



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 8, 2023 at 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

by:

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 317, H.D. 1, Relating to Youth Fees and Fines

Description: Prohibits the assessment of any fines, fees, or court costs against a person who was adjudicated for an offense committed while the person was a minor under the age of eighteen, or against the person's parent or guardian. Limits court ordered community service for minors to seventy-two hours. Repeals the statewide curfew for minors. Effective 6/30/3000. (HD1)

Judiciary's Position:

The Judiciary takes no position on House Bill No. 317, H.D. 1. We wish to express our gratitude for the Committee on Human Services' amendments in H.D. 1 (*see* Stand. Com. Rep. No. 66 dated February 6, 2023), which incorporated amendments recommended by the family court in its testimony to the committee. As noted in the bill's Preamble, family courts across the state already rarely impose fines, fees, or costs on youth and their parents. In addition, as noted in the Committee on Human Services' report, the Judiciary believes that the purpose of this bill is admirable.

We thank you for the opportunity to offer testimony on this bill.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender, State of
Hawai‘i to the House Committee on Judiciary & Hawaiian Affairs

February 8, 2023

H.B. No. 317, HD1: RELATING TO YOUTH FEES AND FINES

Chair Tarnas, Vice-Chair Takayama and Members of the Committee:

The Office of the Public Defender supports H.B. No. 317, HD1.

The Office of the Public Defender represents indigent juveniles in the criminal justice system. Most of our juvenile clients come from families with limited incomes and live in poverty. Many of our clients are not only entangled in the criminal justice system but may also be in foster care and have limited access to resources that many in our community take for granted. We strongly support the purpose of H.B. 317 and join in the call for the prohibition of fines, fees, and court costs against any person adjudicated for an offense committed during the person’s minority, or against the person’s parent or guardian.

H.B. 317, HD1 is in line with the core principles and goals espoused in HRS § 571-1 which established the Family Courts. HRS § 571-1 reads in part as follows:

This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be assisted and protected, and secured in those rights through action by the court; that the court may formulate a plan adapted to the requirements of the child and the child’s family and the necessary protection of the community, and may utilize all state and community resources to the extent possible in its implementation.

This chapter created within the State a system of family courts and *it shall be a policy and purpose of said courts 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.*

Many of our juveniles involved in the court system are struggling with everything – from access to food and basic amenities, access to a safe place to live, access to transportation, and access to a computer and internet access, and access to a working phone. Juveniles in distress include children who are victims of physical and sexual abuse, children who have experienced traumas and face mental health challenges resulting from those traumas. They include children in our foster care system who do not have a loving responsible parent to care and provide for them.

H.B. 317, HD1 will help families concentrate their financial resources on accessing other services more in line with rehabilitation: providing basic needs, maintaining housing, accessing counseling services, educational services, mental health services, and reducing some of the daily pressures on families living in poverty by eliminating court-imposed debt that does nothing to promote rehabilitation, education, or the personal growth of youth in the criminal justice system.

Thank you for the opportunity to comment on this measure.

Opportunity Youth Action Hawai'i

House Committee on Judiciary & Hawaiian Affairs

Hearing Time: 2:00 p.m., February 8, 2023

Location: Conference Room 325, State Capitol

Re: HB 317, HD1, Relating to Youth Fees and Fines

Aloha e Chair Tarnas, Vice Chair Takayama, and members of the Committee:

We are writing to provide **comments on** HB 317, HD1, relating to youth fees and fines.

This bill prohibits the assessment of any fines, fees, or court costs against a person who was adjudicated for an offense committed while the person was a minor under the age of eighteen, or against the person's parent or guardian. It limits court ordered community service for minors to seventy-two hours and repeals the statewide curfew for minors.

Although we are still reviewing the potential impacts of this measure, we seek to express our support for the intent of addressing the punitive aspects of the judicial system experienced by youth.

Our collective, the Opportunity Youth Action Hawai'i (OYAH), works to support young people under age 25 who are disconnected from school and work, referred to as "opportunity youth." This developmental time period is extremely consequential to the individual growth and overall life chances of our children. Although HB 317, HD1 specifically pertains to minors, we also support the legislature's ongoing efforts to address the needs of opportunity youth more broadly.

