution orders force families to choose between paying for necessities and paying the court, leading to increased recidivism, and straining relationships between justice-involved youth and their families.<sup>4</sup>

HB1459, HD1 would also make Hawai'i an outlier among other states. Only 11 states have imposed mandatory juvenile restitution policies,<sup>5</sup> and many are moving towards a more flexible approach for youth or eliminating restitution all together.<sup>6</sup> National organizations, such as the National Juvenile Defender Center (NJDC) and the National Council of Juvenile and Family Court Judges (NCJFCJ), have emphasized the importance of judicial discretion in alleviating harm and preventing recidivism.<sup>7</sup>

Our juvenile justice system should be one of rehabilitation and healing. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families. They can account for the unique needs of indigenous children and the 'ohana who care for them. Yet, HB1459, HD1 will undermine the benefits of family court discretion during juvenile sentencing.

The Office of Hawaiian Affairs urges the Committee members to **DEFER or VOTE NO on HB1459, HD1**. Mahalo piha for the opportunity to testify on this measure.

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<sup>3</sup> ALICE in Hawai'i: a Financial Hardship. Unity Way. 2020. <https://www.unitedforalice.org/state-overview/hawaii>

<sup>4</sup> Making Families Pay. Berkeley Law Policy Advocacy Clinic. (2017). <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>

<sup>5</sup> Juvenile Law Center, Debtor's Prisons for Kids, <https://debtorsprison.jlc.org/#!/map>.

<sup>6</sup> King County Prosecuting Attorney (Washington), Choose 180 Youth Program, <https://kingcounty.gov/depts/prosecutor/youth-programs/choose-180.aspx> (describing program that offers pre-adjudication diversion program for youth and restitution fund to support victim compensation that is not dependent on youth payments); Philadelphia District Attorney's Office, Juvenile Justice Policy, <https://medium.com/philadelphia-justice/philadelphia-daos-juvenile-justice-policy-9c819fa6e0d3> (describing pilot program that pays off youth restitution orders with minimal eligibility and participation requirements); San Francisco County District Attorney's Office, AFTER Program Brochure (on file with authors) (describing community fund that pays for harm or injury caused by young people and alternative programs for youth to participate in).

<sup>7</sup> Ensuring Young People Are Not Criminalized for Poverty: Bail, Fees, Fines, Costs, and Restitution in Juvenile Court. NATIONAL JUVENILE DEFENDER CENTER. [https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card\\_Final.pdf](https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf); Resolution Addressing Fines, Fees, and Costs in Juvenile Courts. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES. [https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII\\_FinesFeesCosts\\_Resolution.pdf](https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII_FinesFeesCosts_Resolution.pdf).



**LATE**

Hawaii Foodservice Alliance LLC, 2720 Waiwai Loop, Honolulu, HI 96819  
Tel: 808.839.2004 ~ Fax: 808.839.2033 ~ [HFA@HFAHawaii.com](mailto:HFA@HFAHawaii.com)

March 14, 2022,

TO: Committee on Judiciary  
Chair Karl Rhoads / Vice Chair Jarrett Keohokalole

FROM: Chad Buck  
CEO  
Hawaii Foodservice Alliance LLC

RE: **OPPOSITION to HB1459 HD1**

**As one of Hawaii's largest employers of the formerly incarcerated, I am writing to testify in OPPOSITION to HB1459 HD1.**

For the past two decades, I have hired and worked with men and women who were formerly incarcerated. In nearly every case, I have seen the same story, the same pattern that always - always begins in childhood with limited resources and challenges at home including food insecurity. Most have grown up in low-income families, with grandparents or aunty and uncle as their caregivers. and about one-third are Native Hawaiian.

Adding on financial penalties to an already challenged situation will do more harm than good. **Our troubled youth need support, care, and direction. Those providing care and a home for our troubled youth need resources, not penalties. Penalties will only create bigger problems for all of us to deal with later.**

I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges.

Mahalo for your time.  
Thank you.

Chad Buck  
Hawaii Foodservice Alliance LLC



## TESTIMONY IN OPPOSITION TO HB 1459, HD 1

TO: Chair Rhoads, Vice-Chair Keohokalole, & Judiciary Committee Members

FROM: Nikos Leverenz  
Grants & Advancement Manager

DATE: March 17, 2022 (9:35 AM)

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Hawai'i Health & Harm Reduction Center (HHRC) **opposes** HB 1459, HD 1, which would mandate victim restitution in juvenile cases.

We share the Office of the Public Defender's concern that this bill moves away from the core principle of the Family Court to "foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce juvenile delinquency" as articulated in HRS Section 571-1. The Public Defender notes how this bill would make juvenile restitution more punitive than adult restitution to the extent that collections would not be able to be enforced in civil court.

This bill would also place Hawai'i among the small minority of 11 states that have mandatory juvenile restitution policies, with others moving toward greater judicial flexibility or eliminating restitution entirely. Many under-resourced families will bear the burden of the restitution provided for under this bill, straining familial relationships that are already beset by a range of challenges.

Just last year [the Legislature declared structural racism a public health crisis via HCR 112](#). The current structure and operation of this state's criminal legal system exemplifies this inequity. Since the territorial era the criminal legal system has subjected Native Hawaiians to excessive levels of surveillance, criminalization, incarceration, and post-release supervision. [Hawai'i leads the nation in the criminalization of schoolchildren](#), with Native Hawaiians comprising a plurality of those arrested. [Native Hawaiians remain subject to inequitable enforcement of Hawai'i's drug laws at every stage of the process](#), including arrest, prosecution, sentencing, incarceration, and post-release supervision. Native Hawaiians comprise a significant portion of the state's probation system, which has the [highest average term in the nation](#) (59 months).

