

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO THE VIOLATION OF RULES DURING EMERGENCY PERIODS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The global pandemic has created great  
2 challenges to our health, economy, and way of life. The  
3 governor and county mayors have had to exercise their emergency  
4 powers under chapter 127A, Hawaii Revised Statutes (HRS), to  
5 impose rules in an attempt to control the spread of COVID-19.  
6 The enforcement of these rules is critical to our efforts to  
7 control the spread of COVID-19, protect the health and safety of  
8 those in our community, manage our medical resources, and  
9 restart our economy. But these enforcement efforts have placed  
10 a heavy burden upon the criminal justice system, which must be  
11 able to process these cases appropriately to allow for  
12 meaningful and effective enforcement.

13           At this time there is concern that the criminal justice  
14 system is unable to handle the great number of cases being  
15 placed into the system. The county police departments have  
16 issued tens of thousands of citations for violations of  
17 emergency proclamations and orders. The citations must be  
18 processed through the court system, and the courts have been

1 inundated with a high volume of cases, while operations are  
2 complicated by the pandemic.

3 There cannot be meaningful and effective enforcement when  
4 the cases cannot be processed in a timely and appropriate  
5 manner. And that adversely impacts our ability to control the  
6 spread of COVID-19.

7 Section 127A-29, HRS, allows the governor and the mayors to  
8 only establish misdemeanor offenses through rulemaking during  
9 emergency periods. Misdemeanor offenses must be processed  
10 through the court system. And the system was overwhelmed by the  
11 many misdemeanor citations being issued to enforce the emergency  
12 rules.

13 The purpose of this bill is to allow the governor and the  
14 mayors to establish lesser offenses during emergency periods,  
15 including non-criminal violations or infractions, and establish  
16 a more expeditious system for the processing of these  
17 infractions which would reduce the impact on the system.

18 By authorizing the governor and the mayors to establish lesser  
19 offenses, they will be able to promulgate consequences that may  
20 be more proportionate to the offenses.

21 The new expeditious system will be similar to that of  
22 chapter 291D, HRS, for the adjudication of traffic infractions,  
23 and will:

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- 1 (1) Eliminate the court arraignment proceeding for many  
2 of the emergency period infractions;
- 3 (2) Facilitate and encourage the resolution of many  
4 emergency period infractions through the payment of a  
5 monetary assessment;
- 6 (3) Speed the disposition of contested cases through a  
7 hearing, similar to small claims proceedings, in which  
8 the rules of evidence will not apply and the court  
9 will consider as evidence the notice of infraction,  
10 applicable police reports, or other written statements  
11 by the police officer who issued the notice, any other  
12 relevant written material, and any evidence or  
13 statements by the defendant contesting the notice of  
14 infraction;
- 15 (4) Dispense in most cases with the need for witnesses,  
16 including law enforcement officers, to be present and  
17 for the participation of the prosecuting attorney;
- 18 (5) Allow judicial, prosecutorial, and law enforcement  
19 resources to be used more efficiently and effectively;  
20 and
- 21 (6) Save the taxpayers money and reduce their frustration  
22 by simplifying the process.

1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to title 37 to be appropriately designated  
3 and to read as follows:

4 "CHAPTER

5 ADJUDICATION OF EMERGENCY PERIOD INFRACTIONS

6 § -1 **Definitions.** As used in this chapter:

7 "Concurrent trial" means a trial proceeding held in the  
8 district or family court in which the defendant is tried  
9 simultaneously in a civil case for any charged emergency period  
10 infraction and in a criminal case for any related criminal  
11 offense, with trials to be held in one court on the same date  
12 and at the same time.

13 "Emergency period infraction" means all non-compliance of  
14 rules proclaimed or ordered by the governor or a mayor pursuant  
15 to chapter 127A which are specified in the emergency  
16 proclamation or order as being an infraction subject to the  
17 adjudication process of this chapter.

18 "Hearing" means a proceeding conducted by the district  
19 court pursuant to section -7 at which the defendant to whom a  
20 notice of infraction was issued either admits to the infraction,  
21 contests the notice of infraction, or admits to the infraction  
22 but offers an explanation to mitigate the monetary assessment  
23 imposed.

1 "Notice of infraction" means the citation form that is  
2 issued to the defendant at or after the time of the infraction  
3 and that notifies the defendant of the civil infraction(s) the  
4 defendant is charged with committing, whatever its title or  
5 denomination.

