



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1119, RELATING TO THE VIOLATION OF RULES DURING EMERGENCY PERIODS.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Thursday, February 11, 2021 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Via Videoconference

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

Chair Nishihara and Members of the Committee:

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

The purposes of this bill are 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.

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 is 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 measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Public Safety
Intergovernmental, and Military Affairs**

February 11, 2021

S.B. No. 1119: RELATING TO THE VIOLATIONS OF RULES DURING EMERGENCY PERIODS

Chair Nishihara, Vice Chair English, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 1119.

This measure allows the governor and the mayors to establish lesser offenses during emergency periods, including non-criminal violations or infractions, to enforce the emergency rules. This measure also establishes a more expeditious enforcement system for the processing of these infractions.

There were over 60,000 emergency order violations issued last year just 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. Just last week, 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 in the amount of \$75 (because he was adamant about his innocence) and made approximately 15 pre-trial court appearances, a jury acquitted the defendant of all charges. Certainly, the resources expended to charge, defend and try the defendant of a violation of emergency order as a misdemeanor were substantial.

Over the past year, our office has represented a number of individuals for walking on the beach to and from the ocean (which was permissible). We represented high school seniors and parents simply taking graduation photographs on the beach. We

know of one case where a family of four 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. And we represented a number of individuals who were not wearing mask even though these individuals were alone or with their family unit. Charging these individuals for misdemeanor offenses was (and is) simply unjust and unfair and a waste of resources.

Moreover, many of the misdemeanor citations were issued (and are issued) to the houseless. Some individuals have 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 minor traffic, parking, jaywalking, and seat belt violations. 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. Moreover, the financial hit caused by subsequent citations would be a sufficient deterrent for most, if not all, individuals.

Thank you for the opportunity to comment on S.B. No. 1119.

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

**TESTIMONY ON SENATE BILL 1119,
RELATING TO THE HAWAII EMERGENCY MANAGEMENT AGENCY**

Before the Senate Committee on
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

By

Luke P. Meyers
Administrator, Hawaii Emergency Management Agency (HI-EMA)

Aloha Chair Nishihara, Vice-Chair English, and Members of the Committee:

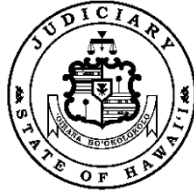
SB 1119 authorizes the governor and the mayors to establish lesser petty misdemeanor offenses and violations during emergency periods, including non-criminal infractions; and establishes a more expeditious system for the processing of these infractions to reduce the burden on the court system.

The Hawaii Emergency Management Agency (HI-EMA) **offers comments on** Senate Bill 1119.

The enforcement of these rules is critical to our efforts to control the Spread of COVID-19, yet there is concern that the criminal justice system is unable to handle the great number of cases being placed into the system by these offenses. Upon passage of SB1119, the judicial system and law enforcement agencies will benefit from being able to process the violations and infractions of emergency rules and orders more efficiently and meaningfully; consequently, the public will benefit from a system that addresses the emergency situations more effectively and is less costly.

Thank you.

Luke P. Meyers: Luke.P.Meyers@hawaii.gov; 808-733-4300



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2021 Regular Session

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senator Clarence K. Nishihara, Chair

Senator J. Kalani English, Vice Chair

Thursday, February 11, 2021, 1:00 p.m.

Via Videoconference

WRITTEN TESTIMONY ONLY

By:

Mark M. Santoki

Acting Deputy Chief Court Administrator

First Circuit

Bill No. and Title: Senate Bill No. 1119, Relating to the Violation of Rules during Emergency Periods.

Purpose: 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.

Judiciary's Position:

The Judiciary takes NO POSITION on this measure, providing the following comments.

This bill authorizes the governor or mayor to designate specific violations of emergency order rules as misdemeanors, petty misdemeanors, or non-criminal emergency order infractions. The bill further creates an adjudication structure for the processing of emergency order infractions similar to the processing of traffic infractions, such as parking tickets and speeding tickets.

Testimony on SB119, Relating to to the Violation of Rules during Emergency Periods.
Thursday, February 11, 2021
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Persons receiving emergency order infractions would have the option of paying their fines online, by mail, or in person. Persons wishing to contest emergency order infractions would have the option of submitting a written statement to the court or requesting a court hearing. In cases where court hearings were requested, hearings could be set by the court with remote appearances, social distancing, and courtroom capacity in mind.

The Judiciary anticipates that creating an 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 also notes that the administrative fee of \$20 is consistent with the fees for processing traffic citations under HRS § 607-4.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

LATE

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE CLARENCE NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL & MILITARY AFFAIRS**
**Thirty-First State Legislature
Regular Session of 2021
State of Hawai'i**

February 11, 2021

RE: S.B. 1119; RELATING TO THE VIOLATION OF RULES DURING EMERGENCY PERIODS.

Chair Nishihara, Vice Chair English, and members of the Senate Committee on Public Safety, Intergovernmental & Military Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in **support** of S.B. 1119.

The purpose of S.B. 1119 is to give the Governor and Mayors authority to set the level of offense—including proposed (non-traffic) infractions—for violating any rules established by their emergency proclamations or orders. This bill would also create a new judicial process for the adjudication of emergency period rule violations that are designated as (non-traffic) infractions.