In short, this measure perpetuates and deepens the structural inequities currently faced by Native Hawaiian, Pasifika, and Black families and should be deferred.

Pursuant to the ABA’s Criminal Justice Standards, prosecutors “[should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action.](#)”

We hope that future legislation, whatever its source, will ameliorate lasting structural inequities in the state’s criminal legal system that worsen the health and well-being of Hawai’i’s under-resourced families. This includes the reform of overly punitive sentencing laws and probation practices.

HHRC’s mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai’i and the Pacific. We work 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. Many of our clients and participants have been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Mahalo for the opportunity to provide testimony.

# COMMUNITY ALLIANCE ON PRISONS

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

**LATE**



## **APOLOGIES FOR VERY LATE TESTIMONY**

### **COMMITTEE ON JUDICIARY**

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Thursday, March 17, 2022

9:35 AM

### **OPPOSITION TO HB 1459 HD1 - JUVENILE RESTITUTION**

Aloha Chair Rhoads, Vice Chair Keohokalole 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 HD1 of the more than 4,008 Hawai'i individuals living behind bars<sup>1</sup> under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 1,110 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.

Community Alliance on Prisons is grateful for this opportunity to express our OPPOSITION to HB 1459 HD1. There is a reason that juvenile offenses are in Family Court and are NOT in the criminal courts - these are offenses committed by children.

This bill does not acknowledge the great strides that Hawai'i has made in juvenile justice. We once had more than 100 children at the Hawai'i Youth Correctional Center and the population now is around 20 individuals.

Why would we assess restitution on youth, who we know do not have the resources? Unlike the penal code statute, the family court restitution statute is permissive or discretionary and does not mandate an order for restitution in every case in which restitution is requested. This bill seems like an over-reach. Only 11 states have juvenile restitution policies and many are moving towards a more flexible approach or are abandoning restitution all together.

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<sup>1</sup> Department of Public Safety, Weekly Population Report, March 7, 2022.

<https://dps.hawaii.gov/wp-content/uploads/2022/03/Pop-Reports-Weekly-2022-03-97.pdf>

Last session this legislature focused on racial justice and the disproportionate representation of Kanaka Maoli in the justice system. This bill is a big step back from that recognition. Decades of reports have shown that Hawaiians are over-represented, over-criminalized, and over-punished more than others.

In general, people of color are over-represented in the juvenile and adult ‘justice’ systems.

It is upsetting to hear adults call youthful wrongdoers “criminals” - a sobriquet - a stigma - that a child will never forget. Community Alliance on Prisons knows many adults who were youthful lawbreakers, spent time in HYCF and then ‘graduated’ to the adult system.

On page 9, lines 9-13, (11) The court ~~may~~ shall order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim as defined in section 706 – 646(1) who suffers loss as a result of the child’s action, ~~or to render community service;~~

What are we doing?

Unlike the penal code statute, the family court restitution statute is permissive or discretionary and does not mandate an order for restitution in every case in which restitution is requested. To make restitution mandatory and to delete community service is outrageous‘ Why are using Chapter 706 in the criminal code for youth?

Why is Hawai`i so tied to punishment? We have experienced more than 100 years of punishment - when will we acknowledge that this experiment has failed?

We believe in accountability - and there are many ways that youth can be held accountable for anti-social behavior - just being ‘tough’ ignores the opportunity to use the incident as a teachable moment.

Community Alliance on Prisons respectfully asks the committee to defer HB 1459 HD1 that counters all the good work the legislature has done and is doing to help families.

**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 3:04:47 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Oppose	Written Testimony Only

Comments:

Hawai'i Friends of Restorative Justice (HFRJ) opposes this bill for mandatory juvenile restitution, which would create more of the social harms that bring youth into the criminal legal system. Most youth who end up in the system come from financially impoverished families (see: [Delinquent by Reason of Poverty](#)). This proposed law would create debt for youth that are already suffering from poverty. It would cause more harm for our community by [generating more inequity](#) and barriers for juveniles to mature into responsible adults. I had a financially struggling single parent and [was a delinquent youth](#) who become a responsible adult. If I'd had to pay restitution, it would have lessened the likelihood that I would have become a preschool teacher by age 19, gone to college, and become a law-abiding adult citizen.

Judges should have the discretion to decide if a juvenile can afford and should pay restitution. Further, not all victims want restitution, and [HRS 577-3](#) already makes parents liable for the torts of their children.

Finally, if we want juveniles to learn from their misbehavior, and if we want to empower victims to decide what they need to address any damages, we should offer restorative justice (RJ). In 2000, HFRJ piloted a successful [juvenile diversion program in Honolulu](#). RJ was provided to over 100 youth who voluntarily met with those who were affected by their misbehavior in a diversion program. Small groups decided how the individual youth could repair the harm. The RJ process enabled the youth and those harmed to exercise their personal agency and learn from meeting with each other. Only eight people who suffered economical damage due to the youths' behavior wanted restitution, and all but one paid the restitution. This rate of payment was significantly greater than what family judges' orders normally resulted in, and what would have been collected if restitution was statutorily mandated.

Please vote against this measure that will only create more injustice and harm for our community. Please contact me, Lorenn Walker, JD, MPH, [lorenn@hawaiifriends.org](mailto:lorenn@hawaiifriends.org) for more information about our opposition to this bill.



