

RE:           **Proposal to Amend Forms C and D of the Hawai‘i Rules of Penal Procedure**

*ADDITIONAL ADVISORIES*  
*RELATED TO WAIVER OF JURY TRIAL*

The Supreme Court of Hawai‘i seeks public comment regarding a proposal to further amend Forms C and D 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 add advisories informing the defendant of four additional aspects of trial by jury and the consequences of its waiver, as set forth in State v. Friedman, 93 Hawai‘i 63, 69-70, 996 P.2d 268, 274-75 (2000). The forms, with the proposed new language underscored, are attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Friday, April 16, 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

**Form C**

**WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA**

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA	Case Number:
STATE OF HAWAI'I vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)  REVISED ORDINANCE SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawai'i Rules of Penal Procedure:

1. I understand that I have the right to be present at the arraignment, at pretrial proceedings, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be physically present at all of these proceedings. I authorize my lawyer to represent me in all of these proceedings without my physical presence.
2. I understand that face-to-face video conferencing might be necessary in order for the court to  accept or  defer my plea and  impose or  defer sentence.
3. I understand that I have the right to address the court before I am sentenced and agree to do so via face-to-face video teleconferencing in lieu of me appearing in person before the court.
4. I plead:  GUILTY OR  NO CONTEST  
to the:  ORIGINAL OR  AMENDED charge(s) listed above.
5. My birth year is \_\_\_\_\_ and I am \_\_\_\_\_ years old. The last four digits of my social security number are XXX-XX-\_\_\_\_\_. I have completed \_\_\_\_\_ years of education.  
  
 I speak, read, write, and understand the English language.

I do not speak, read, write, and understand the English language. This document was interpreted from English to \_\_\_\_\_.  
(Insert Language)

6. My mind is clear. I am not ill. I did not consume any substances which have affected my ability to understand this document or this proceeding.
7. My lawyer explained the charge(s) against me. I understand the charge(s). I told my lawyer everything I know about the case. My lawyer explained the government's evidence against me, the facts which the government must prove in order to convict me and my possible defenses.
8. I understand that by pleading guilty or no contest I give up my right to a trial by a jury or by the court. I understand that for misdemeanor and felony offenses in a jury trial:
- a. Twelve members of the community make up a jury;
  - b. I may take part in jury selection;
  - c. A jury verdict must be unanimous; and
  - d. If I waive a jury trial, the judge alone will decide whether I am guilty or not guilty.

I ~~know~~ further understand that in ~~a~~ any trial,

- a. the government is required to prove my guilt beyond a reasonable doubt;
  - b. I have the right to see, hear and question the witnesses who testify against me;
  - c. I have the right to call my own witnesses to testify for me, but I am not obligated to present any evidence in my own defense, nor can any conclusions be drawn against me for not presenting any evidence;
  - d. I have the right not to testify, and should I decide not to testify my decision cannot be used against me;
  - e. I have the right to testify even though my lawyer thinks I should not, and that the deputy prosecutor will be able to question me; and
  - f. The court would ask me whether my decision to testify or not testify was my own.
9. I understand that the maximum penalties are: \$ \_\_\_\_\_ fine or \_\_\_\_\_ days/months/year in jail or both. (If you are being prosecuted for multiple offenses, complete Form E [listing for multiple offenses].)

INITIAL ONE: I  am  am not on probation or parole; I know that this plea might provide a basis for revocation of my probation or parole.

10. INITIAL ONE:

After discussing all the evidence and receiving advice from my lawyer, I plead GUILTY because (give a brief factual statement of what the Defendant did):

After discussing all the evidence and receiving advice from my lawyer, I plead NO CONTEST because I do not wish to contest the charge(s) against me.

11. I offer my plea freely and voluntarily and with full understanding of all the matters set forth in the information, complaint, or indictment. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.

12. INITIAL ONE:

I do not have any agreement with the government regarding my plea. No one has promised me any kind of deal or favor or leniency if I plead.

