
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, to impose
5 rules in an attempt to control the spread of the SARS-CoV-2
6 virus. The enforcement of these rules is critical to our
7 efforts to control the spread of the SARS-CoV-2 virus, protect
8 the health and safety of those in our community, manage our
9 medical resources, and restart our economy. But these
10 enforcement efforts have placed a heavy burden upon the criminal
11 justice system, which must be able to process these cases
12 appropriately to allow for 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



1 processed through the court system, and the courts have been
2 inundated with a high volume of cases, while operations are
3 complicated by the pandemic.

4 There cannot be meaningful and effective enforcement when
5 the cases cannot be processed in a timely and appropriate
6 manner. And that adversely impacts our ability to control the
7 spread of the SARS-CoV-2 virus.

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

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

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



1 The new expeditious system will be similar to that of
2 chapter 291D, HRS, for the adjudication of traffic infractions,
3 and will:

4 (1) Eliminate the court arraignment proceeding for many of
5 the emergency period infractions;

6 (2) Facilitate and encourage the resolution of many
7 emergency period infractions through the payment of a
8 monetary assessment;

9 (3) Speed the disposition of contested cases through a
10 hearing, similar to small claims proceedings, in which
11 the rules of evidence will not apply and the court
12 will consider as evidence the notice of infraction,
13 applicable police reports, or other written statements
14 by the police officer who issued the notice, any other
15 relevant written material, and any evidence or
16 statements by the defendant contesting the notice of
17 infraction;

18 (4) Dispense in most cases with the need for witnesses,
19 including law enforcement officers, to be present and
20 for the participation of the prosecuting attorney;



1 (5) Allow judicial, prosecutorial, and law enforcement
2 resources to be used more efficiently and effectively;
3 and

4 (6) Save the taxpayers money and reduce their frustration
5 by simplifying the process.

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

9 "CHAPTER

10 ADJUDICATION OF EMERGENCY PERIOD INFRACTIONS

11 § -1 Definitions. As used in this chapter:

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

18 "Emergency period infraction" means all non-compliance of
19 rules proclaimed or ordered by the governor or a mayor pursuant
20 to chapter 127A which are specified in the emergency



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

3 "Hearing" means a proceeding conducted by the district
4 court pursuant to section -7 at which the defendant to whom a
5 notice of infraction was issued either admits to the infraction,
6 contests the notice of infraction, or admits to the infraction
7 but offers an explanation to mitigate the monetary assessment
8 imposed.

9 "Notice of infraction" means the citation form that is
10 issued to the defendant at or after the time of the infraction
11 and that notifies the defendant of the civil infraction or
12 infractions the defendant is charged with committing, whatever
13 its title or denomination.

14 "Related criminal offense" means any criminal violation or
15 crime, committed in the same course of conduct as an emergency
16 period infraction, for which the defendant is arrested or
17 charged.

18 "Trial" means a trial conducted by the district court
19 pursuant to the rules of the district court and the Hawaii rules
20 of evidence.



1 § -2 **Applicability.** (a) Notwithstanding any other
2 provision of law to the contrary, all emergency period
3 infractions, including emergency period infractions committed by
4 minors, shall be adjudicated pursuant to this chapter, except as
5 provided in subsection (b). This chapter shall be applied
6 uniformly throughout the State and in all counties. No
7 emergency period infraction shall be classified as a criminal
8 offense.

9 (b) Where a defendant is charged with a emergency period
10 infraction and the infraction is committed in the same course of
11 conduct as a criminal offense for which the offender is arrested
12 or charged, the emergency period infraction shall be adjudicated
13 pursuant to this chapter; provided that the court may schedule
14 any initial appearance, hearing, or trial on the emergency
15 period infraction at the same date, time, and place as the
16 arraignment, hearing, or trial on the related criminal offense.

17 Notwithstanding this subsection and subsection (c), the
18 court shall not schedule any initial appearance, hearing, or
19 trial on the emergency period infraction at the same date, time,
20 and place as the arraignment, hearing, or trial on the related
21 criminal offense where the related criminal offense is a felony



1 or is a misdemeanor for which the defendant has demanded a jury
2 trial.

3 (c) If the defendant requests a trial pursuant to
4 section -11, the trial shall be held in the district court of
5 the circuit in which the emergency period infraction was
6 committed. If the court schedules a concurrent trial pursuant
7 to paragraph (1), the concurrent trial shall be held in the
8 appropriate district or family court of the circuit in which the
9 emergency period infraction was committed, whichever has
10 jurisdiction over the related criminal offense charged pursuant
11 to the applicable statute or rule of court; provided that:

12 (1) The district or family court, for the purpose of
13 trial, may schedule a civil trial on the emergency
14 period infraction on the same date and at the same
15 time as a criminal trial on the related criminal
16 offense charged. The court shall enter a civil
17 judgment as to the emergency period infraction and a
18 judgment of conviction or acquittal as to the related
19 criminal offense following such concurrent trial; and

20 (2) If trial on the emergency period infraction is held
21 separately from and prior to trial on any related



1 criminal offense, the following shall be inadmissible
2 in the prosecution or trial of the related criminal
3 offense, except as expressly provided by the Hawaii
4 rules of evidence:

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

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

10 Such statements or testimony shall not be deemed a
11 waiver of the defendant's privilege against self-
12 incrimination in connection with any related criminal
13 offense.