The Opportunity Youth Action Hawai'i 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 homelessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

Thank you for the opportunity to testify.



**THE HONORABLE DAVID A. TARNAS, CHAIR
THE HONORABLE GREGG TAKAYAMA, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai'i**

February 8, 2023

RE: H.B. No. 317 RELATING TO YOUTH FEES AND FINES

Dear Honorable Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

[Hawai'i Friends of Restorative Justice](#) urges you to please support this measure.

Fees and fines assessed against youth in the juvenile system are punitive and can impose long-lasting financial and emotional harm on youth and their families. Fees and fines exacerbate existing economic inequality and disproportionately harm low-income, and Native Hawaiian and Pacific Islander families. We urge the Legislature to end this ineffective and criminogenic practice.

Youth and families cannot pay fees and fines

Most youth cannot pay fees and fines because they have little to no income, assets, or money of their own. As a result, the burden of fees and fines falls largely on the families of youth. Because Native Hawaiian and Pacific Islander youth are disproportionately represented in the juvenile legal system, and more often suffer generational poverty than other populations, these families are especially harmed.

With Native Hawaiian and Pacific Islander youth both more likely to be impacted by the juvenile system and poverty, youth fees and fines create a perfect storm of financial and emotional harm for often already struggling families. Fees and fines be insurmountable and often force families to choose between paying for necessities and paying the court, leading to strained relationships between system-involved youth and their parents and siblings at a time when they need support most.¹

National research shows that fees and fines are ineffective and do not support youth rehabilitation.

Fees are designed to cover administrative costs associated with the system, and fines are intended to punish or deter future behavior. And yet, research shows that fees and fines generate little or no revenue for local government and harm youth rehabilitation. Data from other states show that jurisdictions often spend more on collection than they generate in revenue from fees and fines charged to youth.²

Additionally, studies by criminologists found that youth who had fees and fines imposed on them had a significantly higher likelihood of recidivism, even when controlling for demographics and case characteristics.³ As the amount of fees and fines increased, so did the youth's chances of recidivism.⁴

Hawai'i is in the minority of states that continue to authorize fees and fines against youth.

States and localities across the continent are recognizing the harms of fees and fines. Over 20 states have abolished fees and/or fines from their juvenile systems, and many more have



since followed their lead. By removing the authority to charge fees and fines against system-involved youth, H.B. 317 would bring Hawai'i in-step with the national movement towards abolishing fees and fines.

Removing authorization for assessing fees and fines on youth aligns the law with Hawai'i's existing general practices and its dedication to reforming its juvenile justice system.

We respectfully ask you to vote in favor of this bill. If you have any questions concerning our support and decades of experience working with youth and families involved in the juvenile justice system please contact Lorenn Walker lorenn@hawaiiifriends.org.

¹ Berkeley Law Policy Advocacy Clinic, *Making Families Pay* (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.

² Brennan Center for Justice, *The Steep Costs of Criminal Justice Fees and Fines* (2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

³ Alex Piquero, *Justice System—Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUSTICE 325 (2017); Alex Piquero, Michael Baglivio & Kevin Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity* (forthcoming 2023) (on file with authors).

⁴ *Id.*

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COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Rep. David A. Tarnas , Chair

Rep. Gregg Takayama, Vice Chair

Wednesday, February 8, 2023

Room 325

2:00 PM

STRONG SUPPORT FOR HB 317 HD1 -YOUTH FEES & FINES

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,058 Hawai`i individuals living behind bars and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 965 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 appreciates this opportunity to testify in strong support of HB 317 HD1 prohibiting fees and fines for our youth and limits community service to 72-hours.

The HD1 amended the bill by: (1) Deleting language that would have prohibited the family court from assessing the cost of issuing and executing a summons or warrant against a minor's parent or guardian when the parent or guardian fails to comply with an order to produce the minor in court for a violation of a court order of probation or protective supervision; (2) Clarifying that the provision of certain no-cost treatment and services to a minor does not prohibit the utilization of treatment or services that may be available under a minor's health insurance or remove responsibility for any required copayments; (3) Deleting amendments to the Interstate Compact on Juveniles; (4) Deleting language retroactively discharging outstanding debt obligations for court-ordered fees, fines, and costs assessed in related cases prior to the effective date of this measure; (5) Changing the effective date to June 30, 3000, to encourage further discussion;

There are more effective, equitable, and sustainable responses when youth

commit bad acts. Fees and fines run counter to Hawai'i's dedication to holistic and culturally informed youth rehabilitation practices, including the Judiciary's Accountability Program.

