

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

March 16, 2021

H.B. No. 631: RELATING TO FINANCIAL HARDSHIP

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

The Office of the Public Defender **strongly supports** H.B. No. 631, HD1.

Court fees and fines perpetuate a cycle of debt and incarceration for being poor and aggravates known racial and socioeconomic inequalities in the criminal legal system.¹ Our office sees firsthand the devastating consequences, including incarceration, when low-income people are saddled with crippling high fines and fees and funneled into the criminal legal system.

When money is tight, a resident might have to choose between paying the rent or paying several hundred dollars to register their vehicle. With a lapsed registration, the resident is also unable to update their safety check, even if their car is in perfectly working order. This resident still needs to be able to get to work, often more than just one job, and take the kids to school while they save up the money to pay for the registration, the safety check, and the late fees that will attach. While driving to work one day, the resident is pulled over due to their expired stickers, and suddenly they find themselves with a citation for another couple hundred of dollars, which they are also unable to pay. Thirty days later, the fine is sent to a collection agency on the mainland, and a stopper is placed onto the resident’s license. As long as the stopper is in place, the resident will be unable to legally register their car to themselves. In practical terms, this often means that the resident will continue to pick up similar citations while they are saving up to pay the first citation. This resident could save up money for months to pay off their delinquent registration, safety check, and court fines, only to discover that they do not have the money to cover the interest charged by the collection’s agency. Finally, the resident’s driver’s license expires, and the

¹ See e.g., *The Native Hawaiian Justice Task Force Report* (2012), [2012NHJTF REPORT FINAL 0.pdf \(oha.org\)](#); *HCR 85 Task Force on Prison Reform Final Report* (2018), https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf; ACLU, *Blueprint for Smart Justice Hawai‘i* (2019) [SJ-Blueprint-HI.pdf \(aclu.org\)](#).

next time that they are pulled over for expired stickers, they receive a criminal citation for Driving Without a Valid License (“DWOL”); criminalizing them because they are poor.

This is the story that our District Court attorneys hear time and time again during intake interviews with our clients. It is an endless cycle that is eating away at the fabric of our society. By the time clients reach us, it is too late for us to give them the advice that might have helped them avoid falling into this situation. A first-time offense for DWOL offense will cost \$137, including fines and fees, and a second offense costs \$337. It is common practice in District Court to allow unrepresented individuals to plead guilty to these charges at the initial court appearance. It is not until their third offense, when the severity of the charge is upgraded to a misdemeanor, that these individuals are referred to our office for representation.

The vast majority of our DWOL clients have no other non-traffic charges. If it were not for their financial difficulties, these clients would never have to experience the harm of having a criminal conviction on their records. With each additional DWOL citation, the fines grow higher. It is an oppressive system which funnels our clients into a never-ending cycle of debt and incarceration. A third offense will cost \$562 with court fees, and judges have no discretion to lower that amount based on an individual’s financial circumstances. Even a straight conversion to community service work is not practicable for our clients who work one or more jobs. Community service worksites are limited in many areas, and they have been in even shorter supply due to health and safety precautions during the COVID-19 pandemic.

Our only objection to this bill is the current effective date of July 1, 2050, which will not provide the immediate relief that Hawai‘i residents desperately need. Something has got to give. We live in the State with the lowest minimum wage when adjusted for our high cost of living. Residents working multiple jobs can barely afford to pay their rent and feed their families, yet we are treating them like criminals due to unpaid fees. The Office of the Public Defender is strongly in support of re-thinking this regressive system and finding a way to move forward. Allowing judges the discretion to tailor the fine or community service work due to an individual’s financial hardship is an excellent step in the right direction.

Thank you for the opportunity to comment on H.B. No. 631, HD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

March 16, 2021

RE: H.B. 631, H.D. 1; RELATING TO FINANCIAL HARDSHIP.

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 supporting the intent of H.B. 631, H.D. 1 with comments.

The purpose of H.B. 631, H.D. 1 is to provide judges with greater discretion as it relates to fines and fees imposed in certain traffic offenses. Although this bill has good intentions, the Department believes that H.B. 631, H.D. 1 is premature at this time and fails to consider the unintended consequences associated with a number of amendments proposed.

