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MEMORANDUM

To: All Deputy Prosecuting Attorneys
From: Justin Kollar
Date: June 29, 2021
Re: Juvenile Monetary Sanctions

Introduction

Juvenile monetary sanctions harm families—disproportionately Native families and families of color— and generate little or no revenue for local government. Fees are designed only to generate revenue, while fines are intended to punish. Neither are evidence-based practices for rehabilitating, deterring, or even punishing youth. This policy formalizes the Kaua'i County Office of the Prosecuting Attorney's longstanding practice of declining to seek these sanctions for youth and their families.

I. **Juvenile fees and fines are harmful and racially discriminatory.**

Fees and fines undermine the financial and emotional wellbeing of families, and disproportionately burden youth and families of color.¹ The debt from fees and fines strains family budgets and relationships, while adversely affecting the mental health of youth and their family members— parents are forced to choose between paying the court and meeting basic needs.² These economic burdens also correlate to increased recidivism and push youth deeper into the legal system.³

¹ See POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIVERSITY OF CALIFORNIA, MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA (2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/12/Making-Families-Pay.pdf>.

² LESLIE PAIK & CHIARA PACKARD, IMPACT OF JUVENILE JUSTICE FINES AND FEES ON FAMILY LIFE: CASE STUDY IN DANE COUNTY, WI (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

³ Alex R. Piquero & Wesley G. Jennings, Research Note, *Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325

Furthermore, fees and fines disproportionately harm Black and Native youth and other youth of color, as well as low-income youth and families.⁴ Native Hawaiian youth, particularly, are overrepresented at every stage of the delinquency process, and thus exposed to more fees and fines.⁵ Ability-to-pay processes are insufficient to address racial inequity, and may even deepen it.⁶ Lastly, monetary sanctions crush families who are unable to pay and merely inconvenience those who have the means, creating a two-tiered system based on income.⁷

II. Fees and fines serve no governmental interest and undermine public trust.

Fees and fines serve no purpose for the government and undermine many of the goals of the Prosecuting Attorney's office. In addition to increasing recidivism, juvenile fees, and fines in other parts of the country have been shown to net little revenue for courts—some schemes cost more to administer than they bring in.⁸ Current research into adolescent

(2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study-2016.pdf>; JESSICA FEIERMAN ET AL., JUVENILE LAW CENTER, DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE SYSTEM (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

⁴ See Alex R. Piquero, *Disproportionate Minority Contact*, 18 JUV. JUST. 59, 59-61 (2008) (discussing disproportionate punishments, including monetary sanctions, for youth of color in state juvenile systems); FRANK EDWARDS & ALEXES HARRIS, AN ANALYSIS OF COURT IMPOSED MONETARY SANCTIONS IN SEATTLE MUNICIPAL COURTS, 2000-2017 (2020), <https://www.seattle.gov/Documents/Departments/CivilRights/SMC%20Monetary%20Sanctions%20Report%207.28.2020%20FINAL.pdf> (finding that, in Seattle, court debt falls most heavily on people of color); see also Rep. Leslie Herod, *Eliminating juvenile-justice fees means better justice for juveniles*, COLO. SUN (May 23, 2021) <https://coloradosun.com/2021/05/23/eliminating-juvenile-justice-fees-opinion/> (showing rural youth in Colorado were charged more juvenile fees than urban youth).

⁵ *United States of Disparities: National Map: Hawaii*, Burns Inst., <https://usdata.burnsinstitute.org/decision-points/12/hawaii#comparison=2&placement=1&rac=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> (last visited Apr. 16, 2021).

⁶ Theresa Zhen, (Color)Blind Reform: How Ability-to-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt, 43 N.Y.U. REV. L. & SOC. CHANGE 177 (2019).

⁷ See, e.g., Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018, Washington, DC: Federal Reserve Board, 2019, <https://www.federalreserve.gov/publications/report-economic-well-being-us-households.htm> (according to the Federal Reserve, 40% of Americans could not afford a \$400 emergency expense).