I have reached the following agreement with the government (give a brief statement):

INITIAL:

I understand that the court is not bound by this agreement. I understand that I will not be permitted to withdraw my plea if the court does not follow the agreement.

Other than the foregoing agreement with the government, no one has promised me any kind of deal or favor or leniency if I plead.

13. I understand that the court is not required to grant any request for a deferred acceptance of a guilty or no contest plea.

14. I consent to the court imposing sentence without me being physically present. If a presentence report is required by law, I waive (give up) my right to have a presentence report prepared and presented to the court. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to being arrested and having to appear in court.

15. I understand that the court will read the following to me before accepting my plea:

If you are not a citizen of the United States, whether or not you have lawful immigration status, you have the right to receive advice from your lawyer about the specific impact that this case will have, if any, on your immigration status. The entry of a guilty or no contest plea, admission of guilt or sufficient facts, or conviction, deferred judgment, or deferred sentence might have the consequences of your 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. Your lawyer must investigate and advise you about these issues prior to the commencement of trial, entry of a guilty or no contest [plea], or admission of guilt or sufficient facts to any offense punishable as a crime under state law, other than those offenses designated as infractions. You are not required to disclose your immigration or citizenship status to the court.

16. I declare under penalty of perjury that I am the person charged with the offense(s) noted above and affix my fingerprint hereto. I further acknowledge that I signed this document after reviewing it with my lawyer. I am satisfied with my lawyer's advice and representation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Defendant's Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

	Defendant must affix right thumbprint in black ink
	Defendant must attach a recent photograph showing Defendant's face as it will appear during video conference.

**DECLARATION OF COUNSEL**

As counsel for the defendant and as an officer of the Court, I certify the following:

1. I explained the defendant's right to be present.
2. The defendant represented to me that the defendant does not wish to be physically present and that the defendant consents to the court conducting the proceedings in the defendant's physical absence.
3. I read and explained this document to the defendant.
4. The statements contained herein conform with my understanding of the defendant's position.
5. I believe the defendant understands the document in its entirety.
6. The defendant's plea is voluntary.
7. The defendant understands the nature of the charge(s) and the possible consequences.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

Attorney for the Defendant

Approved and so ordered:

---

Judge of the Above-Entitled Court

**Form D**

**WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA; *PRO SE* DEFENDANT**

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA; <i>PRO SE</i> DEFENDANT	Case Number:
STATE OF HAWAI'I vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)  REVISED ORDINANCE SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawai'i Rules of Penal Procedure:

1. I am proceeding without an attorney and I have full knowledge of the following: (Each box must be initialed by Defendant).
  - I understand that I have a right to representation by an attorney. I also understand that if I am financially unable to afford an attorney the court will appoint one at no cost to me.
  - The information(s), complaint(s) and/or indictment(s) set(s) out what the government claims I did. I have read the information(s), complaint(s) and/or indictment(s). I know the government must prove the allegations in the information(s), complaint(s) or indictment(s) in order to convict me.
  - I understand the charge(s) against me.
  - I understand that I have the right to be present at the arraignment, at pretrial proceedings, at a trial, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be physically present at all of these proceedings.

- I understand that face-to-face video conferencing might be necessary in order for the court to  accept or  defer my plea and  impose or  defer sentence.
- I understand that I have the right to address the court before I am sentenced and agree to do so via face-to-face video teleconferencing instead of me appearing in person before the court.
- I understand that by pleading guilty or no contest I give up my right to a trial by a jury or by the court. I understand that for misdemeanor and felony offenses in a jury trial:
- Twelve members of the community make up a jury;
- I may take part in jury selection;
- A jury verdict must be unanimous; and
- If I waive a jury trial, the judge alone will decide whether I am guilty or not guilty.
- I ~~know~~ understand that in ~~a~~ any trial,
- the government is required to prove my guilt beyond a reasonable doubt;
- I have the right to see, hear and question witnesses who testify against me;
- I have the right to call my own witnesses to testify for me, but I am not obligated to present any evidence in my own defense, nor can any conclusions be drawn against me for not presenting any evidence;
- I have the right not to testify, and should I decide not to testify my decision cannot be used against me;
- I have the right to testify and that the deputy prosecutor will be able to question me; and
- The court would ask me whether my decision to testify or not to testify was my own.
- I understand that an attorney would:
- (a) investigate my case, call witnesses, and present evidence;
  - (b) research the law and present legal issues on my behalf and present defenses to the charge(s) on my behalf;
  - (c) know and explain courtroom procedures and argue my case; and
  - (d) negotiate with the government to reduce the charge(s) or lessen the sentence.