Last year the Legislature passed Act 59, Session Laws of Hawaii 2020. It was one of the few bills that passed last year, but due to court closures associated with COVID-19 has not been utilized as envisioned. Act 59 essentially prohibited the imposition of restrictions on a person's ability to obtain or renew a driver's license or to register, renew the registration, or transfer or received title to a motor vehicle as a consequence of unpaid monetary obligations. Additionally, Act 59 allowed for certain individuals to petition the court for a driver's license or motor vehicle clearance. The Department believes that allowing the courts to implement Act 59 and substantial time to collect data before introducing potentially duplicative measures would be prudent.

The Department sees the value in Section 4 (pg. 9, ln. 7-17) which increases the conversion rate of imprisonment to \$50. However, as it relates to the proposed flexibility in sentencing, the Department believes that currently, courts already have the inherent ability to "revoke"/waive fees or convert fines to community service. Additionally, programs such as Volunteer Legal Services also provide services relating to the proposed changes in this bill. Therefore, although H.B. 631, H.D. 1 provides limited value, it may not be an ideal vehicle for the purpose it is seeking.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 631, H.D. 1 with comments. Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 16, 2021

9:15 AM

SUPPORT FOR HB 631 HD1- FEES AND FINES - TRAFFIC

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 of the more than 4,100 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that 1,000 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 is in support this measure that will prevent driving people into poverty, especially at this challenging time when so many individuals and families are struggling just to stay afloat.

People who are exiting incarceration leave with no identification documents, little to no money, and sometimes mounds of traffic fines. This is a huge barrier to successful reentry. The Harvard Criminal Justice Public Policy Program released a report¹ on proportionate fines and made recommendations consistent with the proposed pilot program, including:

“Fines should not swallow up all of a person’s disposable monthly income, and payment should not be required for years on end. Jurisdictions should set a reasonable percentage of net income that can be used to pay a portion of the fine every month.”

Though court debt is often justified as a means of shifting the costs of the criminal justice system to those who “use” that system, that justification is flawed: the legal system is

¹ PROPORTIONATE FINANCIAL SANCTIONS - Policy Prescriptions for Judicial Reform, by Sharon Brett and Mitali Nagrecha, Criminal Justice Policy Program, Harvard Law School, September 2019.

http://cipp.law.harvard.edu/assets/Proportionate-Financial-Sanctions_layout_FINAL.pdf

a public good that benefits all members of the community and thus should be funded from general revenue. Moreover, funding the court system through monetary sanctions can create pressure to raise increasing revenue through the courts. When states and localities use courts to fill gaps in their budgets, this leads to perverse incentives and erodes public trust in the judicial system.²

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

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

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

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

Losing a license also creates barriers to meeting basic needs such as getting to and from medical appointments, school, child care, grocery shopping, and even court appointments. When the only adult or one adult in the household cannot drive, others close to the family must help coordinate logistics. Without additional support getting to work, the driver can lose his/her job. In one study, 42 percent of people lost their jobs after license suspension and 45 percent

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

³ See, e.g., Am. Civil Liberties Union, Written Statement Before the U.S. Commission on Civil Rights, Hearing on Municipal Policing and Courts: A Search for Justice or a Quest for Revenue 2 (Mar. 18, 2016), available at https://www.aclu.org/sites/default/files/field_document/aclu_statement_usccr_03182016_municipal_courts_and_police_choudhury.pdf (describing how practices around criminal justice debt are "racially-skewed due to the dual impact of racial disparities in the criminal justice system and the racial wealth gap").

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

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

of those people could not find another job. The majority of those who did regain employment found work paying a lower wage.⁶

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

Here are recommendations from this report:

RECOMMENDATIONS: REBALANCING THE SCALES OF JUSTICE

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

A 2019 report from the Brennan Center⁸ concludes:

“In recent years, states and municipalities have come to rely on criminal fees and fines, shifting the burden for funding courts, the criminal justice system — and, sometimes, general government operations — from the general public to defendants. But these fees and fines undermine rehabilitation and public safety by saddling people with debt just as they are reentering society. This report shows that they also fail at their primary objective: raising revenue.”

