

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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

April 1, 2024

SCR No. 213: REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS.

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

The Office of the Public Defender supports SCR No. 213.

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 S.C.R. No. 213, which is to gather information and collect data on when and how fines, fees, court costs, and restitution are ordered, collected, and monitored in the juvenile justice system Statewide. This data collection will help us better understand how to improve the process and improve fairness Statewide.

We have joined 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. We also join in the call for restitution collection reform for juvenile adjudications to allow for the option of free-standing orders enforceable as civil judgments, in lieu of the possibility of a lifetime of hearings in the juvenile courts for the payment of restitution in small increments. We strongly agree that, when it comes to restitution, our juvenile courts may be “spend[ing] more money trying to collect those outstanding debts than they receive in revenue.” (See SCR No. 213, lines 23-25). We suggest that the resolution also include data collection on annual staffing positions dedicated to restitution collection to determine the complete financial landscape for these issues.

The core principles and goals espoused in HRS § 571-1, which established the Family Courts, read 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.

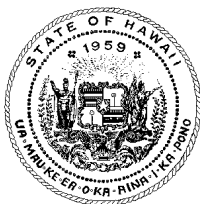
This chapter created within the State a system of family courts and *it shall be a policy and purpose of said courts to promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment to offenders, and reduce 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.

SCR No. 213 will help juveniles and their 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 resolution.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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Executive Director

TESTIMONY ON SCR213/SR189

REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE
COURTS TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF
FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Monday, April 1, 2024; 10:30 AM
State Capitol Conference Room 016 & Videoconference

Good morning Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (Commission) with the opportunity to testify before you today regarding Senate Concurrent Resolution 213/Senate Resolution 189. The Commission supports SCR213/SR189, with an amendment to require the Judiciary to consider the impact any changes to the restitution provisions will have on victims, survivors, and their families.

The Commission provides compensation for violent crime victims to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. 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.

The Commission's testimony relates only to the Concurrent Resolution's/Resolution's reference to restitution. SCR213/SR189 proposes to make recommendations regarding the appropriateness of ordering restitution from juvenile offenders without considering the impact on victims, survivors, and their families.

Why is the question "how can juvenile offenders afford to pay for the crime-related expenses that they caused?" and not "how can the victims, survivors, or their families afford to pay for the crime-related expenses caused by the juvenile offender?" Why is it fair to shift the

burden of crime-related losses caused by the juvenile offender to the victims, survivors, or their families who are now burdened with the financial impact of the loss?

In addition to the trauma of being victimized, forty percent (40%) of the general population cannot afford an emergency expense of a few hundred dollars. Studies have found that the victims of juvenile offenders are disproportionately the impoverished, young people, and people of color, and that the unexpected financial burden resulting from the crime falls on them.

Additionally, the Concurrent Resolution/Resolution calls upon the Judiciary to not only collect and report the data but also to provide recommendations regarding the imposition of restitution. Any recommendations the Judiciary provides should ensure that the interests of juvenile offenders and the victims' right to restitution are both considered.

Thank you for providing the Commission with the opportunity to testify in support of SCR213/SR189, with an amendment to require the Judiciary to consider the impact any changes to the restitution provisions will have on victims, survivors, and their families.



Committee: Judiciary
Hearing Date/Time: Monday, April 1, 2024 at 10:30am
Place: Conference Room 016 & Via Videoconference
Re: Testimony of the ACLU of Hawai'i in SUPPORT of SCR213 / SR189

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The ACLU of Hawai'i supports SCR213/SR189, which requests the Office of the Administrative Director of the Courts to collect, compile, and share data on the assessment of fees, court costs, fines, and restitution in cases against minors.

The ACLU of Hawai'i is committed to Reimaging Public Safety. We advocate for the State to shift spending priorities away from mass criminalization and incarceration towards evidence-based investments in housing, education, employment, and culturally appropriate health and human services in our communities.

National research shows fees and fines imposed on young people are ineffective and do not support rehabilitation.