6 "Related criminal offense" means any criminal violation or  
7 crime, committed in the same course of conduct as an emergency  
8 period infraction, for which the defendant is arrested or  
9 charged.

10 "Trial" means a trial conducted by the district court  
11 pursuant to the rules of the district court and the Hawaii rules  
12 of evidence.

13 § -2 **Applicability.** (a) Notwithstanding any other  
14 provision of law to the contrary, all emergency period  
15 infractions, including emergency period infractions committed by  
16 minors, shall be adjudicated pursuant to this chapter, except as  
17 provided in subsection (b). This chapter shall be applied  
18 uniformly throughout the State and in all counties. No  
19 emergency period infraction shall be classified as a criminal  
20 offense.

21 (b) Where a defendant is charged with a emergency period  
22 infraction and the infraction is committed in the same course of  
23 conduct as a criminal offense for which the offender is arrested

1 or charged, the emergency period infraction shall be adjudicated  
2 pursuant to this chapter; provided that the court may schedule  
3 any initial appearance, hearing, or trial on the emergency  
4 period infraction at the same date, time, and place as the  
5 arraignment, hearing, or trial on the related criminal offense.

6 Notwithstanding this subsection and subsection (c), the  
7 court shall not schedule any initial appearance, hearing, or  
8 trial on the emergency period infraction at the same date, time,  
9 and place as the arraignment, hearing, or trial on the related  
10 criminal offense where the related criminal offense is a felony  
11 or is a misdemeanor for which the defendant has demanded a jury  
12 trial.

13 (c) If the defendant requests a trial pursuant to  
14 section -11, the trial shall be held in the district court of  
15 the circuit in which the emergency period infraction was  
16 committed. If the court schedules a concurrent trial pursuant  
17 to paragraph (1), the concurrent trial shall be held in the  
18 appropriate district or family court of the circuit in which the  
19 emergency period infraction was committed, whichever has  
20 jurisdiction over the related criminal offense charged pursuant  
21 to the applicable statute or rule of court; provided that:

22 (1) The district or family court, for the purpose of

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1 trial, may schedule a civil trial on the emergency  
2 period infraction on the same date and at the same  
3 time as a criminal trial on the related criminal  
4 offense charged. The court shall enter a civil  
5 judgment as to the emergency period infraction and a  
6 judgment of conviction or acquittal as to the related  
7 criminal offense following such concurrent trial; and

8 (2) If trial on the emergency period infraction is held  
9 separately from and prior to trial on any related  
10 criminal offense, the following shall be inadmissible  
11 in the prosecution or trial of the related criminal  
12 offense, except as expressly provided by the Hawaii  
13 rules of evidence:

14 (A) Any written or oral statement made by the  
15 defendant in proceedings conducted pursuant to  
16 section -6(b); and

17 (B) Any testimony given by the defendant in the trial  
18 on the emergency period infraction.

19 Such statements or testimony shall not be deemed a  
20 waiver of the defendant's privilege against self-  
21 incrimination in connection with any related criminal  
22 offense.

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1 (d) In no event shall section 701-109 preclude prosecution  
2 for a related criminal offense where an emergency period  
3 infraction committed in the same course of conduct has been  
4 adjudicated pursuant to this chapter.

5 (e) If the defendant fails to appear at any scheduled  
6 court date prior to the date of trial or concurrent trial and:

7 (1) The defendant's civil liability for the emergency  
8 period infraction has not yet been adjudicated  
9 pursuant to section -7, the court shall enter a  
10 judgment by default in favor of the State for the  
11 emergency period infraction unless the court  
12 determines that good cause or excusable neglect exists  
13 for the defendant's failure to appear; or

14 (2) The defendant's civil liability for the emergency  
15 period infraction has been adjudicated previously  
16 pursuant to section -7, the judgment earlier entered  
17 in favor of the State shall stand unless the court  
18 determines that good cause or excusable neglect exists  
19 for the defendant's failure to appear.

20 (f) If the defendant fails to appear at any scheduled  
21 court date prior to concurrent trial or fails to appear for  
22 concurrent trial scheduled pursuant to subsection (c)(1), the

1 court shall enter a disposition pursuant to the Hawaii rules of  
2 penal procedure for the criminal offense.