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

Community Alliance on Prisons urges the committee to pass this bill that will help so many struggling people who are working their way back to their communities.

Mahalo for this opportunity to testify.

⁸ The Steep Costs of Criminal Justice Fees and Fines, By Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison, Michael Crowley, November 21, 2019. <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>

TO THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021
COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
DATE: Tuesday, March 16, 2021
TIME: 9:15 a.m.
PLACE: VIA VIDEOCONFERENCE
Conference Room 308
State Capitol
415 South Beretania Street

POSITION: **STRONG SUPPORT FOR HB631 HD1**

House Bill 631 will provide judges with greater discretion to adjust the amount(s) owed and taking into consideration the totality of an offender's financial circumstances regarding certain traffic offenses based on the person's inability to pay.

This bill will allow judges to determine the level of flexibility that a case should have and should increase the ability for persons under judgment to not only pay back the state for offense(s) but also allow the person to live not compounded with other issues such as being forced to pay on offenses and not having means to live and survive. For persons in the lower economic strata areas, this is all too familiar. As the language of the bill states.

“The judge will have the discretion to enter an order that allows the person additional time for payment, reduces the amount of each installment, revokes the fee or fine, or unpaid portion thereof, in whole or in part, or converts any outstanding fine to community service”

By enabling a restorative justice approach as stated in HB 631 and less of a draconian approach to criminal justice offenses, persons that are under judgment will have multiple ways to pay back society aside from just monetary means, this approach is indicative of proposed amendments to **HRS §291D-9**

Whereby the following is proposed:

(e) At any point prior to full payment of a monetary assessment, any person who suffers a change in financial circumstances may request a hearing to modify the monetary assessment or to request community service in lieu thereof."

This also is in keeping with a restorative justice approach and seeks restoration rather than mere recompense. Reading this bill and looking at the possible pros and cons, I can only see positive effects in my community.

It is also important to note that Individuals experiencing financial hardship often fall into a cyclical trap in which they accrue fines or other penalties due to traffic infractions. In many cases the individual ends up receiving even more penalties and even imprisonment because they are simply unable to pay the original fine, we must put an end to this vicious cycle.

Therefore, I recommend that this bill be passed out of this committee. This bill and its intent will have a positive effect in my community and other socio-economic challenged areas throughout Hawaii. All amendments to this bill should be with the intent of reducing possible ambiguous language or enhancing the intent of the enabling language. Thank you for taking the time in reading my testimony.

Mahalo,

Ken Farm

HB-631-HD-1

Submitted on: 3/13/2021 3:34:44 PM

Testimony for JDC on 3/16/2021 9:15:00 AM

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

Comments:

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

HB-631-HD-1

Submitted on: 3/14/2021 3:29:07 PM

Testimony for JDC on 3/16/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong support.

HB-631-HD-1

Submitted on: 3/14/2021 5:25:20 PM

Testimony for JDC on 3/16/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Mrowczynski	Individual	Support	No

Comments:

I strongly **SUPPORT** HB631 HD1 for the following reasons:

- This bill gives a person the chance to petition the courts when their inability to pay fees and fines is NOT willful. It includes many options, including community services to pay a debt.
- This is especially important for many formerly incarcerated individuals who return to the community with overwhelming debt from traffic violations making it difficult to get their licenses back, to find housing, and to look for work.

LATE

KALIHI PALAMA HAWAIIAN CIVIC CLUB

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 16, 2021

POSITION: **STRONG SUPPORT FOR HB631**

House Bill 631 will provide judges with greater discretion to adjust the amount(s) owed and take into consideration the totality of an offender's financial circumstances regarding certain traffic offenses based on the person's inability to pay.

This bill will allow judges to determine the level of flexibility that a case should have and should increase the ability for persons under judgment to not only pay back the state for offense(s) but also allow the person to live not compounded with other issues such as being forced to pay on offenses and not having means to live and survive. In keeping with a restorative justice approach that seeks restoration rather than mere recompense. Reading this bill and looking at the possible pros and cons, I can only see positive effects in my community.