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

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

20 (1) The defendant's civil liability for the emergency
21 period infraction has not yet been adjudicated



1 pursuant to section -7, the court shall enter a
2 judgment by default in favor of the State for the
3 emergency period infraction unless the court
4 determines that good cause or excusable neglect exists
5 for the defendant's failure to appear; or

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

12 (f) If the defendant fails to appear at any scheduled
13 court date prior to concurrent trial or fails to appear for
14 concurrent trial scheduled pursuant to subsection (c)(1), the
15 court shall enter a disposition pursuant to the Hawaii rules of
16 penal procedure for the criminal offense.

17 § -3 **Venue and jurisdiction.** (a) All emergency period
18 infractions shall be adjudicated in the district and circuit
19 where the alleged infraction occurred, except as otherwise
20 provided by law.



1 (b) Except as otherwise provided by law, jurisdiction is
2 in the district court of the circuit where the alleged emergency
3 period infraction occurred. Except as otherwise provided in
4 this chapter, district court judges shall adjudicate emergency
5 period infractions.

6 § -4 Notice of infraction; form; determination final
7 unless contested. (a) The notice of infraction shall include
8 the summons for the purposes of this chapter. Whenever a notice
9 of infraction is issued, the defendant's signature, driver's
10 license number or state identification number, current address,
11 and email address shall be noted on the notice. If the
12 defendant refuses to sign the notice of infraction, the officer
13 shall record this refusal on the notice and issue the notice to
14 the defendant. Individuals to whom a notice of infraction is
15 issued under this chapter need not be arraigned before the
16 court, unless required by rule of the supreme court.

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



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

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

6 (1) A statement of the specific infraction for which the
7 notice was issued;

8 (2) A brief statement of the facts;

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

16 (4) A statement of the options provided in section -5(b)
17 for answering the notice and the procedures necessary
18 to exercise the options;

19 (5) A statement that the defendant to whom the notice is
20 issued must answer, choosing one of the options



1 specified in section -5(b), within twenty-one days
2 of issuance of the notice;

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

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

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



1 payment of the total amount stated on the notice
2 of infraction. Payment by mail shall be in the
3 form of a check, money order, or by an approved
4 credit or debit card. Payment in person shall be
5 in the form of United States currency, check,
6 money order, or by an approved credit or debit
7 card; or

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

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



1 a statement given in court pursuant to section
2 -7(a); or
3 (3) Admit the commission of the infraction and request a
4 hearing to explain circumstances mitigating the
5 infraction by completing the appropriate portion of
6 the notice of infraction or preaddressed envelope and
7 submitting it, either by mail or in person, to the
8 authority specified on the notice. In lieu of
9 appearing in person at a hearing, the defendant may
10 submit a written explanation of the mitigating
11 circumstances, which shall be considered by the court
12 as a statement given in court pursuant to section
13 -7(b).

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

19 § -6 Court action after answer or failure to answer.

20 (a) When an admitting answer is received, the court shall enter



1 judgment in favor of the State in the total amount specified in
2 the notice of infraction.

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

5 (1) In the case of an infraction where the defendant
6 requests a hearing at which the defendant will appear
7 in person to contest the infraction, the court shall
8 notify the defendant in writing of the date, time, and
9 place of hearing to contest the notice of infraction.
10 The notice of hearing shall be mailed to the address
11 provided by defendant in the denying answer, or if
12 none is given, to the address provided by defendant
13 when the notice of infraction was issued, or if none
14 was provided, to the email address provided by
15 defendant when the notice of infraction was issued.
16 The notification also shall advise the defendant that,
17 if the defendant fails to appear at the hearing, the
18 court shall enter judgment by default in favor of the
19 State, as of the date of the scheduled hearing, that
20 the total amount specified in the default judgment



