

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 Human Services**

January 31, 2023

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

Chair Mizuno, Vice-Chair Amato and Members of the Committee:

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

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 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 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.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Human Services
Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

Tuesday, January 31, 2023 at 9:30 a.m.
State Capitol, Conference Room 329 & Videoconference

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

Bill No. and Title: HB317 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 during the person's minority, or against the person's parent or guardian, and discharges all related debt obligations assessed prior to the effective date of the Act. Requires the Office of the Administrative Director of the Courts to submit a report to the Legislature.

Judiciary's Position:

The Judiciary takes no position on those portions of HB317 which prohibit the assessment of fines, fees, or court costs against adjudicated minors. The intent and purposes of this bill are admirable; the strategies employed are evidence-based. As noted in the bill's Preamble, family courts across the state already rarely impose fines, fees, or costs on youth and their parents.

However, the Judiciary strongly opposes Part VI, beginning at page 93, because retroactive application implicates the separation of powers doctrine. Cf. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 240 (1995); see also *League of Women Voters of Honolulu v. State of Hawai'i*, 150 Hawai'i 182, 499 P.3d 382 (2021).

In addition to this position, we also have operational concerns.



1. That Part VI would be effective upon approval is of great concern. Staff would have to be diverted from current pressing matters, which will inevitably lead to delays in our current operations. Also, the Judiciary Information Management Systems (JIMS) will require modifications. The JIMS staff will first have to research how the system can be modified, then develop new forms and new code accordingly, and then the modifications must be tested and adjusted. Implementation can begin only afterwards.

2. An additional concern of attempting to apply Part VI is the effect on existing Judiciary contracts and agreements made with third parties, such as collection agencies.

3. Part VI does not provide a finite date for retroactive application. This presents a great challenge to implementation.

4. The sole funding source for the Statewide Driver Education Program is the Statewide Driver Education Special Fund. We raise the possibility that a shortfall may occur some time in the future. In that event, the judiciary will have to look to the Legislature for additional funding, over and above the Judiciary's budget.

5. In certain cases, treatment and services for a youth may be available through health insurance. Language in this bill prohibiting the imposition of costs on a youth or their parents/guardians may foreclose the use of their health insurance. We propose the following additional language for consideration.

Page 56, lines 11-14 to read:

provided that any treatment or services provided under this section shall be provided at no cost to the person whose violation occurred during the person's minority, or to the person's parent or guardian for that person's violation. Nothing in this section shall prohibit the utilization of treatment services provided or covered by any health insurance plan under which the child is already a covered person or beneficiary; provided further that copayments required by the insurer shall be paid by the insured.

Page 83, lines 14-17 to read:

The court shall not order the parent or guardian of a person adjudicated under sections 571-11(1), 571-11(2), 571-13, 571-22, or 571-41(f) to pay for the person's support and treatment[.] , provided that the court may order a child, or their parent or guardian, to utilize treatment options available to them through any health insurance plan of which the child is already a covered



House Bill No. 317, Relating to Youth Fees and Fines
House Committee on Human Services
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person or beneficiary; provided further that copayments required by the insurer shall be paid by the insured.

Page 88, lines 15-19 to read:

A minor who consents to the provision of counseling services under this section shall not be financially responsible for the costs of the services. Nothing in this section shall prohibit the utilization of treatment services provided or covered by any health insurance plan under which the child is already a covered person or beneficiary; provided further that copayments required by the insurer shall be paid by the insured.

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

Hawai'i Association of Criminal Defense Lawyers

January 29, 2023

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

Chair John M. Mizuno
Vice Chair Terez Amato
Honorable Committee Members

The Hawai'i Association of Criminal Defense Attorneys (HACDL) is a local organization of lawyers practicing criminal defense in state and federal courts in Hawai'i. HACDL members include public defenders and private counsel who represent the criminally accused.

HACDL **SUPPORTS** H.B. No. 317 because it recognizes the unique place children have in our criminal justice system. Fees and fines are routinely imposed after a person is convicted of a crime. The Hawai'i Supreme Court has recognized that these court-imposed fees simultaneously fund government programs and punish the offender. *Warner v. State*, 151 Hawai'i 433, 517 P.3d 716 (2022).

The law, however, treats children differently. When a child is prosecuted, our family courts consider punishment in part, but the mission of the juvenile justice system is to rehabilitate children with the hope that they can become well-adjusted people upon reaching majority.

Eliminating fees and fines for children advances the mission. When court fees and fines are imposed on a child, the entire family suffers. Not only is a child forced to pay, but parents and guardians become saddled with the debt. This debt can follow children after the case is closed and into adulthood. It hinders children who get caught up in the legal system and aspire to become law-abiding and productive adults.

HACDL hopes that Hawai'i will join the states and counties on the mainland in abolishing fees and fines imposed on children.

