



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, March 30, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

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. A more expeditious enforcement system for the processing of these infractions would reduce the impact on the court system and the criminal justice system.

In response to the COVID-19 pandemic, the governor and the mayors have exercised their emergency powers under chapter 127A, Hawaii Revised Statutes (HRS), to impose emergency rules. Currently, section 127A-29, HRS, only allows the governor and mayors to establish misdemeanor offenses through rulemaking during emergency periods. The county police departments have issued tens of thousands of citations for violations of these 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. There is concern that the criminal justice system has been unable to

handle the great number of cases being placed into the court system because of the pandemic.

The ability 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 will help the criminal justice system to enforce the emergency rules more efficiently and effectively without overwhelming the judicial system.

The Department respectfully requests the passage of this bill.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Judiciary and Hawaiian Affairs**

March 30, 2021

S.B. No. 540 SD1 HD1: RELATING TO EMERGENCY RULES

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 540 SD1 HD1.

This measure allows for lesser emergency period penalties to be adopted and promulgated by the governor or mayors. This measure also allows for the emergency period infractions to be processed under the traffic adjudication process in HRS chapter 291D. We believe that allowing flexibility in the penalties for emergency order violations will increase fairness and judicial efficiency while still providing a substantial deterrent to alleged violators.

There were over 60,000 emergency order violations issued last year on the island of Oahu, each one punishable as a misdemeanor. This has proven to be a heavy burden for both the Office of the Public Defender and the court system at large. Many law-abiding citizens, including the Surgeon General, were charged with their first criminal offense last year. Even if the cases were reduced to infractions, many of these individuals were forced to spend substantial amounts of money to hire attorneys for such minor offenses. And many of these individuals, like the Surgeon General, are adamant that they are wrongly accused and want their day in court. Indeed, our office represented a defendant in a three-day jury trial charged with one count of violation of the emergency rules and one count of closed park. After the defendant declined a plea offer to pay a fine of \$75 (because he was adamant about his innocence) and after making approximately 15 pre-trial court appearances, a jury acquitted the defendant of all charges. The resources expended by the prosecutor office, our office and the judiciary to charge, prosecute, defend and try the defendant were substantial.

Our office has represented individuals who were on the beach to simply take graduation photographs. We know of one case where a family of four (two young

children) took a drive up to Round Top Drive, and the parents were cited for violating the emergency rules even though no one left their vehicle. Another person who simply stepped off the sidewalk and onto the park to re-tie his shoes so that he would not block the sidewalk was cited for violating the emergency rules. Charging these individuals for misdemeanor offenses was simply unjust and unfair and a waste of resources.

Moreover, many of the misdemeanor citations were issued (and are issued) to the houseless. Records revealed to my office by a news organization revealed that some individuals received over 20 emergency order citations, sometimes receiving up to 9 citations in the same day. According to court records, these individuals also received citations for other crimes of houselessness during this time period (i.e., Unpermitted Sidewalk Structures, Park Closure Violations, etc.). Many of the houseless individuals cited will likely not appear in court, and thus warrants for their arrest will be issued. These individuals will then need to be arrested, booked and brought to court at incredible expense for something as simple as failing to wear a mask properly.

Judicial efficiency would be better served by creating a *civil infraction*, similar to jaywalking or a seat belt violation. Rather than setting mandatory court hearings for these citations, the onus would be on the individual to request a hearing if they wanted to challenge a citation. The majority of the civil infraction citations will be unchallenged; the cited individuals will simply pay the amount of the fine written on the citation either by mail, in person, by phone, or online. And for those who disregard the citations, their unpaid citations will be turned into default judgments rather than bench warrants. This would also reduce law enforcement resources spent on tracking down individuals with a bench warrant for the crime of failing to wear a mask properly or visiting a beach with their children. The financial consequences as a result of subsequent citations would certainly be a sufficient deterrent for most individuals.

Thank you for the opportunity to comment on S.B. No. 540 SD1 HD1.

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney

ROBERT D. RIVERA
Second Deputy Prosecuting Attorney



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TESTIMONY
ON
S.B. 540 SD1 HD1
RELATING TO EMERGENCY RULES

March 29, 2021

The Honorable Mark M. Nakashima
Chair
The Honorable Scot Z. Matayoshi
Vice Chair
and Members of the Committee on Judiciary and Hawaiian Affairs

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 540 SD1 HD1, Relating to Emergency Rules. Specifically, we would like to express our support for S.B. 540 SD1 HD1, which allows for lesser emergency period penalties to be adopted by the governor or mayor and allows for handling of emergency period infractions by the traffic adjudication process.