⁸ See MAKING FAMILIES PAY, supra note 1 at 18; OR. DEPT OF JUST., DIV. OF CHILD SUPPORT, CHILD SUPPORT INFORMATION RELATED TO OREGON YOUTH AUTHORITY 5 (2020), <https://berkeley.box.com/s/5mgugtq1ritzrvj86rylezbfin5yt9an> (showing that the Oregon Division of Child Support spent \$866,000 to collect \$864,000 in juvenile fees in 2019).

development shows that fines are not an effective deterrent, and monetary sanctions have never been an evidence-based method of addressing youthful misconduct.⁹

Pursuing fees and fines strains relationships between the community and government. In jurisdictions where law enforcement pursues monetary sanctions aggressively, police have been shown to close more serious cases at a lower rate.¹⁰ Such low clearance rates, as well as high fee and fine burdens, reduce public trust in police and in government as a whole.¹¹ Funding the judiciary on the backs of poor people further undermines public trust by creating a clear conflict between judges' interest in court budgets and the impartial administration of justice.¹²

III. **Where Hawai`i law does not require this office to pursue fees and fines, we will not.**

The Office of the Prosecuting Attorney shall not seek to impose any discretionary fees and fines and shall object if the Court or any other party seeks to impose them. Most of the juvenile fees and fines authorized in the Hawai`i Revised Statutes are discretionary, meaning that prosecuting attorneys need not seek to impose them.

⁹ Psychosocial maturation processes (e.g., impulse control, future orientation, resistance to peer influence, etc.) develop well into young adulthood. This ongoing development weakens fully mature logical reasoning abilities of adolescents and results in higher vulnerability for engaging in risk-taking behaviors. See OFFICE OF JUVENILE JUST. & DELINQ. PREV., *Studying Deterrence Among High-Risk Adolescents* (2015), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248617.pdf>.

¹⁰ See Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement and the Quality of Government Service* 3-4 (2017), http://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf; see also Alicia Bannon et al., Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* 30 (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (pursuing fines and fees redirects probation officers from other duties).

¹¹ See generally U.S. DEPT OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 15 (2015) [hereinafter FERGUSON REPORT], https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

¹² See *People v. Cameron*, 504 Mich. 927, 929 N.W.2d 785, 786 (2019) (CJ McCormack, concurring in denial of certiorari) (“No matter how neutral and detached a judge may be, the burden of taxing criminal defendants to finance the operations of his court, coupled with the intense pressures from local funding units (and perhaps even from the electorate), could create at least the appearance of impropriety. Assigning judges to play tax collector erodes confidence in the judiciary and may seriously jeopardize a defendant's right to a neutral and detached magistrate.”); *Cain v. White*, (5th Cir 2019) (finding that directing fines and fees into a general revenue fund created an unavoidable conflict of interest for judges).

However, this policy does not affect mandatory fees, such as the Driver Education Assessment fee, or mandatory fines such as e-smoking, curfew, and dancehall fines.¹³ The Office of the Prosecuting Attorney cannot decline to pursue fees and fines required by statute. Deputy Prosecuting Attorneys may refer to this memo and any of the research contained herein when objecting to the imposition of discretionary fees and fines.

Conclusion

For the reasons listed above, the Office of the Kaua'i County Prosecuting Attorney shall not seek to impose discretionary fees and fines in juvenile delinquency proceedings and shall object to their imposition unless there is a compelling reason to request them and supervisory approval has been obtained. This policy only formalizes the established practice of this office, and recognizes that common sense, economic reality, and decency demand that we not attempt to fund the system on the backs of poor children and vulnerable families. This policy shall take effect immediately.

¹³ Haw. Rev. Stats. 286G-3; 712-1258; 577-18; 577-24; 577-34.

Appendix: Juvenile fees and fines currently authorized in statute

Type; authorizing statute	Description	Discretionary or mandatory
Fee; 571-51	Study fee—for medical, psychiatric, or psychological study of youth.	Discretionary (not to be imposed under this policy)
Fee; 571-31	Summons fee—for cost of issuing and executing summons or warrant.	Discretionary (not to be imposed under this policy)
Fine; 571-48(1)(D)	Shoplifting fine	Discretionary (not to be imposed under this policy)
Fee; 286G-3	Fee—driver’s education	Mandatory (unaffected by this policy)
Fine; 577-18	Curfew fine imposed against parent	Mandatory (unaffected by this policy)
Fine; 577-24	Dancehall fine imposed against parent	Mandatory (unaffected by this policy)
Fine; 577-34	Dancehall fine imposed against person who takes minor to dancehall	Mandatory (unaffected by this policy)