Thank you for the opportunity to provide testimony.

THE HONORABLE JOHN MIZUNO, CHAIR
THE HONORABLE TEREZ AMATO, VICE CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai‘i

January 31, 2023

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

Dear Chair Mizuno, Vice Chair Amato, 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.

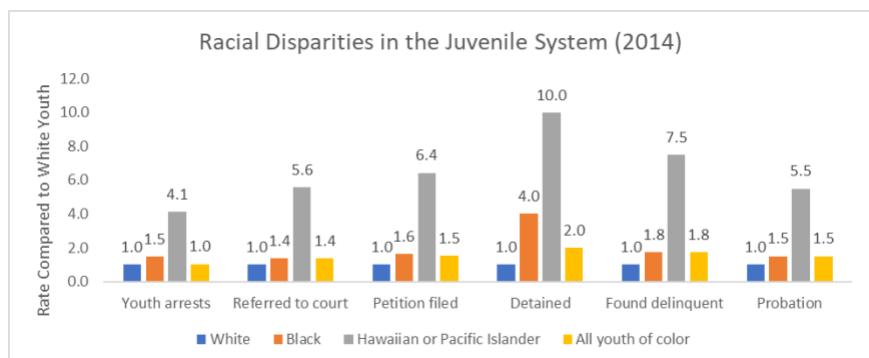
Fees and fines assessed against youth in the juvenile system are punitive and impose long-lasting financial and emotional harm on youth and their families. These monetary sanctions exacerbate existing economic inequality and disproportionately harm low-income, and Native Hawaiian and Pacific Islander 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 Most are also of compulsory school age.³ 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.⁴

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.⁵ 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.⁶

Native Hawaiian youth are also more likely to live in low-income households with parents who cannot afford the costs associated with the system.⁷ Native Hawaiians face the lowest median income of all major ethnic groups throughout the state.⁸ 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.⁹

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.¹⁰ Monetary sanctions harm not only youth, but their families' financial and psychological well-being.¹¹ Parents may take on extra jobs and loans or sell their possessions to pay off fees and fines, sinking them further into poverty and emotional distress.¹² High monetary sanctions 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.¹³

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.¹⁴

Fines are intended to punish or deter future behavior. However, in practice, both fees and fines are ineffective at rehabilitating youth who enter the juvenile system as evidence shows these types of monetary sanctions can increase the chances that a young person commits another crime. Studies by criminologists on the effect of fines, fees, restitution in Pennsylvania and Florida 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.¹⁵ As the amount of fees and fines increased, so did the youth's chances of recidivism.¹⁶ In fact, research shows that youth who are ordered to pay fees and fines as juveniles are still making payments on that debt well into adulthood.¹⁷

Research from the continent finds youth who are ordered to pay fees and fines 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.¹⁸ In some cases, unpaid restitution can prevent youth from expunging their record, creating long-term barriers to housing and employment.¹⁹ It can also lead to long-term financial issues that follow a young person into adulthood, 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.²⁰

Hawai‘i authorizes costly and punitive monetary sanctions against youth and families but do not charge in practice.

This bill affirms Hawaii’s trailblazing efforts to become a model of juvenile justice by codifying the courts’ existing practice of not assessing fines and fees.

Over the past several decades, Hawai‘i has taken meaningful steps toward reducing youth incarceration and reforming the juvenile system.²¹ Hawai‘i made national headlines for its efforts for its diversion efforts, resulting in no girls at the Hawai‘i Youth Correctional Facility.²² In 2022, the Kawailoa Youth & Family Wellness Center won a multi-million dollar Kellogg Grant to overhaul juvenile incarceration in Hawai‘i.²³

Conversations with family court judges across the state confirm the general practice of not charging fines and fees to youth. For example, the First Circuit Family Court, as a matter of practice, does not assess fees and fines against youth or their families except in rare instances (within the discretion of the court and with the exclusion of restitution).

Although it is Hawaii’s general practice not to impose monetary sanctions on youth and their families, their authorizing statutes remain in state law. Since the discretion to charge sanctions is often left up to judges, there are no assurances that this practice will continue indefinitely absent the prohibition by state law.

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. California, Colorado, Nevada, New Mexico and Oregon have all abolished fees and/or fines from their juvenile systems, and many more have since followed their lead.

National associations of judges,²⁴ prosecutors,²⁵ correctional leaders,²⁶ and law enforcement professionals²⁷ 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 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 See Nat’l Ctr. 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.