Mothers Against Drunk Driving  
MADD Hawaii  
madd.org/hawaii

MADD Hawaii  
745 Fort Street, Suite 303  
Honolulu, HI 96813

808-532-6232  
877.ASK.MADD  
877.MADD.HELP Victim Support

**LATE**

To: Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair  
Members of the Senate Committee on Judiciary

From: Theresa Paulette  
Mothers Against Drunk Driving Hawaii (MADD)  
Victim Services Specialist & Program Manager

Date: March 17, 2022, 9:35 a.m.

Re: HB 1459, HD 1 Relating to Juvenile Restitution

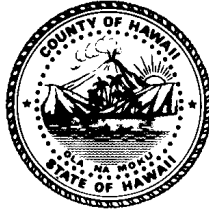
Good Morning Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary. Thank you for providing MADD the opportunity to provide testimony today. MADD strongly supports passage of HB 1459, HD 1.

This bill places the victims of juvenile law violators on the same level as those victimized by an adult offender. Courts assess every offender's ability to pay restitution to the victim before specifying a monthly payment for that individual. Courts are also able to order the parents of a juvenile violator to pay the restitution, if and when the court finds it appropriate.

Victims of crime seek justice and view restitution not only as reparation but accountability by the offender. Offenders may also develop a sense of self-respect and pride in knowing that he or she righted the wrong they committed.

Thank you for the opportunity for MADD to testify in strong support of HB 1459, HD 1.

REBECCA VILLEGAS  
Council Member  
District 7, Central Kona



PHONE: (808) 323-4267  
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## HAWAI'I COUNTY COUNCIL

*West Hawai'i Civic Center, Bldg. A  
74-5044 Ane Keohokalole Hwy.  
Kailua-Kona, Hawai'i 96740*

March 16, 2022

TESTIMONY OF REBECCA VILLEGAS  
COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL  
ON HB 1459 HD1, RELATING TO JUVENILE RESTITUTION  
Committee on Judiciary  
Thursday, March 17, 2022 9:30a.m.

Aloha Chair Rhoads, and Members of the Committee:

I thank you for the opportunity to OPPOSE HB 1459 HD1. My testimony is submitted in my individual capacity as a member of the Hawai'i County Council and Chair of the Hawai'i County Council Climate Resilience and Natural Resource Management Committee.

I do not agree with the changes this measure will make to the Hawaii Revised Statutes Section 571-48. I do not believe that when a child is found by the court to come within section 571-11, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction over the child.

For the reasons above I urge the Committee on Judiciary to OPPOSE this measure. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

A handwritten signature in black ink, appearing to read 'Rebecca Villegas'.

Rebecca Villegas  
Council Member, Hawai'i County Council

**HB-1459-HD-1**

Submitted on: 3/16/2022 8:32:30 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Benton Kealii Pang, Ph.D.	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to HB1459 HD1 because mandatory restitution disproportionately punishes youth from low-income families.

Do not pass HB1459 HD1.

Sincerely,

Benton Kealii Pang, Ph.D.



**HB-1459-HD-1**

Submitted on: 3/15/2022 6:20:46 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Tadia Rice	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

Tadia Rice

**HB-1459-HD-1**

Submitted on: 3/15/2022 6:23:55 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cathryn Kelley Smith	Individual	Oppose	Written Testimony Only

Comments:

This is racist and cruel bill. Period.

**HB-1459-HD-1**

Submitted on: 3/15/2022 6:48:10 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Erik Meade	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in OPPOSITION to HB1459 HD1. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I am distressed that this "tough on crime" bill which indiscriminately targets the poor has been brought up. Shame!

I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time,  
Erik Meade

**HB-1459-HD-1**

Submitted on: 3/15/2022 7:30:06 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Deborah Umiamaka	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose HB1459.

Sincerely, Deborah Umiamaka.

**HB-1459-HD-1**

Submitted on: 3/15/2022 7:34:17 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Jebson Quartero	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

**HB-1459-HD-1**

Submitted on: 3/15/2022 7:52:33 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Lee Curran	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and Judiciary Committee Members,

My name is Lee Curran and I am testifying as an individual who is a co-facilitator of the Transformative Justice Task Force which is part of Faith Action for Community Equity, (FACE) I am testifying in **STRONG OPPOSITION** to HB1459 HD1 that mandates monetary restitution in juvenile sentencing. **This is an abomination of a bill, an affront against humanity and I'm mortified that it is even getting a hearing.**

I first heard about this bill at the same hearing I attended for cash bail reform. Afterwards, I added it to my measure tracking list and unfortunately it shows up right underneath the cash bail bill. I am in disbelief that this bill is getting a hearing; a bill that compounds punishment upon punishment and is grounded in retribution while cash bail reform grounded in upholding the humanity and dignity of our community, friends and family members is languishing without a hearing.

What have we been reduced to as a society? All the widely accepted brain research shows that the juvenile brain isn't always capable of making rational executive decisions until individuals are in their 20s. Neurobiologically speaking, the adolescent brain is poised for impulsivity and thrill seeking. We know this and yet.... we are going to hold juveniles accountable for monetary restitution? It makes absolutely no sense.

This bill strips away the discretion of family court judges who see the whole picture by working with caregivers, social workers, prosecutors, and youth to find solutions. Currently the juvenile criminal system allows family court judges to have discretion to order solutions to best teach youth responsibility. It isn't letting them off the hook as some might believe; it is responding with care and compassion while holding them accountable. These are not mutually exclusive actions and are appropriate with regard to brain development.

