

RE: **Proposal to Amend Form K and to Promulgate New Form L of the Hawai'i Rules of Penal Procedure**

*FORMS REGARDING A DEFENDANT'S ENTRY OF PLEA
AND WAIVER OF RIGHT TO A JURY TRIAL*

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Form K and to promulgate a new Form L of the Hawai'i Rules of Penal Procedure, regarding the entry of plea by a defendant and a defendant's waiver of the right to a jury trial. The amendments are intended to improve the comprehensibility of the forms and to provide a standard form for waiver of jury trial. The proposed forms are attached hereto.

Comments about the proposed forms should be submitted, in writing, **no later than Monday, January 25, 2021**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary website](#).

Attachment

STATE OF HAWAI'I CIRCUIT COURT OF THE _____ CIRCUIT	<input type="checkbox"/> GUILTY PLEA <input type="checkbox"/> NO CONTEST PLEA <input type="checkbox"/> MOTION TO DEFER	
CASE NUMBER:		
STATE OF HAWAI'I vs. (Defendant)		
Year of Birth:	Defendant's Age:	Education (Last Grade Completed):
CHARGE(S)/HRS:	MAXIMUM IMPRISONMENT/FINE:	REPORT NUMBER(S):
Extended Term of Imprisonment:		Mandatory Minimum Term of Imprisonment:
<ol style="list-style-type: none"> 1. My mind is clear [I have not taken any medication, alcohol, or illegal drugs within the last 48 hours] and not under the influence of any illicit drugs, alcohol, or prescribed medication. I am not sick. I speak, read, write, and understand the English language or this document has been read to me or has been interpreted for me. 2. I have received a written copy of the original charge(s) in this case. The charge(s) has/have been explained to me. I understand the original charge(s) against me. I told my lawyer all of the facts I know about the case. My lawyer explained the [government's] State's evidence against me, my possible defense(s), and the facts which the [government] State must prove in order to convict me. 3. I understand the reduced charge(s) with which the [government] State has agreed to charge me, instead of the original charge(s). (Applicable only if original charge has been reduced.) 4. I plead of my own free will. No one is pressuring me or threatening me or any other person to force me to plead. I am not taking the blame or pleading to protect another person from prosecution. 5. I know I have the right to plead not guilty or to persist in that plea and have a speedy and public trial by jury or by the court. I know in a trial the [government] State is required to prove my guilt beyond a reasonable doubt. I know I can see, hear, and question witnesses who testify against me, and that I may call my own witnesses to testify for me at trial. I understand I have the right to take the stand to testify and I have the right not to testify at trial. I know by pleading I give up the right to file any pre-trial motions, and I give up the right to a trial and may be found guilty and sentenced without a trial of any kind. Except in certain limited circumstances, I also give up the right to appeal anything that has happened in this case to date. 		
<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Defense Counsel <input type="checkbox"/> Adult [Probation Division] Client Services Branch		

6. I further understand that for misdemeanor and felony offenses: (a) twelve members of the community make up a jury; (b) in a jury trial, I may take part in jury selection; (c) in a jury trial, the jury's verdict must be unanimous; and (d) if I waive a jury trial, the judge alone will decide whether I am guilty or not guilty.

[6]7. I understand that the court may impose any of the following penalties for the offense(s) to which I now plead: the maximum term of imprisonment, any extended term of imprisonment, and any mandatory minimum term of imprisonment specified above; consecutive terms of imprisonment (if more than one charge); restitution; a fine; a fee and/or assessment; community service; probation with up to 2 years of imprisonment and other terms and conditions. I further understand that: (a) the court must order restitution for reasonable and verified losses requested by a victim or when the crime victim compensation fund makes an award; (b) the court cannot waive the restitution amount or convert it to community service; and (c) unless the amount of restitution has already been determined, the court cannot determine what a possible restitution amount will be until a later time.

[7]8. I plead no contest because, after discussing all the evidence and receiving advice on the law from my lawyer, I do not want to contest the charge(s) against me.

I plead guilty because, after discussing all the evidence and receiving advice on the law from my lawyer, I believe that I am guilty. (Give a brief statement of the facts that establish ~~the defendant's~~ your guilt as to each offense to which ~~the defendant is~~ you are entering a plea pursuant to the requirements of HRS §§ 701-114, 701-115, 702-205, and 702-206, as amended.)

I move to defer acceptance of my plea. I understand that if the court denies my motion, the court will then find and adjudge me guilty upon this plea, and impose sentence.

[8]9. I have not been promised any kind of deal or favor or leniency by anyone for my plea, except that I have been ~~told~~ informed that the ~~government~~ State has agreed as follows (if none, write "None"):

I have reviewed with my lawyer a written copy of the agreement between myself and the State, which is attached hereto, and I fully understand and agree to its terms.

I know that the court is not required to follow any deal or agreement between the ~~government~~ State and me. I know that the court has not promised me leniency.

The court has agreed to follow the plea agreement pursuant to Rule 11, Hawai'i Rules of Penal Procedure.