3       §   -3 **Venue and jurisdiction.** (a) All emergency period  
4 infractions shall be adjudicated in the district and circuit  
5 where the alleged infraction occurred, except as otherwise  
6 provided by law.

7       (b) Except as otherwise provided by law, jurisdiction is  
8 in the district court of the circuit where the alleged emergency  
9 period infraction occurred. Except as otherwise provided in  
10 this chapter, district court judges shall adjudicate emergency  
11 period infractions.

12       §   -4 **Notice of infraction; form; determination final**  
13 **unless contested.** (a) The notice of infraction shall include  
14 the summons for the purposes of this chapter. Whenever a notice  
15 of infraction is issued, the defendant's signature, driver's  
16 license number or state identification number, current address,  
17 and email address shall be noted on the notice. If the  
18 defendant refuses to sign the notice of infraction, the officer  
19 shall record this refusal on the notice and issue the notice to  
20 the defendant. Individuals to whom a notice of infraction is  
21 issued under this chapter need not be arraigned before the  
22 court, unless required by rule of the supreme court.

1 (b) The form for the notice of infraction shall be  
2 prescribed by rules of the district court which shall be uniform  
3 throughout the State; provided that each judicial circuit may  
4 include differing statutory, rule, or ordinance provisions on  
5 its respective notice of infraction.

6 (c) A notice of infraction that is generated by the use of  
7 electronic equipment or that bears the electronically stored  
8 image of any person's signature, or both, shall be valid under  
9 this chapter.

10 (d) The notice of infraction shall include the following:

11 (1) A statement of the specific infraction for which the  
12 notice was issued;

13 (2) A brief statement of the facts;

14 (3) A statement of the total amount to be paid for each  
15 infraction, which amount shall include any fee,  
16 surcharge, or cost required by statute, ordinance, or  
17 rule, and any monetary assessment, established for the  
18 particular infraction pursuant to section -8, to be  
19 paid by the defendant, which shall be uniform  
20 throughout the State;

21 (4) A statement of the options provided in section -5(b)  
22 for answering the notice and the procedures necessary  
23 to exercise the options;

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1 (5) A statement that the defendant to whom the notice is  
2 issued must answer, choosing one of the options  
3 specified in section -5(b), within twenty-one days  
4 of issuance of the notice;

5 (6) A statement that failure to answer the notice of  
6 infraction within twenty-one days of issuance shall  
7 result in the entry of judgment by default for the  
8 State and may result in the assessment of a late  
9 penalty;

10 (7) A statement that, at a hearing requested to contest  
11 the notice of infraction conducted pursuant to  
12 section -7, no officer shall be present unless the  
13 defendant timely requests the court to have the  
14 officer present, and that the standard of proof to be  
15 applied by the court is whether a preponderance of the  
16 evidence proves that the specified infraction was  
17 committed;

18 (8) A statement that, at a hearing requested for the  
19 purpose of explaining mitigating circumstances  
20 surrounding the commission of the infraction or in  
21 consideration of a written request for mitigation, the  
22 defendant shall be considered to have committed the  
23 infraction;

1 (9) A space in which the signature of the defendant to  
2 whom the notice was issued may be affixed; and

3 (10) The date, time, and place at which the defendant to  
4 whom the notice was issued must appear in court, if  
5 the defendant is required by the notice to appear in  
6 person at the hearing.

7 § -5 **Answer required.** (a) A defendant who receives a  
8 notice of infraction shall answer the notice within twenty-one  
9 days of the date of issuance of the notice. There shall be  
10 included with the notice of infraction a preaddressed envelope  
11 directed to the designated district court.

12 (b) Provided that the notice of infraction does not  
13 require an appearance in person at a hearing as set forth in  
14 section -4(d)(10), in answering a notice of infraction, a  
15 defendant shall have the following options:

16 (1) Admit the commission of the infraction in one of the  
17 following ways:

18 (A) By mail or in person, by completing the  
19 appropriate portion of the notice of infraction  
20 or preaddressed envelope and submitting it to the  
21 authority specified on the notice together with  
22 payment of the total amount stated on the notice  
23 of infraction. Payment by mail shall be in the

1 form of a check, money order, or by an approved  
2 credit or debit card. Payment in person shall be  
3 in the form of United States currency, check,  
4 money order, or by an approved credit or debit  
5 card; or