In addition to recognizing the neurobiology, we need to recognize the intergenerational trauma to Kanaka Maoli youth from decades of colonialism. Kanaka Maoli youth comprise far more adjudicated juveniles than their proportion of the whole juvenile population. It is our moral obligation and responsibility to address the trauma perpetuated and showing up across the spectrum of the criminal legal system in Hawai'i.

Please **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes to address the science of brain development in juveniles while addressing the intergenerational trauma in Kanaka Maoli youth.

Thank you for the opportunity to testify on this abominable bill.

Lee Curran, Makaha

**HB-1459-HD-1**

Submitted on: 3/15/2022 7:59:44 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Steven Thomas	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose as this law would exacerbate money problems for financially challenged families. Juveniles rarely have means to pay restitution without turning to their families. This law would punish families as opposed to rehabilitating a wayward child.



**HB-1459-HD-1**

Submitted on: 3/15/2022 8:23:00 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jesika H.	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in OPPOSITION to HB1459 HD1. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

**HB-1459-HD-1**

Submitted on: 3/15/2022 8:51:50 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Johanna Stone	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou e nā hoa ʻē,

Why would we mandate something like this? How would mandatory monetary restitution in juvenile sentencing help anything? Crime comes from POVERTY. We must address POVERTY to address CRIME. Further fining an already IMPOVERISHED individual and family will only make things WORSE. This is common sense! We must be HELPING our people who are impoverished by providing them with resources for basic needs! We must be giving the most, to those we have the least. We must be working with caregivers, social workers, prosecutors, and youth to find solutions.

Family court judges currently have discretion to order solutions to best teach youth their responsibility. Mandatory restitution disproportionately punishes youth from low-income families. Caregivers who are often their ‘ohana may be ordered to pay restitution. In 2017, approximately one-third of adjudicated juveniles were Hawaiian. This disproportionately affects our people. We are overrepresented in poverty situations. We must be GIVING our people RESOURCES to meet their basic needs. For these reasons stated above, I oppose this bill.

Fulfill your duty to our people.

me ke aloha nui

johanna k stone

**HB-1459-HD-1**

Submitted on: 3/15/2022 9:11:59 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Maddux	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in OPPOSITION to HB1459 HD1. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

Mike Maddux

Hawi

**HB-1459-HD-1**

Submitted on: 3/15/2022 9:13:50 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Malu	Individual	Oppose	Written Testimony Only

Comments:

Aloha All,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

We need to be courageous and take a deeper look at the broken systems and lack of resources for juveniles that find themselves in trouble. Most of these juvenile delinquents suffer from some sort of mental and/or physical trauma,, neglect, or abuse prior to the offenses they cause. You do not see a mentally stable teen causing such trouble. What supports do these children have when they are acting out for help? Our kids need to be the priority and not moved down to the bottom of the list behind paperwork or lack of funding. Kids are dying because there are no caseworkers. How does that sit with you? When are we going to be proactive versus reactive? How many more kids do we need to lose before we start making their health, care, and future a priority?

Back to restitution, who is going to foot the bill? How will these families be able to pay? A lot of these teens come from low-income families who are on a fixed income and either will not be able to pay or will be buried in debt. What will happen if they can't pay? More penalties? How will this help and rehabilitate our kids? We need to start from the beginning with accessible resources and support for kids to help deter behavior that ends them up in jail. Let's change the narrative and start helping our kids especially the ones who can't help themselves. We can do better than this.

Thank you for your time.

**HB-1459-HD-1**

Submitted on: 3/15/2022 9:27:10 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Evelyn Hascall	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

Evvelyn Hascall

**HB-1459-HD-1**

Submitted on: 3/15/2022 10:01:44 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Iolani Kuoha	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunt and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

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I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

'Iolani Kuoha

**HB-1459-HD-1**

Submitted on: 3/15/2022 9:58:03 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Bobi Olmos Arnold	Individual	Oppose	Written Testimony Only

Comments:

NO to forced restitution for juvenile offenders. Asking for restitution from a young person, most likely unemployed or possibly making less than minimum wage if working is unconscionable. Many adults grown and employed can't make restitution as ordered by the courts, how can a youngster be ordered to come up with money they don't have and family must not be held accountable for such monies deemed owed due to legal process that will penalize and punish rather than provide meaningful restitution? Family Court works with juveniles and families ensuring such penalties won't criminalize children even further than they are being hurt already. America has turned incarceration and punishment into problem solving techniques but this action is totally flawed. Hawaiian style, make the punishment fit the crime. Graffiti? Scrub the walls. Stealing? Work in the store, wash the cars, stock the shelves. This provides avenues towards meaningful mentorships, adult examples of honesty, professionalism, friendly caring encounters. A morality of grace, saved even we the uneducated, jobless, without family support, drug addiction, homeless, just one caring judge, Casa, mentor, just one can turn a life around ending another spiraling child from hopelessness. I was a hungry, penniless homeless child way back, please don't forget hurt people hurt people.

**HB-1459-HD-1**

Submitted on: 3/15/2022 10:02:45 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Robert Ripp	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to this bill.

This bill places an undue bureden on families.

It is not going to prevent crime.

Please do not dictate blanket pusihments; leave discretion to Family Court.

thank you very much



**HB-1459-HD-1**

Submitted on: 3/16/2022 12:24:48 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jennifer Azuma Chrupaluk	Individual	Oppose	Written Testimony Only

Comments:

No. You are double-clutching families with is a violation to human rights and is morally unethical.

First of all, if you can legally do this without committing a human rights violation, you need to make sure that parents are *not* legally responsible for juveniles under the age of 18, and that is not possible. Second of all, kids who come from money are generally not the majority in detention. From 30 years of experience working directly with youth advocacy, starting from within an urban detention center, it has been my experience that juvenile delinquency is a negative nonverbal response to the injustices that are happening to the juvenile in their life.