A 2016 study¹ found: *“Although the use of financial penalties is pervasive in the justice system, there has been limited (and mostly dated) empirical research that has investigated the effect of financial costs incurred by juvenile offenders and the extent to which such costs relate to the likelihood of recidivism and reintegration into society. **This study uses data from a large cohort of adolescent offenders to examine how demographics and case characteristics relate to financial penalties imposed by the justice system and the degree to which such monetary penalties are related to recidivism in a 2-year follow-up. Results suggest that financial penalties increase the likelihood of recidivism.** Study limitations and directions for future research are also discussed.”*

Although community service is often a method of unchecked labor extraction on the continent, it can also be used to strengthen Native Hawaiian's connection to the 'āina. Care must be 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. If facilitated with intentionality, culturally sensitive community service programs offer a unique opportunity for youth to connect with their community and heritage, reducing recidivism rates.

The impacts of youth fees and fines fall on families that can least afford this extra expense. Native Hawaiian and Pacific Islander youth are also more likely to live in low-income households with parents who cannot afford the costs associated with the system. With Native Hawaiian and Pacific Islander youth both more likely to be impacted by the juvenile system and poverty, youth fees and fines create a perfect storm of financial and emotional harm for often already struggling families. Fees and fines be insurmountable and often force families to choose between paying for necessities and paying the court, leading to strained relationships between system-involved youth and their parents and siblings at a time when they need support most.

In short, fees and fines impose long-lasting financial and emotional harm and limit families' ability to invest in opportunities for their children.

Research shows fees and fines generate little or no revenue for local government because most system-involved youth and their families are low-income. Data from other states show that localities often spend more on collection than they generate in revenue from fees and fines charged to youth.

Hawai'i has made great strides in how we address youthful wrongdoing. National research shows that fees and fines are ineffective and do not support youth rehabilitation.

¹ Research Note: Justice System—Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders, Alex R. Piquero du and Wesley G. Jennings, September 14, 2016. <https://journals.sagepub.com/doi/full/10.1177/1541204016669213>

Hawai'i is in the minority of states that continue to authorize fees and fines against youth.

States and localities across the continent are recognizing the harms of fees and fines. Over 20 states have abolished fees and/or fines from their juvenile systems, and many more have since followed their lead. By removing the authority to charge fees and fines against system-involved youth, H.B. 317 HD1 would bring Hawai'i in-step with the national movement towards abolishing fees and fines.

Removing authorization for assessing fees and fines on youth aligns the law with Hawai'i's existing general practices and its dedication to reforming its juvenile justice system.

THE HONORABLE DAVID A. TARNAS, CHAIR
THE HONORABLE GREGG TAKAYAMA, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai‘i

February 6, 2023

RE: H.B. No. 317: RELATING TO YOUTH FEES AND FINES

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Policy Advocacy Clinic at Berkeley Law, as a member of the national Debt Free Justice campaign,¹ submits the following testimony to express our support for H.B. 317.

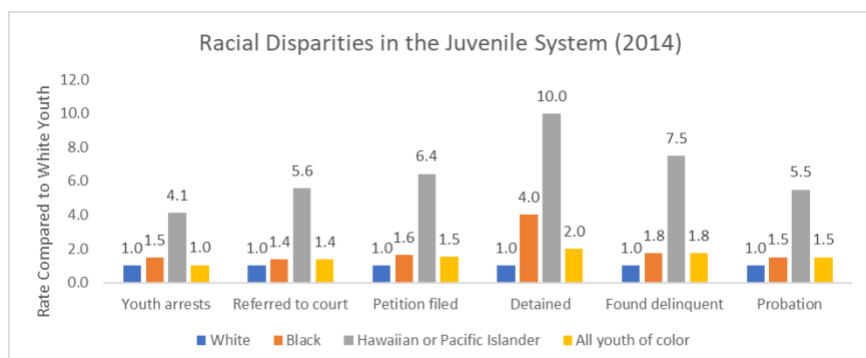
Fees and fines assessed against youth in the juvenile system are punitive and impose long-lasting financial and emotional harm on youth and their families. These monetary sanctions exacerbate existing economic inequality and disproportionately harm low-income, and Native Hawaiian and Pacific Islander families. Removing the authority to assess these monetary sanctions protects system-affected youth from this ineffective and criminogenic practice and brings state law in line with the existing general practice of the courts.