6 (B) Via the Internet or by telephone, by submitting  
7 payment of the total amount stated on the notice  
8 of infraction. Payment via the Internet or by  
9 telephone shall be by an approved credit or debit  
10 card;

11 (2) Deny the commission of the infraction and request a  
12 hearing to contest the infraction by completing the  
13 appropriate portion of the notice of infraction or  
14 preaddressed envelope and submitting it, either by  
15 mail or in person, to the authority specified on the  
16 notice. In lieu of appearing in person at a hearing,  
17 the defendant may submit a written statement of  
18 grounds on which the defendant contests the notice of  
19 infraction, which shall be considered by the court as  
20 a statement given in court pursuant to section

21 -7(a); or

22 (3) Admit the commission of the infraction and request a

1 hearing to explain circumstances mitigating the  
2 infraction by completing the appropriate portion of  
3 the notice of infraction or preaddressed envelope and  
4 submitting it, either by mail or in person, to the  
5 authority specified on the notice. In lieu of  
6 appearing in person at a hearing, the defendant may  
7 submit a written explanation of the mitigating  
8 circumstances, which shall be considered by the court  
9 as a statement given in court pursuant to  
10 section -7(b).

11 (c) When answering the notice of infraction, the defendant  
12 shall affix the person's signature to the answer and shall state  
13 the address at which the defendant will accept future mailings  
14 from the court. No other response shall constitute an answer  
15 for purposes of this chapter.

16 **§ -6 Court action after answer or failure to answer.**

17 (a) When an admitting answer is received, the court shall  
18 enter judgment in favor of the State in the total amount  
19 specified in the notice of infraction.

20 (b) When a denying answer is received, the court shall  
21 proceed as follows:

22 (1) In the case of an infraction where the defendant

1 requests a hearing at which the defendant will appear  
2 in person to contest the infraction, the court shall  
3 notify the defendant in writing of the date, time, and  
4 place of hearing to contest the notice of infraction.

5 The notice of hearing shall be mailed to the address  
6 provided by defendant in the denying answer, or if  
7 none is given, to the address provided by defendant  
8 when the notice of infraction was issued, or if none  
9 was provided, to the email address provided by  
10 defendant when the notice of infraction was issued.

11 The notification also shall advise the defendant that,  
12 if the defendant fails to appear at the hearing, the  
13 court shall enter judgment by default in favor of the  
14 State, as of the date of the scheduled hearing, that  
15 the total amount specified in the default judgment  
16 must be paid within thirty days of entry of default  
17 judgment; and

- 18 (2) When a denying answer is accompanied by a written  
19 statement of the grounds on which the defendant  
20 contests the notice of infraction, the court shall  
21 proceed as provided in section -7(a) and shall  
22 notify the defendant of its decision, including the  
23 total amount assessed, if any, by mailing the notice

1 of entry of judgment within forty-five days of the  
2 postmarked date of the answer to the address provided  
3 by the defendant in the denying answer, or if none is  
4 given, to the address provided by defendant when the  
5 notice of infraction was issued, or if none was  
6 provided, to the email address provided by defendant  
7 when the notice of infraction was issued. The notice  
8 of entry of judgment also shall advise the defendant,  
9 if it is determined that the infraction was committed  
10 and judgment is entered in favor of the State, that  
11 the defendant has the right, within thirty days of  
12 entry of judgment, to request a trial and shall  
13 specify the procedures for doing so. The notice of  
14 entry of judgment shall also notify the defendant, if  
15 an amount is assessed by the court for monetary  
16 assessments, fees, surcharges, or costs, that if the  
17 defendant does not request a trial within the time  
18 specified in this paragraph, the total amount assessed  
19 shall be paid within thirty days of entry of  
20 judgment.