Secondly, the patronizing response that professionals give to the youth is mechanical and the youth see right through it. They already know that nobody cares and that adults are doing more destruction than good for their future. This proposal has absolutely no support and should go back to the trash can that it came from. You are deliberately robbing our adolescents of the little bit of hope they might have left, after you make the cost of living so expensive that 80% of our children and youth come from at-risk families. The DOE is crappy at best, and you have politics and the administration itself to blame for it. Parents are constantly at wits end, trying to maintain a stable home. Real estate markets across Hawai'i just increased 25% and do you know what that means for every homeowner? More taxes.

What are you doing to help our families? You keep on building out the institutionalization, but you are not building stronger families. You are breaking families down at every angle and that is because the State of Hawai'i is to profit-minded, that the state is more concerned at tourism affairs and quite frankly, your considerations are volatile at best.

If you want people in the state to act better, than perhaps you should invest in your common+unities. Stop making the burden of our families so heavy. You're literally using petty bills like this one to commite genocide << and I meant exactly what I said. Want to save the state a ton of money? Stop spending \$4 million/year on tourism advertisements. People know how to find paradise when they want to travel.

**HB-1459-HD-1**

Submitted on: 3/15/2022 10:51:08 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Oppose	Written Testimony Only

Comments:

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

**HB-1459-HD-1**

Submitted on: 3/16/2022 3:39:28 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Vanessa Lee Miller	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

**HB-1459-HD-1**

Submitted on: 3/16/2022 4:03:36 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gordon B. Lindsey	Individual	Oppose	Written Testimony Only

Comments:

Oppose for varrious reasons

**HB-1459-HD-1**

Submitted on: 3/16/2022 6:52:40 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Kanani Higbee	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I, Kanani Higbee, **strongly oppose** HB 1459 HD1 Relating to Mandatory Monetary Restitution for Juveniles. I am a Maui ‘ōiwi from Lāhainā. I have a background working with youth at a highschool for over ten years, as well as several years working with youth in after school programs and summer and winter break county programs. I am a parent leader and graduated from the first cohort of Parent Leadership Training Institute on Maui. I am finishing my bachelor degree of Social Science as well.

I strongly oppose HB 1459 because I know more than anyone what affect this has on youth. My brothers were part of the school to prison pipeline. They have been in and out of prison all their life. The state of Hawaii failed them every step of the way during their childhood and even before. This HB 1459 would disproportionately harm Native Hawaiians even more since 1/3 of delinquent juveniles are Native Hawaiian. We are already an oppressed group. The state of Hawaii government and state legislators fails in meeting their responsibilities to us.

There are underlying causes of juvenile delinquency that are exacerbated by choices made by the state of Hawaii government and state legislators. Their lack of meeting their responsibilities in honoring the Hawaiian Home Commission Act (HHCA) makes Hawaiian youth susceptible to delinquency. HHCA is an act passed through the U.S. Congress. When Hawaii became a state, they agreed to honor the Act. However, they have failed miserably. The Act is supposed to address the trauma Hawaiians experienced by from being displaced from their lands. They were supposed to get a lot so they can build a home and build generational wealth and have upward mobility and be less susceptible to things like juvenile delinquency, but that's not possible when the state makes sure to not honor it. Tens of thousands of Hawaiians have died on the list of Hawaiian Homes already. 1,000 die annually currently. Their families lose out on a home forever since the corrupt state of Hawaii sells our workforce housing to the highest bidder which are tourists renting to tourists, causing property values to skyrocket. These poor youth are set up for failure! Their parents have to work 2-3 jobs to make ends meet and must neglect their children. So they are susceptible to delinquency. In my community of Lahaina, we have a severe shortage of people who work in youth. It's been very harmful for our youth. They don't have the support they need to succeed.

So many youth fall through the cracks. We have high turnover with School based behavior counselors that would make sure teens don't fall through the cracks. They are only paid \$45,000 a year even though they require a master's degree. They are assigned 500 students to make sure no one falls through the cracks. But one SBBH counselor admitted to me that there are many youth who fall through the cracks because he just cannot get to them all. There is only 1 of him and 500 of them.

Funds need to be shifted to the right places to help these youth. If you look at ACE and PCE scores. These are studies that people who work with youth swear by. It has been proven that the more factors youth have that harm them like incarcerated parent, neglectful parent, etc makes kids more susceptible to things like juvenile delinquency.

It is important to support these youth if you want them to thrive and that's just not happening.

What is the goal here? To have lifelong thriving members of society? Or to have lifelong incarcerated members who make the prison for profit a ton of money? You don't get thriving members of society by oppressing an already oppressed people.

Thank for for taking the time to read this. This is the second time I'm submitting because the website glitches and doesn't allow smooth submissions. Someone needs to look into this. It thwarts attempts from hearing much needed testimony from the public.

With Aloha,

Kanani Higbee

**HB-1459-HD-1**

Submitted on: 3/16/2022 7:03:08 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Serafina Gajate	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

**HB-1459-HD-1**

Submitted on: 3/16/2022 7:32:05 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Benjamin Guerrero	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I oppose this bill. Please consider that judges need to have the best opportunity to work with other support service agencies as possible to get a full picture of the youth and his situation, in order to be able to turn a youth's life around, when possible, before they go on the path to incarceration. Once on this path, it's an uphill battle for a youth to have a normal life because doors will have closed, sometime permanently.

