



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Pandemic & Disaster Preparedness

Representative Linda Ichiyama, Chair

Representative Stacelynn K.M Eli, Vice Chair

Tuesday, March 16, 2021, 9:00 a.m.
State Capitol, Conference Room 309
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

By:

Mark M. Santoki

Acting Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 540, S. D. 1, Relating to Emergency Rules.

Purpose: Allows for lesser emergency period penalties to be adopted and promulgated by the governor or a mayor. Allows for the emergency period infractions to be processed under the traffic adjudication process in chapter 291D, Hawaii Revised Statutes. Allows electronic copies of notices of infractions, infraction adjudication hearings, and notices of infraction judgments to be sent via email. Grants the District Court concurrent jurisdiction over emergency period rule infractions committed by minors.

Judiciary's Position:

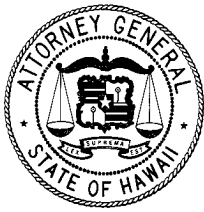
The Judiciary takes NO POSITION on this measure providing the following technical amendments for consideration.

The Judiciary would like to request that the provisions in Section 7 of the bill that would require the court to send an electronic copy, in addition to postal mail, of the notice of infraction, notice of hearing, and notice of entry of judgment by e-mail be deleted or modified to allow the

court to utilize e-mail at its discretion. In fiscal year 2019-2020, the number of traffic infractions filed statewide was 148,578. The e-mail requirement as proposed and applied to all infraction cases would be overwhelming for existing court staff.

The Judiciary anticipates that creating emergency period infractions as a new case type in the Judiciary Information Management System (JIMS) will require an appropriation of \$40,000 for the development, testing and software changes needed. The Judiciary would also respectfully request an amendment to HRS § 607-4 to add an administrative fee of \$20 to be assessed by the court for administrative costs associated with processing emergency period infractions with one half of the assessment to be directed to the judiciary computer system special fund, consistent with the fees for processing traffic citations under HRS § 607-4.

Thank you for the opportunity to testify on this measure.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 540, S.D. 1, RELATING TO EMERGENCY RULES.

BEFORE THE:

HOUSE COMMITTEE ON PANDEMIC AND DISASTER PREPAREDNESS

DATE: Tuesday, March 16, 2021 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lance Goto,
Deputy Attorney General, at 586-1160)

Chair Ichiyama and Members of the Committee:

The Department of the Attorney General supports this bill with one recommended amendment.

The purposes of this bill are to allow for lesser emergency period penalties to be adopted and promulgated by the governor or a mayor; and to amend the State's existing traffic infraction adjudication laws to incorporate emergency period infractions so that they are adjudicated in the same manner. The bill also allows electronic copies of notices of infractions, infraction adjudication hearings, and infraction judgments to be sent via email; and it grants the District Court concurrent jurisdiction over emergency period rule infractions committed by minors.

In section 8 of the bill, on page 18, the bill amends section 291D-12, Hawaii Revised Statutes, to address the powers of district court judges sitting in the new traffic and emergency period division. But the bill does not revise the power of the court on lines 16 and 17, which reads:

(1) To conduct traffic infraction hearings and to impose monetary assessments;

It should be amended to read as follows:

(1) To conduct traffic infraction and emergency period infraction hearings and to impose monetary assessments;

The Department appreciates the effort of the Committee in facilitating the processing of emergency period infractions, and respectfully requests the passage of this bill with the requested amendment.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE LINDA ICHIYAMA, CHAIR
HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i

March 16, 2021

RE: S.B. 540, S.D. 1; RELATING TO EMERGENCY RULES.

Chair Ichiyama, Vice Chair Eli, and members of the House Committee on Pandemic & Disaster Preparedness, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **support** of S.B. 540, S.D. 1, with proposed amendments.