21 (c) When an answer admitting commission of the infraction  
22 but seeking to explain mitigating circumstances is received, the  
23 court shall proceed as follows:

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- 1           (1) In the case of an infraction where the defendant  
2           requests a hearing at which the defendant will appear  
3           in person to explain mitigating circumstances, the  
4           court shall notify the defendant in writing of the  
5           date, time, and place of hearing to explain mitigating  
6           circumstances. The notice of hearing shall be mailed  
7           to the address provided by defendant in the answer, or  
8           if none is given, to the address provided by defendant  
9           when the notice of infraction was issued, or if none  
10          was provided, to the email address provided by  
11          defendant when the notice of infraction was issued.  
12          The notification also shall advise the defendant that,  
13          if the defendant fails to appear at the hearing, the  
14          court shall enter judgment by default in favor of the  
15          State, as of the date of the scheduled hearing, and  
16          that the total amount stated in the default judgment  
17          must be paid within thirty days of entry of default  
18          judgment; and
- 19          (2) If a written explanation is included with an answer  
20          admitting commission of the infraction, the court  
21          shall enter judgment for the State and, after  
22          reviewing the explanation, determine the total amount  
23          of the monetary assessments, fees, surcharges, or

1 costs to be assessed, if any. The court shall then  
2 notify the defendant of the total amount to be paid  
3 for the infraction, if any. There shall be no appeal  
4 from the judgment. If the court assesses an amount  
5 for monetary assessments, fees, surcharges, or costs,  
6 the court shall also notify the defendant that the  
7 total amount shall be paid within thirty days of entry  
8 of judgment.

9 (d) If the defendant fails to answer within twenty-one  
10 days of issuance of the notice of infraction, the court shall  
11 take action as provided in subsection (e).

12 (e) Whenever judgment by default in favor of the State is  
13 entered, the court shall mail a notice of entry of default  
14 judgment to the address provided by the defendant when the  
15 notice of infraction was issued, or if none was provided, to the  
16 email address provided by defendant when the notice of  
17 infraction was issued. The notice of entry of default judgment  
18 shall advise the defendant that the total amount specified in  
19 the default judgment shall be paid within thirty days of entry  
20 of default judgment and shall explain the procedure for setting  
21 aside a default judgment. Judgment by default for the State  
22 entered pursuant to this chapter may be set aside pending final  
23 disposition of the infraction upon written application of the

1 defendant and posting of an appearance bond equal to the amount  
2 of the total amount specified in the default judgment and any  
3 other assessment imposed pursuant to section -8. The  
4 application shall show good cause or excusable neglect for the  
5 defendant's failure to take action necessary to prevent entry of  
6 judgment by default. Thereafter, the court shall determine  
7 whether good cause or excusable neglect exists for the  
8 defendant's failure to take action necessary to prevent entry of  
9 judgment by default. If so, the application to set aside  
10 default judgment shall be granted, the default judgment shall be  
11 set aside, and the notice of infraction shall be disposed of  
12 pursuant to this chapter. If not, the application to set aside  
13 default judgment shall be denied, the appearance bond shall be  
14 forfeited and applied to satisfy amounts due under the default  
15 judgment, and the notice of infraction shall be finally  
16 disposed. In either case, the court shall determine the  
17 existence of good cause or excusable neglect and notify the  
18 defendant of its decision on the application in writing.

19 § -7 **Hearings.** (a) In proceedings to contest a notice  
20 of infraction where the defendant to whom the notice was issued  
21 has timely requested a hearing and appears at such hearing:

22 (1) In lieu of the personal appearance by the officer who

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1 issued the notice of infraction, the court shall  
2 consider the notice of infraction and any other  
3 written report made by the officer, if provided to the  
4 court by the officer, together with any oral or  
5 written statement by the defendant to whom the notice  
6 of infraction was issued;

7 (2) The standard of proof to be applied by the court shall  
8 be whether, by a preponderance of the evidence, the  
9 court finds that the infraction was committed; and

10 (3) After due consideration of the evidence and arguments,  
11 if any, the court shall determine whether commission  
12 of the infraction has been established. Where the  
13 commission of the infraction has not been established,  
14 judgment in favor of the defendant, dismissing the  
15 notice of infraction or any count therein with  
16 prejudice, shall be entered in the record. Where it  
17 has been established that the infraction was  
18 committed, the court shall enter judgment in favor of  
19 the State and shall assess a monetary assessment  
20 pursuant to section -8, together with any fees,  
21 surcharges, or costs. The court also shall inform the  
22 defendant of the right to request a trial pursuant to  
23 section -11. If the defendant requests a trial at

1 the time of the hearing, the court shall provide the  
2 defendant with the trial date as soon as practicable.