Please find ways to financially support Native Hawaiian and other low income families to help pay or defer payments based on the families current financial situation. If these families are forced to pay restitution, it may have a multitude of additional negative impacts and possibly hinder the youth from turning their life around, and will only exacerbate an already difficult situation.

Mahalo



**HB-1459-HD-1**

Submitted on: 3/16/2022 7:46:05 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Matthew K. Ing	Individual	Oppose	Written Testimony Only

Comments:

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges.

There are so many amazing service providers who can help take care of our youth on the wrong path, and judges should have the ability to render judgments that would restore justice, rather than straddle young people with a lifetime of debt. We know that more than a third of young offenders are Native Hawaiian, and a majority are from families experiencing poverty. Please allow family court judges the ability to use their best discretion and create space for the community to rally behind young people while they are still young and full of potential. Please vote No.

**HB-1459-HD-1**

Submitted on: 3/16/2022 8:08:57 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Matthew Villanueva	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this bill as it disproportionately affects low income families and takes the discretion away from family court judges to see the whole family picture and appropriate more helpful stipulations.

**HB-1459-HD-1**

Submitted on: 3/16/2022 9:05:29 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Kelli Soileau	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

**I am testifying in OPPOSITION to HB1459 HD1.** This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

**I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.**

Mahalo for your time.

**COUNTY COUNCIL**

Arryl Kaneshiro, Chair  
Mason K. Chock, Vice Chair  
Bernard P. Carvalho, Jr.  
Felicia Cowden  
Bill DeCosta  
Luke A. Evslin  
KipuKai Kualii



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188  
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E-mail: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

March 16, 2022

**TESTIMONY OF FELICIA COWDEN**  
**COUNCILMEMBER, KAUAI COUNTY COUNCIL**  
**ON**  
**HB 1459, HD1, RELATING TO JUVENILE RESTITUTION**  
Senate Committee on Judiciary  
Thursday, March 17, 2022  
9:35 a.m.  
Via Videoconference  
Conference Room 016

Dear Chair Rhoads and Members of the Committee:

Thank you for this opportunity to provide testimony in **OPPOSITION** to HB 1459, HD1, Relating to Juvenile Restitution. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

HB 1459, HD1, will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their *'ohana* should pay when convicted of an offense. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

Thank you again for this opportunity to provide testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

A handwritten signature in cursive script that reads "Felicia Cowden".

FELICIA COWDEN  
Councilmember, Kaua'i County Council

AMK:mn

**HB-1459-HD-1**

Submitted on: 3/16/2022 9:31:00 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Ashley Howard	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. It is important for family court judges to have the discretion to determine a juvenile’s sentencing, that may or may not include monetary restitution, for a convicted crime. This bill will remove that authority; in turn, overlooks the best possible avenue for the child to take responsibility for their offense.

In Hawai‘i, in most cases, majority of the youth involved in the juvenile justice system come from low-income households, with one-third of those children being of Native Hawaiian ancestry. The proposed bill imposes a monetary restitution that will cause additional financial hardship to these families, who have very little or no means at all, to pay the court’s order on behalf of the child. Factors like these are considered by family court judges before judgement is made in court for the juvenile delinquent’s wrongdoing. Other important influential factors prior to judgement include information and opinions from the child’s family, social workers and prosecutors. The proposed bill denies family court judges to allow these important factors to have effect and provide the child with solutions that will teach them to learn from their mistakes.

We must do our due diligence to support these children, with special focus and concern to our Native Hawaiian children, to allow for a positive change with careful thought to who they are, and the potential they may have in our community and future Hawai‘i. We must hold them liable for their unfavorable actions, along with ensuring that the punishment they face will encourage them to grow towards a better light.

A mandatory monetary restitution should not be enforced for every juvenile sentencing. We should not be exerting a child’s repercussions of lessons to be learned onto their families. Family court judges should not be disallowed the ability to provide fair justice wholeheartedly to children in the juvenile court system. We should not disregard consideration to reason prior to administering a child’s conviction. We should be seeking is to help these children be pono, do what is right, make better choices in their future, therefore contribute to a thriving lāhui, gratifying the people of Hawai‘i.

This bill does not support the betterment of the juvenile justice system, nor does it serve our children fairly. For all of these reasons I ask the Committee to **VOTE NO on HB1459 HD1**.

Mahalo for your time.



**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 10:12:08 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Katherine A Tibbetts	Individual	Oppose	Written Testimony Only

Comments:

Equal treatment is NOT always equitable treatment. We appoint judges to exercise their best judgment within the framework of our laws. If enacted, this bill undermines the ability of our judges to perform their duties. In addition, it has a potential hugely regressive impact on the most vulnerable youth and families in our communities. I strongly urge you to allow judges to do the work you entrusted to them.

**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 10:46:44 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Molly Mamaril	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

Molly Mamaril



**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 10:58:41 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jhernie Evangelista	Individual	Oppose	Written Testimony Only

Comments:

Aloha mai kākou,

I am testifying in **OPPOSITION to HB1459 HD1**. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for your time.

**LATE**

**Robert K. Merce**  
2467Aha Aina Place  
Honolulu, HI 96821

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Testimony Before the Committee on Judiciary  
Chair: Senator Karl Rhoads  
Vice Chair: Senator Jarrett Keohokalole  
Hearing Date: Thursday, March 17, 2022  
Hearing Time: 9:35 a.m.  
Via Video Conference  
**In Strong Opposition to HB 1459 HD 1**

Chair Rhoads, Vice Chairs Keohokalole, and Committee Members:

**I strongly oppose HB 1459, HD 1** which would impose mandatory restitution of money or services in every case in which an adjudicated juvenile causes damage or loss.