Fees are designed to cover administrative costs associated with the system. Fines are intended to punish or deter future behavior. However, research shows that fees and fines generate little or no revenue for local government while doing real harm to 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.¹

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.² As the amount of fees and fines increased, so did the youth's chances of recidivism.³

Moreover, when governments rely on fees to fund essential government functions, it creates an incentive for unnecessary laws, regulations, and enforcement. Law

¹ 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>.

² 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).

³ *Id.*

enforcement officers spend an extraordinary amount of time and resources on arresting and booking people for minor offenses with hefty fees attached, or for not paying those fees. Instead, those resources could be reallocated into prevention programs and other services that address pathways to involvement in the criminal legal system.

Imposing fines and fees disparately impacts Native Hawaiian and Pacific Islander youth and their families.

Financial costs for juveniles associated with fines, fees, or court costs are unnecessarily punitive and can result in long-lasting financial harm and stress for these youth and their families.

The majority of youth have no means to pay fees and fines as they have little to no income or assets of their own. As a result, the burden falls largely on their families. 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.

By passing SCR213/SR189, the State will be able to assess the necessity for and effectiveness of fines and fees imposed on minors.

Sound public policy is driven by data and evidence-based practices. This measure would require the Judiciary to provide the following data:

(1) The total and annual average amounts of fees, court costs, fines, and restitution that are assessed, collected, waived, and outstanding in cases against minors for each of the last five years; and

(2) For the circuit, family, and district courts in each judicial district, a description of each fee, court cost, or fine that can be assessed in cases against minors, and their respective amounts.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota

Policy Director

ACLU of Hawai'i

cshiota@acluhawaii.org

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.

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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE MIKE GABBARD, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai‘i**

April 1, 2024

RE: S.C.R. No. 213 / S.R. No. 189: REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS.

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

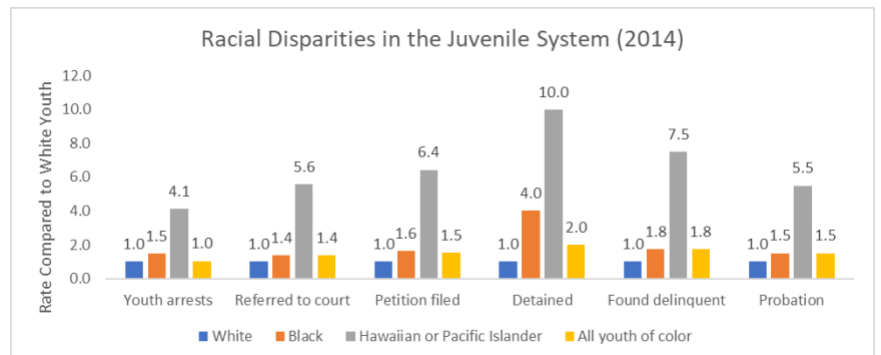
The Policy Advocacy Clinic at Berkeley Law, as a member of the national Debt Free Justice campaign,¹ submits the following testimony to express our support for S.C.R. No. 213 / S.R. No. 189.

Fees, court costs, fines, and restitution (hereafter, “monetary sanctions”) 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. Requiring the collection of data would provide insight into how many youth in the state are harmed by monetary sanctions and help inform policymakers about areas of the law that may warrant future legislation.

Evidence from other jurisdictions suggest that monetary sanctions are ineffective, criminogenic, and unaffordable for the youth and families who make up Hawai‘i’s juvenile legal system.

Research shows that monetary sanctions are ineffective at supporting youth rehabilitation and may instead increase the likelihood that youth reoffend in the future. In 2017, researchers examining over 1,000 juvenile court cases in Pennsylvania found that monetary sanctions “significantly increased the odds of a youth recidivating . . . even after controlling for relevant youth demographics and case characteristics variables.”² Earlier last year, a study of over 12,000 juvenile court cases in Florida revealed that youth who are assessed monetary sanctions are more likely to recidivate than youth who receive no monetary sanctions.³

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.⁴ 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.⁵ With Native Hawaiian and Pacific Islander youth both more likely to be impacted by the juvenile system and poverty, youth monetary sanctions create a perfect storm of monetary extraction from families least likely to be able to afford it.