3 (b) In proceedings to explain mitigating circumstances  
4 where the defendant to whom the notice of infraction was issued  
5 has timely requested a hearing and appears at such hearing:

6 (1) The procedure shall be limited to the issue of  
7 mitigating circumstances. A defendant who requests to  
8 explain the circumstances shall not be permitted to  
9 contest the notice of infraction;

10 (2) After the court has received the explanation, the  
11 court shall enter judgment in favor of the State and  
12 may assess a monetary assessment pursuant to  
13 section -8, together with any fees, surcharges, or  
14 costs;

15 (3) The court, after receiving the explanation, may vacate  
16 the admission and enter judgment in favor of the  
17 defendant, dismissing the notice of infraction or any  
18 count therein with prejudice, where the explanation  
19 establishes that the infraction was not committed; and

20 (4) There shall be no appeal from the judgment.

21 (c) If a defendant for whom a hearing has been scheduled,  
22 to contest the notice of infraction or to explain mitigating  
23 circumstances, fails to appear at the hearing, the court shall

1 enter judgment by default for the State and take action as  
2 provided in section -6(e).

3 § -8 **Monetary assessments.** (a) A defendant found to  
4 have committed an emergency period infraction shall be assessed  
5 a monetary assessment of \$\_\_\_\_\_.

6 (b) In addition to any monetary assessment imposed for an  
7 emergency period infraction, the court may impose additional  
8 assessments for:

9 (1) Failure to pay a monetary assessment by the scheduled  
10 date of payment; or

11 (2) The cost of service of a penal summons issued pursuant  
12 to this chapter; and

13 (3) The administrative cost associated with the processing  
14 of emergency period infractions of \$20 for each  
15 noncompliance with a rule in addition to any fine  
16 imposed by the court, and whether or not such fine is  
17 suspended.

18 (c) The clerk of the district court shall deposit the  
19 administrative cost collected into the judiciary computer system  
20 special fund pursuant to section 601-3.7.

21 (d) The court may grant to a defendant claiming inability  
22 to pay, an extension of the period in which the monetary

1 assessment shall be paid or may impose community service in lieu  
2 thereof.

3       **§ -9 Time computation.** In computing any period of time  
4 prescribed or allowed by this chapter, the day of the act,  
5 event, or default from which the period of time begins to run  
6 shall not be included. The last day of the period so computed  
7 shall be included, unless it is a Saturday, Sunday, or legal  
8 holiday in which event the period runs until the end of the next  
9 day that is not a Saturday, Sunday, or legal holiday.

10 Intermediate Saturdays, Sundays, and legal holidays shall be  
11 included. Whenever an act required to be performed under this  
12 chapter may be accomplished by mail, the act shall be deemed to  
13 have been performed on the date of the postmark on the mailed  
14 article.

15       **§ -10 Powers of the district court judge hearing cases**  
16 **pursuant to this chapter.** (a) A district court judge hearing  
17 cases pursuant to this chapter shall have all the powers of a  
18 district court judge under chapter 604, including the following  
19 powers:

- 20           (1) To conduct emergency period infraction hearings  
21                 and to impose monetary assessments;
- 22           (2) To permit deferral of monetary assessment or  
23                 impose community service in lieu thereof;

- 1           (3) To dismiss a notice of infraction, with  
2           or without prejudice, or to set aside a judgment for  
3           the State;
- 4           (4) To issue penal summonses and bench warrants and  
5           initiate contempt of court proceedings in proceedings  
6           conducted pursuant to section -11;
- 7           (5) To issue penal summonses and bench warrants and  
8           initiate failure to appear proceedings in proceedings  
9           conducted pursuant to section -4(d)(10); and
- 10          (6) To exercise other powers the court finds  
11          necessary and appropriate to carry out the purposes of  
12          this chapter.

13          § -11 **Trial and concurrent trial.** (a) There shall be  
14 no right to trial unless the defendant contests the notice of  
15 infraction pursuant to section -7. If, after proceedings to  
16 contest the notice of infraction, a determination is made that  
17 the defendant committed the infraction, judgment shall enter in  
18 favor of the State. The defendant may request a trial pursuant  
19 to the Hawaii rules of evidence and the rules of the district  
20 court; provided that any request for trial shall be made within  
21 thirty days of entry of judgment. If, after appearing in person  
22 at a hearing to contest the notice of infraction, the defendant  
23 requests a trial at the conclusion of the hearing, the court

1 shall provide the defendant with the trial date as soon as  
2 practicable.