I am sorry my testimony is late, but I was not aware of HB 1459 until late this afternoon.

The American Bar Association (ABA) has opposed mandatory minimum sentences for over 50 years because they are “the antithesis of rational sentencing,” they lead to “excessively severe sentences,” they “tend to create sentencing disparities,” they “undermine the judiciary,” and they “punish ethnic minorities disproportionately.”<sup>1</sup>

I agree with ABA Resolution 10B and oppose all mandatory minimum sentences as a matter of policy for juveniles and adults. I strongly urge you to defer HB 1459 HD 1.

Thank you for allowing me to testify on this matter.

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<sup>1</sup> American Bar Association Resolution 10B, adopted by the House of Delegates August 14-15, 2017. Accessed March 16, 2022, [https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/opposing\\_minimum\\_senecing\\_10b.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/opposing_minimum_senecing_10b.authcheckdam.pdf)

**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 2:14:00 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Delia Ulima	Individual	Oppose	Written Testimony Only

Comments:

Aloha, My name is Delia Ulima and I currently serve as the Chair of the Juvenile Justice State Advisory Council. I also work for EPIC 'Ohana as the HI HOPES Initiative Manager and have led youth advisory boards for over 12 years in various legislative and collaborative efforts to transform the child welfare system. I am submitting this testimony in OPPOSITION to HB1459HD1 as a private citizen. While well-intentioned, this legislation is premature and further expert input as well as data and feedback from young people with lived experience in the system is critical to crafting fair and effective policy. Furthermore, this piece of legislation will negatively and disparately impact young people who live in poverty and are Native Hawaiian/Pacific Islander. Please consider taking the requisite time and attention needed to put forth legislation that makes sense and helps, not harms, Hawaii's most vulnerable and at-risk youth. Mahalo Nui Loa!

**LATE**

**HB-1459-HD-1**

Submitted on: 3/16/2022 5:44:13 PM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Nikki-Ann Yee	Individual	Oppose	Written Testimony Only

Comments:

I am testifying in OPPOSITION to HB1459 HD1. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

A judge may sentence youth to community service because by helping the public, youth may learn about their circumstances and take responsibility for their offense. Often, paying monetary restitution becomes the responsibility of their 'ohana. If a family lives with fixed or low incomes, they may need to cut back on necessities to pay court-ordered restitution. With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families.

I ask Committee members to VOTE NO on HB1459 HD1. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Mahalo for the opportunity to testify.

**LATE**



Hawai'i

Committee: Judiciary  
Hearing Date/Time: Thursday, March 17, 2022 at 9:35 a.m.  
Place: Via Videoconference  
Re: Testimony of the ACLU of Hawai'i in Opposition of HB 1459, HD1

Dear Chair Rhoads, Vice Chair Keohokalole and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **opposition to HB1459 HD1**. This bill would mandate victim restitution in juvenile cases.

The ACLU of Hawai'i is committed to advancing Smart Justice policies in Hawai'i. First and foremost, we advocate for strategies to reduce the number of youth and adults in our carceral system and shift spending priorities away from mass criminalization and incarceration that disparately impacts Native Hawaiians, Pacific Islanders and Black people, and low-income people - towards health care, housing, education and human services within communities.

We oppose this measure because it is inconsistent with the principle of fostering the rehabilitation of juveniles in Family Court. Hawai'i has taken meaningful steps towards reducing the youth incarceration and reforming the juvenile system, including the Kawaihoa Youth & Family Wellness Center. In contrast, this proposed measure would essentially create a Debtor's Prison for children, and disproportionately burden families of color, particularly Native Hawaiians and Pacific Islanders.

Significantly, Native Hawaiian and indigenous youth from the Micronesian Islands are 4.1. times more likely to be arrested, 5.6 times more likely to be referred to court, 10 times more likely to be detained and 7.5 times more likely to be found delinquent compared to White youth.<sup>1</sup>

While we understand the importance of providing compensation to victims, that interest must be balanced with the reality that restitution orders will force families to choose between paying for necessities and paying the court, leading to increased recidivism.<sup>2</sup> In lieu of victim restitution for indigent youth and their families, the Courts have discretion to offer culturally sensitive community service programs that allow youth to connect with their community and heritage.

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<sup>1</sup> *United States of Disparities: National Map: Hawaii*, Burns Institute (2014).

<sup>2</sup> *Making Families Pay*, Berkeley Law Policy Advocacy Clinic (2017).

In closing, we respectfully respect that you defer this measure as there are more effective, equitable and sustainable mechanisms for making victims and survivors whole.

Thank you for the opportunity to submit testimony.

Sincerely,

*Carrie Ann Shirota*

Carrie Ann Shirota  
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 over 50 years.*

American Civil Liberties Union of Hawai'i  
P.O. Box 3410 Honolulu,  
Hawai'i 96801T: 808.522.5900  
F: 808.522.5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)[www.acluhawaii.org](http://www.acluhawaii.org)

**LATE**

**HB-1459-HD-1**

Submitted on: 3/17/2022 7:09:57 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Collins	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this measure, as it will disproportionately impact youth of low-income and Native Hawaiian youth. This will send our state and our community backwards. I implore to vote no or defer this measure indefinitely.

Mahalo for your time.

**LATE**

**HB-1459-HD-1**

Submitted on: 3/17/2022 8:14:27 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Nicole Reid	Individual	Oppose	Written Testimony Only

Comments:





# Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813  
Phone (808) 521-2302 • [www.nativehawaiianlegalcorp.org](http://www.nativehawaiianlegalcorp.org)



**HB1459**  
RELATING TO JUVENILE RESTITUTION  
SENATE JUDICIARY COMMITTEE

March 17, 2022

9:35 a.m.