[9]10. I further state that (if none, write "None"):

GUILTY/NO CONTEST PLEA (Continued)		CASE NUMBER:
<p>[40]11. I understand that:</p> <ul style="list-style-type: none"> [] If I am not a citizen of the United States, whether or not I have lawful immigration status, I have the right to receive advice from my lawyer about the specific impact that this case will have, if any, on my immigration status. [] The entry of a guilty or no contest plea, admission of guilt or sufficient facts, or conviction, deferred judgment or deferred sentence may have the consequence of my immediate detention, deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. [] In some cases, detention and deportation from the United States will be required. [] My lawyer must investigate and advise me about the aforementioned issues prior to the commencement of trial, entry of a guilty or no contest plea, or admission of guilt or sufficient facts to <u>establish</u> any offense punishable as a crime under state law, other than those offenses designated as infractions, and I acknowledge that I have been so advised. [] I am not required to disclose my immigration status or citizenship status to the court. <p>[44]12. I am signing this Guilty/No Contest Plea [form] <u>document</u> after I have gone over all of it with my lawyer. I know I will not be permitted to withdraw my plea <u>except in certain limited circumstances</u>. I am signing this form in the presence of my lawyer. I have no complaints about my lawyer and I am satisfied with what he/she <u>my lawyer</u> has done for me.</p>		
DATE	DEFENDANT'S SIGNATURE	
CERTIFICATE OF COUNSEL		
<p>I certify that I have read and explained fully this Guilty/No Contest Plea document to the defendant and believe he/she <u>the defendant</u> understands this document in its entirety. The statements contained in this document conform with my understanding of the defendant's position. I believe the defendant's plea is made voluntarily and with an intelligent understanding of the nature of the charge(s) and possible consequences. The defendant signed this Guilty/No Contest Plea [form] <u>document</u> in my presence. I further certify that I have complied with Rules 1.2(a) and 1.4 of the Hawai'i Rules of Professional Conduct.</p>		
DATE	ATTORNEY FOR DEFENDANT	SIGNATURE
<p>I acknowledge that the Judge questioned me personally [in open court] <u>on the record during a hearing</u> to make sure that I knew what I was doing in pleading guilty or no contest and understood this [form] <u>document</u> before I signed it.</p> <p>[DATE _____ SIGNATURE OF DEFENDANT (signed in open court after questioning)]</p>		
DATE	DEFENDANT'S NAME	DEFENDANT'S SIGNATURE (signed after questioning by the court)
[NAME OF] JUDGE		

PROPOSED FORM L

STATE OF HAWAI'I _____ COURT OF THE _____ CIRCUIT	WAIVER OF TRIAL BY JURY	
CASE NUMBER	REPORT NUMBER(S)	
STATE OF HAWAI'I vs. (DEFENDANT)		

CHARGE(S): VIOLATION OF HRS SECTION(S):

I, the undersigned Defendant, have read completely this waiver form and discussed it thoroughly with my attorney and with the assistance of an interpreter, if applicable. I acknowledge and understand the following:

1. I am entitled to a jury trial on the instant charge(s).
2. A jury consists of twelve (12) people chosen from the community to determine whether I am guilty, not guilty or if applicable, not guilty by reason of insanity of the instant charge(s).
3. Before I may be found guilty, all twelve jurors must unanimously agree the State has proved beyond a reasonable doubt each and every material element of the crime(s) charged.
4. If any one juror fails to agree the State has proved each and every material element of the crime(s) charged beyond a reasonable doubt, I cannot be found guilty.
5. I have the right to consult with and assist my attorney in selecting the twelve jurors and making requests to excuse one or more jurors for cause or otherwise.
6. By waiving my right to a jury trial, I know the judge alone will consider the evidence and decide whether I am guilty, not guilty or if applicable, not guilty by reason of insanity of the instant charge(s).
7. I have consulted with my attorney and understand the possible advantages and disadvantages of both a jury trial and a judge trial.
8. I am satisfied with the advice and services provided by my attorney.
9. My mind is clear and I am not under the influence of any illicit drugs, alcohol or prescribed medication.
10. No one has made any promises as to the outcome of either a judge or jury trial nor has anyone put any pressure upon me to give up my right to a jury trial.
11. I have had sufficient time to fully consider and make this decision to waive my right to a jury trial.
12. I understand this decision is entirely up to me and is my own free, voluntary choice.
13. I hereby forever waive my right to have my case tried by a jury and instead agree to have my case tried by the judge alone.

DATE	DEFENDANT	SIGNATURE
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CERTIFICATE OF COUNSEL

I certify I have explained the foregoing "Waiver of Trial by Jury" form to Defendant and with the assistance of an interpreter, if applicable; I believe Defendant understands the document in its entirety; the statements contained therein conform with my understanding of Defendant's position; I believe Defendant's waiver is made with a voluntary, knowing and intelligent understanding of the defendant's right to a jury trial, as well as, the potential advantages and disadvantages of waiving the defendant's right to a jury trial; and that Defendant signed the foregoing in my presence.

DATE	ATTORNEY FOR DEFENDANT	SIGNATURE
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DATE	JUDGE	SIGNATURE
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