Data on youth monetary sanctions is not being comprehensively collected.

Over the last two years, we have conducted legal and legislative research, requested data from the family courts, and engaged with a variety of stakeholders including community leaders, advocacy groups, attorneys, judges, and court staff in Hawai‘i.

In our conversations with family courts across the state, we learned that no court is actively tracking information on fees and fines. Only the First Circuit, which also operates an Accountability Program that allows youth to do community service to pay off their debt,⁶ was able to provide data on restitution. From 2017 to 2022, the First Circuit ordered over \$152,000 in restitution against 230 youth and collected approximately \$53,000.⁷ Nearly 100 of those youth have paid less than 25% of the total amount ordered.⁸ Collecting data over time will not only allow family courts to identify juvenile case trends but also to understand the effectiveness of existing programs like the Accountability Program.

It is necessary to understand the current landscape of youth monetary sanctions as Hawai‘i begins to make substantive juvenile legal system reforms.

Local organizations dedicated to juvenile legal system change were recently awarded the Kellogg Grant for their trauma-informed and innovative reforms.⁹ As these organizations prepare for implementation, collecting data and documenting the status quo will be necessary to understand needs and ultimately evaluate progress.

Kaua‘i County has already taken bold action to end the imposition of monetary sanctions on youth.¹⁰ The Judiciary affirmed that “family courts across the state already rarely impose fines, fees, or costs on youth and their parents.”¹¹ Collecting further data on the assessment—or lack thereof—of monetary sanctions will help identify evidence-based alternatives that promote accountability and rehabilitation and inform future reforms to the juvenile system in Hawai‘i.

Last session, this committee passed a single chamber resolution on data collection (SR 202), but the Administrative Office of the Courts (AOC) said “because of ongoing commitments and priorities, and limited resources, the Judiciary does not necessarily take action in response to single house resolutions” and that “due to limited resources and capacity” they were not in a position to take action in response to the resolution. We are hopeful the Legislature will prioritize passing a concurrent resolution this year, as it may propel the AOC to fulfill this important data request.

Collecting data on youth in the system and outcomes, including around the assessment and collection of monetary sanctions, will lead to more informed and comprehensive reform of Hawai‘i’s juvenile legal system.

We respectfully ask for “Aye” vote.

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 Alex R. Piquero & Wesley G. Jennings, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUSTICE 325, 334 (2017).

³ Alex Piquero, Michael Baglivio & Kevin Wolff, *A Statewide Analysis of the Impact of Restitution and Fees on Juvenile Recidivism in Florida Across Race & Ethnicity* (2023), <https://jlc.org/resources/statewide-analysis-impact-restitution-and-fees-juvenile-recidivism-florida-across-race>.

⁴ Burns Institute, *United States of Disparities: National Map: Hawaii* (2014).

<https://usdata.burnsinstitute.org/decision-points/12/hawaii#comparison=2&placement=1&aces=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>.

⁵ *Id.*

⁶ Hawai'i State Judiciary, "Papa Hoike Kuleana: Accountability Program of the First Circuit Family Court," https://www.courts.state.hi.us/news_and_reports/featured_news/2016/07/papa-hoike-kuleana-accountability-program-of-the-first-circuit-family-court.

⁷ Family Court of the First Circuit, Restitution Amounts 2017-2022 (on file with authors).

⁸ *Id.*

⁹ W.K. Kellogg Foundation, "Partners in Development Foundation," <https://www.wkkf.org/grants/grant/2022/11/kawailoa-a-transformative-indigenous-model-tim-to-end-youth-incarceration-6011193> (last accessed Mar. 21, 2023).