1 must be paid within thirty days of entry of default
2 judgment; and

3 (2) When a denying answer is accompanied by a written
4 statement of the grounds on which the defendant
5 contests the notice of infraction, the court shall
6 proceed as provided in section -7(a) and shall
7 notify the defendant of its decision, including the
8 total amount assessed, if any, by mailing the notice
9 of entry of judgment within forty-five days of the
10 postmarked date of the answer to the address provided
11 by the defendant in the denying answer, or if none is
12 given, to the address provided by defendant when the
13 notice of infraction was issued, or if none was
14 provided, to the email address provided by defendant
15 when the notice of infraction was issued. The notice
16 of entry of judgment also shall advise the defendant,
17 if it is determined that the infraction was committed
18 and judgment is entered in favor of the State, that
19 the defendant has the right, within thirty days of
20 entry of judgment, to request a trial and shall
21 specify the procedures for doing so. The notice of



1 entry of judgment shall also notify the defendant, if
2 an amount is assessed by the court for monetary
3 assessments, fees, surcharges, or costs, that if the
4 defendant does not request a trial within the time
5 specified in this paragraph, the total amount assessed
6 shall be paid within thirty days of entry of judgment.

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

10 (1) In the case of an infraction where the defendant
11 requests a hearing at which the defendant will appear
12 in person to explain mitigating circumstances, the
13 court shall notify the defendant in writing of the
14 date, time, and place of hearing to explain mitigating
15 circumstances. The notice of hearing shall be mailed
16 to the address provided by defendant in the answer, or
17 if none is given, to the address provided by defendant
18 when the notice of infraction was issued, or if none
19 was provided, to the email address provided by
20 defendant when the notice of infraction was issued.

21 The notification also shall advise the defendant that,



1 if the defendant fails to appear at the hearing, the
2 court shall enter judgment by default in favor of the
3 State, as of the date of the scheduled hearing, and
4 that the total amount stated in the default judgment
5 must be paid within thirty days of entry of default
6 judgment; and

- 7 (2) If a written explanation is included with an answer
8 admitting commission of the infraction, the court
9 shall enter judgment for the State and, after
10 reviewing the explanation, determine the total amount
11 of the monetary assessments, fees, surcharges, or
12 costs to be assessed, if any. The court shall then
13 notify the defendant of the total amount to be paid
14 for the infraction, if any. There shall be no appeal
15 from the judgment. If the court assesses an amount
16 for monetary assessments, fees, surcharges, or costs,
17 the court shall also notify the defendant that the
18 total amount shall be paid within thirty days of entry
19 of judgment.



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

4 (e) Whenever judgment by default in favor of the State is
5 entered, the court shall mail a notice of entry of default
6 judgment to the address provided by the defendant when the
7 notice of infraction was issued, or if none was provided, to the
8 email address provided by defendant when the notice of
9 infraction was issued. The notice of entry of default judgment
10 shall advise the defendant that the total amount specified in
11 the default judgment shall be paid within thirty days of entry
12 of default judgment and shall explain the procedure for setting
13 aside a default judgment. Judgment by default for the State
14 entered pursuant to this chapter may be set aside pending final
15 disposition of the infraction upon written application of the
16 defendant and posting of an appearance bond equal to the amount
17 of the total amount specified in the default judgment and any
18 other assessment imposed pursuant to section -8. The
19 application shall show good cause or excusable neglect for the
20 defendant's failure to take action necessary to prevent entry of
21 judgment by default. Thereafter, the court shall determine



1 whether good cause or excusable neglect exists for the
2 defendant's failure to take action necessary to prevent entry of
3 judgment by default. If so, the application to set aside
4 default judgment shall be granted, the default judgment shall be
5 set aside, and the notice of infraction shall be disposed of
6 pursuant to this chapter. If not, the application to set aside
7 default judgment shall be denied, the appearance bond shall be
8 forfeited and applied to satisfy amounts due under the default
9 judgment, and the notice of infraction shall be finally
10 disposed. In either case, the court shall determine the
11 existence of good cause or excusable neglect and notify the
12 defendant of its decision on the application in writing.

13 § -7 Hearings. (a) In proceedings to contest a notice
14 of infraction where the defendant to whom the notice was issued
15 has timely requested a hearing and appears at such hearing:

16 (1) In lieu of the personal appearance by the officer who
17 issued the notice of infraction, the court shall
18 consider the notice of infraction and any other
19 written report made by the officer, if provided to the
20 court by the officer, together with any oral or



1 written statement by the defendant to whom the notice
2 of infraction was issued;

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

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



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

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

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

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

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

18 (c) If a defendant for whom a hearing has been scheduled,
19 to contest the notice of infraction or to explain mitigating
20 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.



1 (d) The court may grant to a defendant claiming inability
2 to pay, an extension of the period in which the monetary
3 assessment shall be paid or may impose community service in lieu
4 thereof.