3 (b) At the time of trial, the State shall be represented  
4 by a prosecuting attorney of the county in which the infraction  
5 occurred. The prosecuting attorney shall orally recite the  
6 charged infraction in court prior to commencement of the trial.  
7 Proof of the defendant's commission of the infraction shall be  
8 by a preponderance of the evidence.

9 (c) Appeals from judgments entered after a trial on the  
10 notice of infraction may be taken in the manner provided for  
11 appeals from district court civil judgments.

12 (d) If trial on the infraction is held prior to trial on  
13 any related criminal offense, the following shall be  
14 inadmissible in the subsequent prosecution or trial of the  
15 related criminal offense:

16 (1) Any written or oral statement made by the  
17 defendant in proceedings conducted pursuant to  
18 section -6(b); and

19 (2) Any testimony given by the defendant in the  
20 trial on the infraction.

21 The statement or testimony, or both, shall not be deemed a  
22 waiver of the defendant's privilege against self-incrimination  
23 in connection with any related criminal offense.

1           (e) In any concurrent trial, the State shall be  
2 represented by a prosecuting attorney of the county in which the  
3 infraction and related crime occurred. Proof of the defendant's  
4 commission of the infraction shall be by a preponderance of the  
5 evidence, and proof of the related criminal offense shall be by  
6 proof beyond a reasonable doubt. The concurrent trial shall be  
7 conducted pursuant to the rules of the appropriate court, the  
8 Hawaii rules of evidence, and the Hawaii rules of penal  
9 procedure.

10           § -12 Rules. (a) The supreme court may adopt rules of  
11 procedure for the conduct of all proceedings pursuant to this  
12 chapter.

13           (b) Chapter 626 shall not apply in proceedings conducted  
14 pursuant to this chapter, except for the rules governing  
15 privileged communications, and proceedings conducted under  
16 section -11.

17           (c) Notwithstanding section 604-17, while the court is  
18 sitting in any matter pursuant to this chapter, the court shall  
19 not be required to preserve the testimony or proceedings, except  
20 proceedings conducted pursuant to section -11 and proceedings  
21 in which the infraction is heard on the same date and time as  
22 any related criminal offense.

1 (d) The prosecuting attorney shall not participate in  
2 emergency period infraction proceedings conducted pursuant to  
3 this chapter, except proceedings pursuant to section -11 and  
4 proceedings in which a related criminal offense is scheduled for  
5 arraignment, hearing, or concurrent trial.

6 (e) Chapter 91 shall not apply in proceedings before the  
7 court.

8 (f) Except as otherwise provided in section -2, chapter  
9 571 and the Hawaii family court rules shall not apply in any  
10 proceedings conducted pursuant to this chapter."

11 SECTION 3. Section 127A-29, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[+]§127A-29[+] **Misdemeanors[-], petty misdemeanors, and**  
14 **emergency period infractions.** Any person violating any rule of  
15 the governor or mayor prescribed and promulgated pursuant to  
16 this chapter and having the force and effect of law, shall, if  
17 it shall be so stated and designated in the rule, be guilty of a  
18 misdemeanor[-]or petty misdemeanor. Upon conviction, the  
19 person shall be [~~fined not more than \$5,000, or imprisoned not~~  
20 ~~more than one year, or both.~~]sentenced pursuant to chapter 706.

21 The governor or mayor may also prescribe or promulgate the  
22 noncompliance with a rule as an emergency period infraction, as  
23 defined in section -1, provided that it is specified in the

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1 emergency proclamation or order as being an infraction subject  
2 to the adjudication process of chapter \_\_\_\_\_.

3 Any person who intentionally, knowingly, or recklessly  
4 destroys, damages, or loses any shelter, protective device, or  
5 warning or signal device, shall if the same was installed or  
6 constructed by the United States, the State, or a county, or is  
7 the property of the United States, the State, or a county, be  
8 fined the cost of replacement, or imprisoned not more than one  
9 year, or both. The governor or mayor, may, by rule, make  
10 further provisions for the protection from misuse of shelters,  
11 protective devices, or warning and signal devices."

12 SECTION 4. Section 571-41, Hawaii Revised Statutes, is  
13 amended by amending subsection (f) to read as follows:

14 "(f) The judge, or the senior judge if there is more than  
15 one, may by order confer concurrent jurisdiction on a district  
16 court created under chapter 604 to hear and dispose of cases of  
17 violation of traffic laws ~~[or]~~, ordinances, or emergency period  
18 rules, established pursuant to chapter 127A, by children,  
19 provision to the contrary in section 571-11 or elsewhere  
20 notwithstanding. The exercise of jurisdiction over children by  
21 district courts shall, nevertheless, be considered noncriminal  
22 in procedure and result in the same manner as though the matter  
23 had been adjudicated and disposed of by a family court."