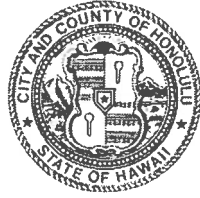
With the onset of the COVID-19 pandemic in 2020, our Department (along with the Office of the Public Defender, the Judiciary, and other affected bodies) was inundated with tens of thousands of emergency proclamation and/or order rule violations, which had to be charged by law as misdemeanors; this includes the option for defendants to request a jury trial. In addition to putting an unprecedented strain on all stakeholders’ personnel and resources, this experience clearly illustrated the need for more flexibility in establishing and enforcing any future rules that are made by emergency proclamation or order. The Department is grateful to the Department of the Attorney General and Judiciary for working together to develop a reasonable and expeditious means of processing these rule violations moving forward, while still holding offenders accountable.

We also note that a similar, but alternative, means of addressing these rule violations was proposed in S.B. 540, and that bill was previously heard by the Senate Committee on Judiciary. The Department supports both approaches, and thanks both committees for their dedication to helping to resolve this problem.

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. 1119. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE MC-SH

February 11, 2021

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
413 South Beretania Street, Room 214
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

**SUBJECT: Senate Bill No. 1119, Relating to the Violation of
Rules During Emergency Periods**

I am Major Mark Cricchio of District 6 (Waikiki) of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD is in support of Senate Bill No. 1119, Relating to the Violation of Rules During Emergency Periods. Senate Bill No. 1119 will allow the HPD to conduct enforcement that is more proportionate to the offenses encountered by issuing citations that are non-criminal. Subsequently, the judiciary process will be simplified and expedited, resulting in the speedier resolution of cases. It will also ease the budget of the state and taxpayers by removing the need for lengthy proceedings and lowering the need for witnesses, including law enforcement personnel on overtime. With the officer's involvement being minimized in the judicial proceedings, the HPD will be able to use their resources more efficiently with continued emergency period enforcement or other community-related matters.

The HPD supports Senate Bill No. 1119, Relating to the Violation of Rules During Emergency Periods.

The Honorable Clarence K. Nishihara, Chair
and Members
February 11, 2021
Page 2

Thank you for the opportunity to testify.

Sincerely,



Mark Ericchio, Major
District 6

APPROVED:



Susan Ballard
Chief of Police



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
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(808) 244-6400
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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 10, 2021

The Honorable Ronald D. Kouchi, District 8
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 409
Honolulu, HI 96813

**RE: SENATE BILL 1119 RELATING TO THE VIOLATION OF RULES
DURING EMERGENCY PERIODS**

Dear Senator Kouchi:

The Maui Police Department SUPPORTS the passage of S.B. 1119.

This act will allow the mayor of each county the discretion to establish lesser or lower offenses during emergency periods, to include non-criminal offenses. Given this authority, mayors will be able to implement penalties that may be more appropriate to these offenses and suited to the needs of respective counties. Even if contested, this act will also allow for a more streamlined hearing which will speed the disposition. This will expedite the judicial proceedings and encourage resolution which will alleviate and reduce the burden on the court system.

This act will free up our officers from having to testify or participate in such hearings and allow for a more efficient use of our resources. With this in mind, it will also allow our officers to readily enforce these infractions knowing the process will be simplified.

Accordingly, the Maui Police Department requests S.B. 1119 be PASSED.

Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Acting Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney

ROBERT D. RIVERA
Second Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
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TESTIMONY
ON
S.B. 1119 RELATING TO
THE VIOLATION OF RULES
DURING EMERGENCY PERIODS

LATE

February 9, 2021

The Honorable Clarence K. Nisihara
Chair
The Honorable J. Kalani English
Vice Chair
and Members of the Committee on Public Safety, Intergovernmental and Military Affairs

Chair Nisihara, Vice Chair English, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 1119, Relating to The Violation of Rules During Emergency Periods. Specifically, we would like to express our general support for S.B. 1119.

The COVID-19 pandemic and its related emergency orders have resulted in a number of challenges for law enforcement and prosecution of emergency order violations. Enforcement of the emergency orders often requires our Department to balance the public health interest in reducing community spread, the law enforcement interest in promoting compliance with the law, and the criminal justice system's interest in striving for fair and consistent outcomes in all cases.

Although we prosecute each case to the best of our ability and strive to balance the interests at play, the sheer number of violations, coupled with the wide spectrum of conduct and criminal intent between cases, has the potential to result in less than ideal outcomes. By allowing each county to adopt lower grades of emergency order violation offenses as appropriate, this bill would allow our Department the ability to work towards outcomes that are more fair and equitable for all parties, while retaining the ability to deter conduct that encourages the spread of COVID-19. We also appreciate and support the Legislature's efforts to streamline the processing of these citations by creating an expedited process for citation handling at the trial level.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of S.B. 1119. 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.

SB-1119

Submitted on: 2/8/2021 12:11:15 PM

Testimony for PSM on 2/11/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

"Meaningful and effective enforcement" is the key. This is certainly a step in the right direction. The current punishment or "corrective action" efforts, is much too severe.

In our recent enforcement efforts, we have criminalized tens of thousands of our Hawaii citizens and visitors. There were harsh implications, the least of which resulted in the overburdening of our, already busy, court system.

SB-1119

Submitted on: 2/8/2021 2:07:30 PM

Testimony for PSM on 2/11/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

This is more like a Dictatorship then a constitutional America stop acting like communist befor it comes back to bit you on your ASS. The Hawaii people will not stand for this. WE ARE Watching!!

SB-1119

Submitted on: 2/11/2021 9:52:37 AM

Testimony for PSM on 2/11/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jennifer carman	Individual	Oppose	No

Comments:

Strongly oppose SB1119!

the governor cannot make up rules and make up an emergency state

that violates our constitutional rights and birthrights