5 § -9 Time computation. In computing any period of time
6 prescribed or allowed by this chapter, the day of the act,
7 event, or default from which the period of time begins to run
8 shall not be included. The last day of the period so computed
9 shall be included, unless it is a Saturday, Sunday, or legal
10 holiday in which event the period runs until the end of the next
11 day that is not a Saturday, Sunday, or legal holiday.
12 Intermediate Saturdays, Sundays, and legal holidays shall be
13 included. Whenever an act required to be performed under this
14 chapter may be accomplished by mail, the act shall be deemed to
15 have been performed on the date of the postmark on the mailed
16 article.

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



- 1 (1) To conduct emergency period infraction hearings and to
- 2 impose monetary assessments;
- 3 (2) To permit deferral of monetary assessment or impose
- 4 community service in lieu thereof;
- 5 (3) To dismiss a notice of infraction, with or without
- 6 prejudice, or to set aside a judgment for the State;
- 7 (4) To issue penal summonses and bench warrants and
- 8 initiate contempt of court proceedings in proceedings
- 9 conducted pursuant to section -11;
- 10 (5) To issue penal summonses and bench warrants and
- 11 initiate failure to appear proceedings in proceedings
- 12 conducted pursuant to section -4(d)(10); and
- 13 (6) To exercise other powers the court finds necessary and
- 14 appropriate to carry out the purposes of this chapter.

15 § -11 Trial and concurrent trial. (a) There shall be

16 no right to trial unless the defendant contests the notice of

17 infraction pursuant to section -7. If, after proceedings to

18 contest the notice of infraction, a determination is made that

19 the defendant committed the infraction, judgment shall enter in

20 favor of the State. The defendant may request a trial pursuant

21 to the Hawaii rules of evidence and the rules of the district



1 court; provided that any request for trial shall be made within
2 thirty days of entry of judgment. If, after appearing in person
3 at a hearing to contest the notice of infraction, the defendant
4 requests a trial at the conclusion of the hearing, the court
5 shall provide the defendant with the trial date as soon as
6 practicable.

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

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

16 (d) If trial on the infraction is held prior to trial on
17 any related criminal offense, the following shall be
18 inadmissible in the subsequent prosecution or trial of the
19 related criminal offense:

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



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

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

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

15 § -12 Rules. (a) The supreme court may adopt rules of
16 procedure for the conduct of all proceedings pursuant to this
17 chapter.

18 (b) Chapter 626 shall not apply in proceedings conducted
19 pursuant to this chapter, except for the rules governing
20 privileged communications, and proceedings conducted under
21 section -11.



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

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

12 (e) Chapter 91 shall not apply in proceedings before the
13 court.

14 (f) Except as otherwise provided in section -2, chapter
15 571 and the Hawaii family court rules shall not apply in any
16 proceedings conducted pursuant to this chapter."

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

19 "[~~f~~]§127A-29[+] Misdemeanors[-], petty misdemeanors, and
20 emergency period infractions. Any person violating any rule of
21 the governor or mayor prescribed and promulgated pursuant to



1 this chapter and having the force and effect of law, shall, if
2 it shall be so stated and designated in the rule, be guilty of a
3 misdemeanor~~[-]or petty misdemeanor.~~ Upon conviction, the
4 person shall be ~~[fined not more than \$5,000, or imprisoned not~~
5 ~~more than one year, or both.]~~ sentenced pursuant to chapter 706.

6 The governor or mayor may also prescribe or promulgate the
7 noncompliance with a rule as an emergency period infraction, as
8 defined in section -1, provided that it is specified in the
9 emergency proclamation or order as being an infraction subject
10 to the adjudication process of chapter .

11 Any person who intentionally, knowingly, or recklessly
12 destroys, damages, or loses any shelter, protective device, or
13 warning or signal device, shall if the same was installed or
14 constructed by the United States, the State, or a county, or is
15 the property of the United States, the State, or a county, be
16 fined the cost of replacement, or imprisoned not more than one
17 year, or both. The governor or mayor, may, by rule, make
18 further provisions for the protection from misuse of shelters,
19 protective devices, or warning and signal devices."

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



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

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

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

- 16 (1) Moneys collected from administrative fees pursuant to
17 section 287-3(a);
- 18 (2) Fees prescribed by the supreme court by rule of court
19 for electronic document certification, electronic
20 copies of documents, and for providing bulk access to
21 electronic court records and compilations of data; and



1 (3) Fees pursuant to sections 607-4(b)(10) [~~and~~],
2 607-5(c)(32) [~~-~~], and -8(b)(3) ."

3 SECTION 6. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$40,000 or so much
5 thereof as may be necessary for fiscal year 2021-2022 and the
6 same sum or so much thereof as may be necessary for fiscal year
7 2022-2023 to process and adjudicate the emergency rule
8 infractions.

9 The sum appropriated shall be expended by the judiciary to
10 effectuate the purposes of this Act.

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

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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



Report Title:

Violation of Rules During an Emergency Period; Appropriation

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. Makes an appropriation.
(SD1)

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