Since each county faces its own unique set of circumstances and priorities in any given emergency situation, we believe that it is appropriate for each county to determine its own emergency rule enforcement priorities by setting an appropriate penalty for violations of emergency rules. This bill grants each county the discretion to do so, or to allow the default misdemeanor penalties to stand.

We also support the creation of emergency period infractions and their handling via the current traffic infraction process. Currently, our Department is required to review every emergency rule violation case that we receive, regardless of its severity or whether the person who was cited intends to contest the matter. This bill would substantially lessen the caseload for our deputies and staff, as our Department would only be involved with emergency rule infraction cases if a citation is contested and set for trial. Moreover, it expedites the handling of uncontested infraction matters by allowing a person to admit to the violation and pay the cost of the citation without having to appear in court.

Finally, we suggest that Section 10 of the bill be amended to write out each of the HRS sections individually, with necessary amendments made line by line, and removal of the phrase "as the context requires." This prevents any ambiguities resulting from the use of that phrase to add the terms "traffic infraction or emergency period infraction" to the statute. We would also suggest that the phrase "emergency infraction" on page 19, Line 1 be amended to "emergency period infraction" for clarity and consistency.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of S.B. 540 SD1 HD1, including proposed amendments. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i

March 30, 2021

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

Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary & Hawaiian Affairs, 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, H.D. 1, with proposed amendments.

The purpose of S.B. 540, S.D. 1, H.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 of Honolulu’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 committees for incorporating many our recommended changes into the S.D. 1 and H.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 believe Section 10 could be more precisely worded if each of the listed HRS sections were written-out separately—rather than listed by statute number alone—such that the applicable amendments could be made line-by-line. Nevertheless, if Section 10 continues in its current form, we strongly recommend that that words, “as the context requires,” be removed from page 21, line 5, 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 further 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 notices of traffic infraction—and notices of emergency period infraction, if this bill becomes law—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 the traffic violations bureau from handling all emergency period infractions, it does seem rather unusual, so we wanted to raise the point and 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.

We thank this Committee and all prior committees for the concerted efforts to address this 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, H.D. 1, with proposed amendments. Thank you for the opportunity to testify on this matter.



HAWAI'I LODGING & TOURISM
A S S O C I A T I O N

Testimony of
Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

House Committee on Judiciary & Hawaiian Affairs
Senate Bill 540, SD1, HD1: Relating to Emergency Rules

Chair Nakashima and members of the Committee, mahalo for the opportunity to submit testimony on behalf of the Hawai'i Lodging & Tourism Association, the state's largest private sector visitor industry organization.

The Hawai'i Lodging & Tourism Association—nearly 700 members strong, representing more than 50,000 hotel rooms and nearly 40,000 lodging workers —has long pushed for a measure that would fine individuals who flout public health mandates meant to slow the spread of COVID-19. In the earliest days of the pandemic, thousands of citations were handed out to those observed without a proper face covering in public spaces. Unfortunately, these were classified as misdemeanors and required a court appearance. This ultimately resulted in countless cases being dismissed for a variety of reasons, rendering mask mandates all but unenforceable.

HLTA has gone on the record multiple times to advocate for the adoption of a measure of this nature that would impose a fine upon those that are skirting regulations that require a mask. This bill would not only make public health policies enforceable, but also serve as a deterrent for those individuals who would otherwise put the health and safety of their neighbors at risk. **For these reasons, HLTA strongly supports Senate Bill 540, SD1, HD1.**

Mahalo for the opportunity to provide this testimony.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 325
TUESDAY, MARCH 30, 2021 AT 2:00 P.M.**

To The Honorable Mark Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair; and
Members of the Committee on Judiciary & Hawaiian Affairs,

SUPPORT SB540 SD1 HD1 RELATING TO EMERGENCY RULES

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our support of SB540 SD1 HD1.

We appreciate the flexibility afforded by this measure to the Governor and/or Mayors to determine the level of infraction. Currently, violations of the Emergency Proclamation/ Order is a misdemeanor, which we understand is causing issues as some who received a ticket are fighting against it and wasting resources. We support a more effective and efficient system that still fosters strong mask enforcement efforts until we are safe and masks are no longer deemed necessary.

Additionally, we have questions on how this will work if there are different enforcement efforts on the State and County levels and whether the fines are allocated to state or county funds.

Mahalo for your consideration of our testimony and ask that you please pass this bill.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

SB-540-HD-1

Submitted on: 3/30/2021 7:18:02 AM

Testimony for JHA on 3/30/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support this bill and pass it through.