We must understand that by limiting the offender's ability to provide for family and be productive in society, the judiciary is limiting the tax base from which it draws funding. This is counterproductive to supporting a financially healthy judiciary and criminal justice system. Individuals experiencing financial hardship often fall into a cyclical trap in which they accrue fines or other penalties due to traffic infractions, then end up receiving even more penalties and even imprisonment because they are simply unable to pay the original fine.

This bill and its intent will have a positive effect in our communities with a large impact on socio-economically challenged areas throughout Hawaii.

Please pass HB631.

Mahalo for the opportunity to testify.

Me ka mana'o nui,

Juanita Mahienaena Brown Kawamoto

President

Kalihi-Palama Hawaiian Civic Club

LATE

HB-631-HD-1

Submitted on: 3/15/2021 11:23:19 AM

Testimony for JDC on 3/16/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Eaton	Individual	Support	No

Comments:

Aloha, my name is Carolyn Eaton and I am an Oahu voter. I'm supporting HB 631, which comes before Senate Judiciary Comm. tomorrow morning.

LATE

TESTIMONY IN STRONG SUPPORT of HB631 Relating to FINANCIAL HARDSHIP

Chair Karl Rhoads
Committee on Judiciary
415 S. Beretania Street
Honolulu, HI 96813

Mahalo piha Chair Rhoads, Vice Chair Keohokalole, and Committee Members for hearing this bill.

I write in **strong support** for ending the destructive cyclical trap that people struggling to make ends meet find themselves in, when they face stiffer penalties for their inability to pay. **This bill allows people to make themselves whole again in the eyes of the law.**

Currently judges have **minimum sentencing requirements**, even if an offender can't pay off a citation because they can't afford to. This bill would allow judges to consider an individual's financial hardship **ONLY if they can demonstrate that their inability to pay off a citation is due to financial hardship.**

This is not a, "give them free reign, unequal justice," situation. This is a common sense measure that says, "if someone can't pay off a fine because they need to feed their family and can't afford to pay off the citation, does it make sense to continue fining them?" **Furthermore, the current structure says that if someone isn't paying off their fines, they need to be thrown in jail.** It is tragic that a person of lower income is thrown into jail, where they can't earn income and take care of their family, because they are penalized for not paying off a ticket that they didn't have money to pay off in the first place.

Imagine a person who cannot afford to pay for their registration, which is very high on O'ahu. They receive a ticket while going to work. They can't pay off the ticket, and receive higher fines. They eventually need to go to prison or do community service because they can't pay their fines off even though they want to. They now have this on their record, time away from work, and an even harder time to make ends meet. This does not serve justice, doesn't make our streets safer, doesn't help those in need, and just generally a bad situation.

Thank you for your consideration.

With Aloha,

Rikako Ishiki

LATE

STRONG SUPPORT FOR THOSE WITH FINANCIAL NEEDS: PASS HB631!

Chair Karl Rhoads
Chair, Committee on Judiciary
Hawaii State Capitol
Room 204

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members,

I write in **strong support** of HB 631 Relating to Financial Hardship, and thank you for hearing this measure.

Individuals experiencing financial hardship often fall into a **cyclical trap in which they accrue fines or other penalties due to traffic infractions, then end up receiving even more penalties and even imprisonment because they are simply unable to pay the original fine.** According to Aloha United Way's (AUW) Study of Financial Hardship Report (2017), roughly half of Hawaii's families cannot afford to meet basic needs, a number that unfortunately is higher now with the COVID-19 pandemic. **This bill argues that disadvantaged individuals should be given the opportunity to redeem themselves and not get trapped forever by fines and imprisonment.**

In 2019 the legislature passed Act 112, which established the Financial Hardship Taskforce, which under Chief Justice Recktenwald published a report with multiple recommendations. Based on these recommendations, this bill seeks to:

- 1). Provides judges with greater discretion to adjust the amount owed by a person who violates certain traffic offenses based purely on the person's inability to pay.
- 2). Decreases the imprisonment term to contumacious nonpayment ratio. Increases the amount of credit given to a person committed for contumacious nonpayment.

I respectfully urge passage of this measure by the committee. Thank you for your consideration.

Mahalo nui loa,

Daniel Lee