The purpose of S.B. 540, S.D. 1, is to authorize the Governor and Mayors to set a specific level of offense—from infraction through misdemeanor—for violating any rules established by their emergency proclamations or orders. This bill would also expand Chapter 291D, Hawaii Revised Statutes (“HRS”), to include adjudication of emergency period infractions, and amend HRS §571-41 to give District Court and Family Court concurrent jurisdiction over emergency period infractions committed by minors.

Given the tens of thousands of citations issued for violating the Governor and Mayor’s emergency proclamations and orders in 2020, the Department supports this effort to streamline procedures for adjudicating future violations. With regards to the specific language and provisions of this bill, the Department is grateful to the prior committee for incorporating our recommended changes into the S.D. 1, and appreciates all of the hard work that is going into addressing this issue.

In terms of further amendments to the bill, we recommend as follows...

In Section 7, we are uncertain why HRS §291D-7(d) was left un-amended, where subsections (a) through (c), and (e), were amended. For purposes of clarity and consistency, we recommend that page 12, line 9, be deleted, and page 16, line 14, be amended to read:

~~[2. By amending subsection (e) to read:]~~ (d) If the person fails to answer within twenty-one days of issuance of the notice of traffic infraction or emergency period infraction, the court shall take action as provided in subsection (e).

For Section 10 of this bill, we believe it would be beneficial to write out each of the listed HRS sections separately, and make the necessary amendments line-by-line (in lieu of the current approach). Nevertheless, if Section 10 continues in its current form, we strongly recommend that that words, “as the context requires,” be removed from page 20, line 21, as this language makes it very subjective—and thus unclear—as to where the term “traffic infraction” would be replaced and where it would not be replaced. Moreover, it is unclear who would make that determination.

If every section listed in Section 10 is ultimately written in full, with line-by-line amendments, we note that in:

- HRS §291D-4(b) -- It may be preferable to use “and” instead of “or,” for the second sentence, as follows:

(b) Except as otherwise provided by law, jurisdiction is in the district court of the circuit where the alleged traffic infraction or emergency period infraction occurred. Except as otherwise provided in this chapter, district court judges shall adjudicate traffic infractions **and emergency period infractions**.

- HRS §291D-6 -- Subsection (a) requires that all notice of traffic (or emergency period) infractions include a “preaddressed envelope directed to the **traffic violations bureau** of the applicable district court.” (Emphasis added.) While there does not appear to be any law or rule to prohibit this, it does seem rather unusual, so we wanted to raise the point to ensure that that is what is truly intended.

- HRS §291D-9(b) – It may be preferable to use “and” instead of “or,” for the first sentence, as follows:

(b) Notwithstanding section 291C-161 or any other law to the contrary, the district court of each circuit shall prescribe a schedule of monetary assessments for all traffic infractions **and emergency period infractions**, and any additional assessments to be imposed pursuant to subsection (c). The particular assessment to be entered on the notice of traffic infraction or emergency period infraction pursuant to section 291D-5 shall correspond to the schedule prescribed by the district court. Except after proceedings conducted pursuant to section 291D-8 or a trial conducted pursuant to section 291D-13, monetary assessments assessed pursuant to this chapter shall not vary from the schedule prescribed by the district court having jurisdiction over the traffic infraction or emergency period infraction.

Finally, we recommend conforming amendments in the following two areas:

- Page 7, line 20, through page 8, line 5:
"Hearing" means a proceeding conducted by the district court pursuant to section 291D-8 at which the person to whom a notice of traffic infraction **or emergency period infraction** was issued either admits to the [~~traffic~~] infraction, contests the [~~notice of traffic~~]

infraction[~~,-] or emergency period infraction], or admits to the [traffic] infraction but offers an explanation to mitigate the monetary assessment imposed.~~

– Page 18, lines 16-17:

(1) To conduct traffic **or emergency period** infraction hearings and to impose monetary assessments;

We thank the Committee for its efforts to address this ongoing issue, and note we are always available to discuss any contemplated changes to the bill, if we can be of any assistance.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 540, S.D. 1, with proposed amendments. Thank you for the opportunity to testify on this matter.