Conference Room 016

Aloha e Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

The Native Hawaiian Legal Corporation (“NHLC”) offers the following testimony in **OPPOSITION** to HB1459, a bill that will mandate monetary restitution in juvenile sentencing.

NHLC is a public interest law firm whose mission is to protect and advance Native Hawaiian identity and culture through legal and other forms of advocacy. After more than 47 years of service to the lāhui, NHLC has gained extensive knowledge about the legal issues facing Native Hawaiians and the inequities that burden the Native Hawaiian community.

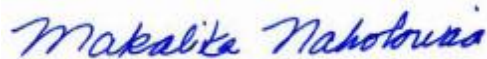
As others have testified to with respect to this bill, there are deep concerns that this bill conflicts with the intent of our juvenile justice system to treat juveniles differently from adult offenders. This is reflected in the handling of juvenile proceedings in family court; that juveniles are adjudicated not convicted of offenses; and that the focus in these proceedings is creating “incentive for reform” and “deterrence fom further misconduct.” Mandatory restitution erodes this distinction between juveniles and youth. Further, it does not serve the focus on reform and deterrence. Youth have little to no income or assets, so the burden of restitution falls largely on their families, and studies have shown that restitution obligations correlate to higher rates of recidivism.

While this is harmful for any family, if HB1459 passes, the Native Hawaiian community will disproportionately bear these negative outcomes, because the Native Hawaiian community is already burdened by significant overrepresentation in the juvenile and criminal justice systems. Native Hawaiians make up 18% of the general population, but 37% of the incarcerated population. Narrowing to juveniles, data from 2017 found that approximately one-third of adjudicated juveniles were Native Hawaiians. The significant over representation of Native Hawaiian in the juvenile and criminal justice systems are among the most serious justice problems facing the Native Hawaiian community. At the same time, Native Hawaiians also face the lowest median income of all major ethnic groups throughout the State, which is another serious social justice concern.

Taking these challenges together, Native Hawaiian youth have a greater likelihood of involvement in the juvenile justice system than the general population of youth, while their families are among the least financially equipped to bear these burdens. The foreseeable result is greater financial hardship for families, which studies have shown leads to increased recidivism. Not only will HB1459 fail to disrupt the tragically swollen pipeline of Native Hawaiians into the criminal justice system as adults, this bill has a good chance of making that pipeline larger.

The State should be considering systemic reforms aimed at remediating the overrepresentation of Native Hawaiian children in the juvenile justice system. This bill goes in the opposite direction. Accordingly, NHLC **strongly opposes HB1459**.

Mahalo for the opportunity to testify.



Makalika Naholowaa, Executive Director  
For the Native Hawaiian Legal Corporation



**LATE**

17 March 2022  
Senate Judiciary Committee  
Hearing Time: 09:35 AM  
Location: Virtual  
Re: HB 1459, HD1, Relating to Juvenile Restitution

Aloha e Chair Rhoads, Vice-Chair Keohokalole, and members of the Committee:

We are writing in **opposition** to HB 1459, HD1, relating to juvenile restitution. This bill will take away family court judges' discretion in determining if and how much monetary restitution a juvenile and their 'ohana should pay when convicted of an offense.

In Hawai'i, adjudicated youth are predominately from low-income families, often their caregivers are grandparents or aunty and uncle, and about one-third are Native Hawaiian. Currently, when deciding an outcome of a case, family court judges meet with youth, their families, social workers, and prosecutors to view circumstances surrounding a case. If it is determined to be a violent offense, judges may waive the case to adult court and the juvenile will be tried as an adult. Otherwise, a judge has the discretion to sentence youth to restitution or community service.

With discretionary authority, family court judges can support systemic change to reduce recidivism and provide services to families. We are opposed to this measure.

The Opportunity Youth Action Hui is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs.

We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth houselessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

**Please do not advance HB 1459, HD1.**

**LATE**

**HB-1459-HD-1**

Submitted on: 3/17/2022 9:17:36 AM

Testimony for JDC on 3/17/2022 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Diopilo Hardison	Individual	Oppose	Written Testimony Only

Comments:

Hello,

I am testifying in **OPPOSITION to HB1459 HD1**. I Believe that this bill will disproportionately impact low-income families. Many of these families have mothers and fathers working multiple jobs or overtime to support their families. They are already struggling to survive in Hawaii. In many cases, the parents may not even know what their children are doing when they are not around until it is too late because they are forced out of necessity to be away at work much of the time. This bill will ultimately punish the family for their youth's actions and will not teach our youth to be accountable for their actions.

This bill also takes away the judges' discretion to work with caregivers, social workers, prosecutors, and youth to find the best solution to teach our troubled youth. By doing this, we as a society are choosing to abandon the futures of our troubled youth and view them as nothing more than criminals with no room to grow or change. Many of these youths are lost, and they need proper guidance to become productive members of society. Unfortunately, I believe that this bill will also lead to a rise in repeat offenders.

I say this as a once troubled youth. I found myself in legal trouble and dropped out of high school my junior year. I am now a college graduate and entering law school. I hope to give back to the community that did not give up on me. But, let's not create a future where stories like mine are few and far between or virtually nonexistent.

I ask Committee members to **VOTE NO** on **HB1459 HD1**. Don't take away discretion from family court judges. We need better policies for long-lasting changes in our juvenile justice system instead.

Thank you,