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- ⁴ Andrew Sum et al., Ctr. for Labor Market Studies, Northeastern Univ., *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>.
- ⁵ 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>.
- ⁶ *Id.*
- ⁷ 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.
- ⁸ 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>.
- ⁹ 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/>.
- ¹⁰ Berkeley Law Policy Advocacy Clinic, *Making Families Pay* (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.
- ¹¹ 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>.
- ¹² Brief Of Amici Curiae Juvenile Law Center and Forty Other Organizations in Support of Petitioners, 18. Juvenile Law Center. Sep. 11, 2018.
- ¹³ *Id.*
- ¹⁴ 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>.
- ¹⁵ 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).
- ¹⁶ *Id.*
- ¹⁷ Eli Hager, *Victim Restitution Payments for Childhood Crimes Often Linger into Adulthood, Analysis Finds*, THE WASHINGTON POST (Jun. 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.
- ¹⁸ Lindsey Smith et al., Juvenile Law Ctr., *Reimagining Restitution: New Approaches to Support Youth and Communities* 13 (2022), <https://debtorsprison.jlc.org/documents/JLC-Reimagining-Restitution.pdf>.
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ Crime and Justice Institute, *Implementing Comprehensive Juvenile Justice System Improvement in Hawaii* (2017), http://www.crj.org/assets/2017/10/Hi-Brief-v8-10-17-17_FINAL.pdf.
- ²² Claire Healy, *Hawaii Has No Girls in Juvenile Detention. Here's How It Got There*, THE WASHINGTON POST (Jul. 25, 2022), <https://www.washingtonpost.com/nation/2022/07/25/hawaii-zero-girls-youth-correctional-facility/>.
- ²³ *Hawai'i Project To End Youth Incarceration Receives \$20 Million Award From Kellogg Foundation's Global Challenge To Advance Racial Equity*, PARTNERS IN DEVELOPMENT FOUNDATION (Oct. 11, 2022), <https://pdf.org/hawai-i-project-to-end-youth-incarceration-receives-20-million-award-from>.
- ²⁴ 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.
- ²⁵ Fair And Just Prosecution, *Fines, Fees, and the Poverty Penalty* (2017), https://fairandjustprosecution.org/wp-content/uploads/2017/11/FJPBrief_Fines.Fees_.pdf.
- ²⁶ Youth Corr. Leaders For Just., *Statement on Abolishing Youth Fines and Fees* (May 2021), <https://yclj.org/fines-and-fees>.
- ²⁷ 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

Submitted on: 1/30/2023 9:55:45 AM

Testimony for HUS on 1/31/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Houser	RYSE (Residential Youth Services & Empowerment)	Support	Written Testimony Only

Comments:

Support for the intent of addressing the punitive aspects of the judicial system experienced by youth. In collaboration with the OYAH, we seek to promote equity in the justice system and to improve and increase resources for adolescent and young adults.

Opportunity Youth Action Hawai'i

House Committee on Human Services

Hearing Time: 9:30 a.m., January 31, 2023

Location: State Capitol

Re: HB 317, relating to youth fees and fines

Aloha e Chair Mizuno, Vice Chair Amato and members of the Committee:

We are writing to provide **comments on** HB 317, 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 during the person's minority, or against the person's parent or guardian, and discharges all related debt obligations assessed prior to the effective date of the Act. It requires the Office of the Administrative Director of the Courts to submit a report to the Legislature.

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 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.

HB-317

Submitted on: 1/30/2023 3:51:16 PM

Testimony for HUS on 1/31/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support



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HB 317|1/31/23

Aloha Chair, Vice Chair & the HUS,

As a safety coordinator of Kapalama NSW, I testify in strong support of HB 317. NSWs are grassroots citizen led safety initiatives of the HPD.

Charging extra fees & fines and court costs is harmful to young people because this practice in juvenile justice proceedings does not facilitate better results. It is not evidence based and it does not rehabilitate or deter youth from crime. These economic burdens placed on young people can undermine public safety by leading to recidivism, reoffense and escalating crime. Often times, parents have to choose between court costs and meeting basic needs.

Jurisdictions on the mainland spend more money collecting fines than they do in receiving money from the revenue of fines. Many states are seeking to repeal the charges against juveniles. In 2021 & 2022, 27 states introduced legislation to end this practice in juvenile justice proceedings. California, Nevada & Oregon and numerous counties in other state have prohibited imposing fees & fines.

The purpose of this act is to prohibit the assessment of any fines, fees, or court costs against a person who is adjudicated for an offense committed during the person's minority. The act also forgives all outstanding debt. This act is an example of advance systemic reform for our criminal justice system and one that will bring about transformative change.

LATE





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📍 Kalihi-Palama

1/30/23

In the words of Equal Justice Initiative, "More incarceration doesn't reduce violent crime. Using prisons to deal with poverty and mental illness makes these problems worse. People leave overcrowded and violent jails and prisons more traumatized, mentally ill, and physically battered than they went in."1 If there are new approaches to our justice system, we will have a healthier system and healthier communities.

Thank you for opportunity.

Blessings,

Angela Melody Young (Zhizi Xiong)

Safety coordinator & Co-captain of Kapalama NSW