1 SECTION 5. Section 601-3.7, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) There is established in the state treasury a special  
4 fund to be known as the judiciary computer system special fund,  
5 which shall contain the following:

6 (1) Moneys collected from administrative fees pursuant to  
7 section 287-3(a);

8 (2) Fees prescribed by the supreme court by rule of court  
9 for electronic document certification, electronic  
10 copies of documents, and for providing bulk access to  
11 electronic court records and compilations of data; and

12 (3) Fees pursuant to sections 607-4(b)(10) [~~and~~],  
13 607-5(c)(32) [~~-~~], and -8(b)(3)."

14 SECTION 6. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$40,000 or so much  
16 thereof as may be necessary for fiscal year 2021-2022 to process  
17 and adjudicate the emergency rule infractions.

18 The sum appropriated shall be expended by the Judiciary to  
19 effectuate the purposes of this Act.

20 SECTION 7. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun, before the effective date of this Act.

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1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

4

5

INTRODUCED BY: 

6

BY REQUEST

7

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**Report Title:**

Violation of Rules During an Emergency Period

**Description:**

Authorizes the governor and the mayors to establish lesser petty misdemeanor offenses and violations during emergency periods, including non-criminal infractions; and establishes a more expeditious system for the processing of these infractions to reduce the burden on the court system.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE VIOLATION OF RULES DURING EMERGENCY PERIODS.

PURPOSE: To allow the governor and the mayors to establish lesser offenses during emergency periods, including non-criminal violations or infractions, to enforce the emergency rules, and establish a more expeditious enforcement system for the processing of these infractions, which would reduce the impact on the court system and the criminal justice system.

MEANS: Add a new chapter to title 37, Hawaii Revised Statutes (HRS). Revise sections 127A-29, 571-41(f), and 601-3.7(a), HRS.

JUSTIFICATION: The emergency situations caused by the COVID-19 pandemic exposed the need for the governor and the mayors to be able to establish lesser offenses, including non-criminal violations or infractions, and enable a more expeditious system to process the infractions more efficiently and effectively without overwhelming the judicial system.

In response to the COVID-19 pandemic, the governor and the mayors have exercised their emergency powers under chapter 127A, HRS, to impose emergency rules. Currently, section 127A-29, HRS, allows the governor and mayors to only establish misdemeanor offenses through rulemaking during emergency periods. The county police departments have issued tens of thousands of citations for violations of emergency rules. Because the misdemeanor offenses, which are criminal offenses, must be processed through the court system, the courts have been inundated with a high volume of cases, while operations are complicated by the pandemic. At this time there is concern that the

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criminal justice system is unable to handle the great number of cases being placed into the system.

The new and expeditious system to adjudicate emergency period infractions, proposed by the bill, would:

- (1) Eliminate the court arraignment proceeding for many of the emergency period infractions;
- (2) Facilitate and encourage the resolution of many emergency period infractions through the payment of a monetary assessment;
- (3) Speed the disposition of contested cases through a hearing, similar to small claims proceedings, in which the rules of evidences will not apply and the court will consider as evidence the notice of infraction, applicable police reports, or other written statements by the police officer who issued the notice, any other relevant written material, and any evidence or statements by the defendant contesting the notice of infraction;
- (4) Dispense in most cases with the need for witnesses, including law enforcement officers, to be present and for the participation of the prosecuting attorney;
- (5) Allow judicial, prosecutorial, and law enforcement resources to be used more efficiently and effectively; and
- (6) Save the taxpayers money and reduce their frustration by simplifying the process.

Impact on the public: The public will benefit from the enforcement system that addresses the emergency situations more efficiently and effectively and is less costly.

Impact on the department and other agencies:  
The judicial system and law enforcement

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agencies will benefit from being able to process the violations and infractions of emergency rules and orders more efficiently and meaningfully.

GENERAL FUND: \$40,000.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: All state and county enforcement agencies, the judiciary, and other criminal justice entities.

EFFECTIVE DATE: Upon approval.