Fees and fines are unaffordable for the youth and families who make up Hawai‘i’s juvenile legal system.

By nature of their age, most youth have little to no income, assets, or money of their own, rendering youth unable to pay fees and fines imposed on them. Some youth in the juvenile system are not old enough to work at all, or at least cannot work full time under federal law.²

Therefore, the de facto burden of fees and fines falls largely on the families of youth. Because Native Hawaiian and Pacific Islander youth are disproportionately represented in the juvenile legal system, this burden tends to fall more heavily on those families.³ According to data from the Office of Juvenile Justice and Delinquency Prevention, Native Hawaiian and Pacific Islander youth 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.⁴

Native Hawaiian youth are also more likely to live in low-income households with parents who cannot afford the costs associated with the system.⁵ Native Hawaiians face the lowest median income of all major ethnic groups throughout



the state.⁶ 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.⁷

With Native Hawaiian and Pacific Islander youth both more likely to be impacted by the juvenile system and poverty, youth fees and fines create a perfect storm of monetary extraction from families least likely to be able to afford it.

Fees and fines are ineffective and criminogenic.

Fees are designed to generate revenue to cover costs associated with the system. But for youth and their families, fees and fines can be insurmountable and often force families to choose between paying for necessities and paying the court, leading to strained relationships between system-involved youth and their parents and siblings at a time when they need support most.⁸ Monetary sanctions harm not only youth, but their families' financial and psychological well-being.⁹ And yet, research shows that fees and fines generate little or no revenue for local government because most system-involved youth and their families are low-income. Data from other states show that jurisdictions often spend more on collection than they generate in revenue from fees and fines charged to youth.¹⁰

Fines are intended to punish or deter future behavior. However, in practice, both fees and fines are ineffective at supporting youth rehabilitation. Studies by criminologists on the effect of fines, fees, restitution found that youth, specifically youth of color, who had fees and fines imposed on them had a significantly higher likelihood of recidivism, even when controlling for demographics and case characteristics.¹¹

Retroactive discharge of outstanding debt does not implicate constitutional separation-of-powers principles.

We are incredibly grateful to the Hawai'i State Judiciary for its comments on HB 317. Crucially, the Judiciary affirms "[t]he intent and purposes of this bill are admirable; the strategies employed are evidenced-based . . . [and] family courts across the state already rarely impose fines, fees, or costs on youth and their parents."¹² The Judiciary raised questions relating to retroactive discharge of outstanding debt and whether it "implicates the separation of powers doctrine."¹³

The Judiciary refers to two cases in expressing its concerns on retroactivity: *Plaut v. Spendthrift Farm*,¹⁴ a U.S. Supreme Court case; and *League of Women Voters of Honolulu v. Hawai'i*,¹⁵ a state Supreme Court case. While both cases generally discuss retroactive application of new policies, the facts presented in each case differ vastly from the stated intent and impact of HB 317. *Plaut* refers specifically to (1) a bill with solely/primarily retroactive effect that (2) allowed the reversal of a court's previous judgment. Here, the retroactive elimination of debt imposed on youth and their families is only part of the bill's larger prospective relief, and eliminating court debt would not upend the judgment of the family court relating to adjudications of delinquency. The *League of Women Voters* case refers specifically to the retroactivity of rules established by court precedent—our bill does not impact the application of any court rule.

Lastly, and as discussed further below, legislatures across the country have successfully passed laws to retroactively discharge outstanding debt from fees and fines charged to youth and their families. These include California, Colorado, Maryland, New Jersey, Oregon, and Washington.¹⁶ The risk of constitutional violation has not been realized in any of these states; to

the contrary, these bills have received significant support from legislators, judges, legal advocates, and the countless youth and families whose debt has been relieved through retroactive discharge.