¹⁰ Office of the Prosecuting Attorney, County of Kaua'i, State of Hawai'i, Memorandum to All Deputy Prosecuting Attorneys Re: Juvenile Monetary Sanctions (June 29, 2021), <https://www.law.berkeley.edu/wp-content/uploads/2021/07/FINAL-Fines-Fees-Kauai-DA-Policy.pdf>.

¹¹ *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).

SCR-213

Submitted on: 3/30/2024 7:53:28 PM

Testimony for JDC on 4/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawai'i	Support	Remotely Via Zoom

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i; Hawai'i's oldest and largest policy and political LGBTQIA+ focused organization fully supports SCR 213.

We hope you all will support this resolution
Mahalo nui loa,

Michael Golojuch, Jr. (he/him)
Chair and SCC Representative

Stonewall Caucus of the Democratic Party of Hawai'i

SCR-213

Submitted on: 3/31/2024 9:53:44 AM

Testimony for JDC on 4/1/2024 10:30:00 AM

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

Comments:

RE: S.C.R. No. 213 / S.R. No. 189: REQUESTING THE OFFICE OF THE ADMINISTRATIVE DIRECTOR OF THE COURTS TO COLLECT, COMPILE, AND SHARE DATA ON THE ASSESSMENT OF FEES, COURT COSTS, FINES, AND RESTITUTION IN CASES AGAINST MINORS.

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

Hawai'i Friends of Restorative Justice submits the following testimony to express our support for S.C.R. No. 213 / S.R. No. 189.

Fees, court costs, fines, and restitution (hereafter, "monetary sanctions") 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. Requiring the collection of data would provide insight into how many youth in the state are harmed by monetary sanctions and help inform policymakers about areas of the law that may warrant future legislation.

Evidence suggests that monetary sanctions are ineffective, criminogenic, and unaffordable for the youth and families involved in Hawai'i's juvenile legal system

Research shows that monetary sanctions 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 monetary sanctions charged to youth.^[1] Additionally, studies by criminologists found that youth who had monetary sanctions imposed on them had a significantly higher likelihood of recidivism, even when controlling for demographics and case characteristics.^[2] As the amount of monetary sanctions increased, so did the youth's chances of recidivism.^[3]

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. 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

monetary sanctions create a perfect storm of financial and emotional harm for often already struggling families.

Data on youth monetary sanctions needs to be comprehensively collected

Presently, none of the Family Courts are actively tracking information on fees and fines. Only the First Circuit, which also operates an Accountability Program that allows youth to do community service to pay off their debt, provided data on restitution. Collecting data over time will not only allow family courts to identify juvenile case trends but also to understand the effectiveness of existing programs like the Accountability Program.

Data collection is necessary as Hawai‘i begins to make substantive juvenile legal system reforms. Local organizations dedicated to juvenile legal system change were recently awarded the Kellogg Grant for their trauma-informed and innovative reforms.^[4] As these organizations prepare for implementation, collecting data and documenting the status quo will be necessary to understand needs and ultimately evaluate progress.

Last session, this committee passed a single chamber resolution on data collection (SR 202), but the Administrative Office of the Courts said “because of ongoing commitments and priorities, and limited resources, the Judiciary does not necessarily take action in response to single house resolutions” and that “due to limited resources and capacity” they were not in a position to take action in response to the resolution. We are hopeful the Legislature will prioritize passing a concurrent resolution this year, as it may propel the AOC to fulfill this important data request.

Collecting data on youth in the system and outcomes, including around the assessment and collection of monetary sanctions, will lead to more informed and comprehensive reform of Hawai‘i’s juvenile legal system.

Please vote yes for this measure and mahalo for your public service.

Mahalo,

Lorenn Walker, JD, MPH

Director, Hawai‘i Friends of Restorative Justice

[1] 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>.

[2] 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).

[3] *Id.*

[4] W.K. Kellogg Foundation, “Partners in Development Foundation,” <https://www.wkkf.org/grants/grant/2022/11/kawailoa-a-transformative-indigenous-model-tim-to-end-youth-incarceration-6011193> (last accessed Mar. 21, 2023).