- I understand that, if I give up my right to an attorney, I will not have an attorney's assistance and must do everything an attorney would do by myself.
- I understand my right to be represented by an attorney. I may either hire my own attorney or ask the court to appoint one if so required. I choose to give up my right to an attorney and I desire to represent myself.
- My mind is clear. I am not ill. I did not consume any substances which have affected my ability to understand this document or this proceeding.
- I understand that the maximum penalties are: \$ \_\_\_\_\_ fine or \_\_\_\_\_ days/months/years in jail or both. (If you are being prosecuted for multiple offenses, complete Form E [listing for multiple offenses].)

2. I plead:  GUILTY OR  NO CONTEST  
to the:  ORIGINAL OR  AMENDED charge(s) listed above.

3. My birth year is \_\_\_\_\_ and I am \_\_\_\_\_ years old. The last four digits of my social security number are XXX-XX-\_\_\_\_\_. I have completed \_\_\_\_\_ years of education.

I speak, read, write, and understand the English language.

I do not speak, read, write, and understand the English language. This document was interpreted from English to \_\_\_\_\_.  
(Insert Language)

4. INITIAL ONE: I  am  am not on probation or parole; I know that this plea might provide a basis for revocation of my probation or parole.

5. I offer my plea freely and voluntarily and with full understanding of all the matters set forth in the information, complaint, or indictment. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.

6. INITIAL ONE:

I plead GUILTY because (Give a brief factual statement of what you did):

I plead NO CONTEST because I do not wish to contest the charge(s) against me.

7. I understand that the government may provide reports or information to establish a factual basis for the plea and/or for sentencing recommendations.
8. INITIAL ONE:
- I do not have any agreement with the government regarding my plea. No one has promised me any kind of deal or favor or leniency if I plead.
- I have reached the following agreement with the government (give a brief summary):

INITIAL:

- I understand that the court is not bound by this agreement. I understand that I will not be permitted to withdraw my plea if the court does not follow the agreement.
- Other than the foregoing agreement, no one has promised me any kind of deal or favor or leniency if I plead.
9. I have full knowledge of the following: (Each box must be initialed)
- I understand that the court is not required to grant any request for a deferred acceptance of a guilty or no contest plea.
- I consent to the court imposing sentence without me being physically present. If a presentence report is required by law, I waive (give up) the right to have a presentence report prepared and presented to the court. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to arrest and an order to appear in court.
- I understand that the court will read the following to me before accepting my plea:

If you are not a citizen of the United States, whether or not you have lawful immigration status, you have the right to receive advice from a lawyer about the specific impact that this case will have, if any, on your immigration status. The entry of a guilty or no contest plea, admission of guilt or sufficient facts, or conviction, deferred judgment, or deferred sentence might have the consequences of your 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. Your lawyer must investigate and advise you about these issues prior to the commencement of trial, entry of a guilty or no contest [plea], or admission of guilt or sufficient facts to any offense punishable as a crime under state law, other than those offenses designated as infractions. You are not required to disclose your immigration or citizenship status to the court.

I declare under penalty of perjury, that I am the person charged with the offense(s) listed above and affix my fingerprint hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Defendant's Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

	Defendant must affix right thumbprint in black ink
	Defendant must attach a recent photograph showing Defendant's face as it will appear during video conference.

Prosecutor

- Objects
- Does not object
- Takes no position

Approved and so ordered:

\_\_\_\_\_  
Judge of the Above-Entitled Court

\_\_\_\_\_  
(Date)