There is growing bipartisan and national support for ending fees and fines for youth.

By removing the authority to assess fees and fines against system-involved youth, H.B. 317 would bring Hawai‘i in-step with the national movement towards abolishing fees and fines. States and localities across the continent are recognizing the harms of fees and fines. Over 20 states have abolished fees and/or fines from their juvenile systems, and many more have since followed their lead.¹⁷

National associations of judges,¹⁸ prosecutors,¹⁹ correctional leaders,²⁰ and law enforcement professionals²¹ support the elimination of fees and fines for young people.

Hawai‘i is an outlier in continuing to authorize monetary sanctions under state law. While Kaua‘i County has taken bold action to denounce the imposition of monetary sanctions on youth, it is up to the state legislature to repeal these harmful and outdated statutes.

Removing authorization for assessing fees and fines on youth aligns the law with Hawai‘i’s existing general practices and its dedication to reforming its justice system.

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

¹ Debt Free Justice is a national campaign dedicated to ending the harmful and unjust fees and fines imposed on youth in the justice system and their families. See more at <https://debtfreejustice.org/>.

² 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. Dep’t 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>.

³ Burns Institute, *United States of Disparities: National Map: Hawaii* (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>.

⁴ *Id.*

⁵ Dep’t of Business, Economic Development and Tourism, State of Hawai‘i, *Demographic, Social, Economic, and Housing Characteristics for Selected Race Groups in Hawaii*, 12 (2018).

https://files.hawaii.gov/dbedt/economic/reports/SelectedRacesCharacteristics_HawaiiReport.pdf.

⁶ Office of Hawaiian Affairs, *Income Inequality and Native Hawaiian Communities in the Wake of the Great Recession: 2005 to 2013 2* (2014), <https://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>.

⁷ 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/>.

⁸ Berkeley Law Policy Advocacy Clinic, *Making Families Pay* (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.

⁹ 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>.

¹⁰ Brennan Center for Justice, *The Steep Costs of Criminal Justice Fees and Fines* (2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

¹¹ Alex Piquero, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUSTICE 325 (2017); Alex Piquero, Michael Baglivio &

Kevin Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity* (forthcoming 2023) (on file with authors).

¹² *Relating Youth Fines and Fees: Hearing on H.B. 317 Before the House Comm. on Hum. Servs.*, 32nd Leg., Reg. Sess. (Haw. 2023) (statement of Andrew T. Park, Judge, Fam. Ct. of the First Cir., Haw. State Judiciary).

¹³ *Id.*

¹⁴ 514 U.S. 322, 240 (1995).

¹⁵ 260 Hawai'i 182, 499 P.3d 382 (2021).

¹⁶ Debt Free Justice, "Our Impact," <https://debtfreejustice.org/our-impact> (last accessed Feb. 7, 2023). Additional information about relevant legislation available upon request.

¹⁷ "Debt-Free Justice Reforms of Youth Fees & Fines," <https://www.datawrapper.de/#h6qvkl> (last accessed Feb. 6, 2023).

¹⁸ Nat'l Council of Juv. And Fam. Ct. Judges, *Resolution Addressing Fines, Fees, and Costs in Juvenile Courts* (Mar. 2018), https://www.ncjfcj.org/wp-content/uploads/2019/10/ExXIII_FinesFeesCosts_Resolution.pdf.

¹⁹ Fair And Just Prosecution, *Fines, Fees, and the Poverty Penalty* (2017), https://fairandjustprosecution.org/wp-content/uploads/2017/11/FJPBrief_Fines.Fees_.pdf.

²⁰ Youth Corr. Leaders For Just., *Statement on Abolishing Youth Fines and Fees* (May 2021), <https://yclj.org/fines-and-fees>.

²¹ L. Enf't Leaders To Reduce Crime & Incarceration, *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond* (Apr. 2020), https://lawenforcementleaders.org/wp-content/uploads/2020/04/2020_04_LEL_Policy_Report_Final.pdf.

HB-317-HD-1

Submitted on: 2/6/2023 7:58:49 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB317.