



## Office of the Public Defender State of Hawai'i

### Testimony of the Office of the Public Defender, State of Hawai'i to the House Committee on Judiciary

February 10, 2019

H.B. No. 509: RELATING TO DISMISSAL OF CRIMINAL CASES

Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 509.

Rule 48(c)(2) of the Hawai'i Rules of Penal Procedure ("HRPP") currently provides, in pertinent part:

The following periods shall be excluded in computing time for trial commencement:

\* \* \* \*

(2) periods that delay the commencement of trial and are caused by court congestion of the trial docket when the congestion is attributable to exceptional circumstances.

This measure essentially seeks to amend HRPP Rule 48(c)(2) by deleting the last provision in subsection (c)(2) to read, in pertinent part:

The following periods shall be excluded in computing time for trial commencement:

\* \* \* \*

(2) periods that delay the commencement of trial and are caused by court congestion of the trial docket ~~when the congestion is attributable to exceptional circumstances.~~

Citing the ABA Standards Relating to Speedy Trials, the Hawai'i Supreme Court, in State v. Estencion, 63 Haw. 264, 268, 625 P.2d 1040, 1043 (1981), set forth the purpose of HRPP Rule 48: to ensure an accused a speedy trial, which is separate and distinct from his/her constitutional protection to a speedy trial; to relieve congestion in the trial court; to promptly process all cases reaching the courts; and to advance the efficiency of the criminal justice process. *See also* State v. Soto, 63 Haw. 317, 320-21, 627 P.2d 279, 281 (1981); State v. Dunn, 8 Haw. App. 238, 243, 798 P.2d 908, 911 (App. 1990).

This measure will defeat each purpose of Rule 48. First, by expanding the exclusion period to any court congestion, the accused's right to speedy trial is jeopardized. The trial court

can continue the commencement of trial beyond the six-month period by simply finding court congestion. An accused, who one must remember is to be presumed innocent, will have his/her trial delay simply because a courtroom could not accommodate his/her trial. This consequence is even more egregious when the accused is unable to afford to post the bail and will remain in prison for the commencement of his/her trial.

Second, this measure will defeat Rule 48's purpose to relieve congestion. Indeed, the measure will actually encourage/increase court congestion. More cases will be prolonged, and fewer cases will be dismissed.

The Supreme Court has repeatedly held that that all parties -- the prosecutor, the accused, and the court -- share responsibility for carrying out the speedy trial requirements of HRPP Rule 48. Soto, 63 Haw. at 321, 627 P.2d at 281; State v. Sujohn, 64 Haw. 516, 520, 644 P.2d 1326, 1328 (1982); State v. Kahawai, 9 Haw. App. 205, 210, 831 P.2d 936, 939 (1992), cert. denied, 73 Haw. 627, 834 P.2d 1315 (1992). As the Intermediate Court of Appeals ("ICA") noted,

Rule 48's sanction of dismissal in criminal cases . . . creates an incentive for trial courts to design and implement efficient and fair procedures to decrease potential for delay caused by chronic congestion, for the legislature to supply the necessary resources to ensure prompt processing of all criminal cases, and gives the prosecutor an incentive to design screening procedures to ensure that as much as possible those cases that may be disposed of other than by trial are removed from the criminal justice system as quickly as possible.

Kahawai, 9 Haw. App. at 210-11, 831 P.2d at 939. Moreover, the ICA realized that the distinction between chronic court congestion and congestion due to exceptional circumstances enhances Rule 48's purpose of furthering society's interest in the prompt disposition of criminal trials. Id. at 210, 831 P.2d at 939.

Bottom line, this measure will emasculate Rule 48. There are and there will always be far more pending criminal cases than available time slots for trial; therefore, trial courts can always rule that the basis for a case to be continued is court congestion.

If the Legislature is concerned that court congestion attributable to exceptional circumstances is an unattainable exclusion period, the Hawai'i Supreme Court has upheld the exclusion of time periods due to court congestion attributable to exceptional circumstances. See State v. Lord, 63 Haw. 270, 625 P.2d 1038 (1981) (upheld court congestion exclusion on the ground that during the period in question the grand jury had returned an inordinately large number of indictments); State v. Herrera, 63 Haw. 405, 629 P.2d 626 (1981) (upheld exclusion on the grounds that during the relevant period there was a shortage of judge to hear criminal cases in the first circuit due to the resignations of two judges and an increase in the number of indictments).

Thank you for the opportunity to comment on H.B. 509.



*The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Judiciary**  
Representative Chris Lee, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 12, 2019, 4:00 p.m.  
State Capitol, Conference Room 325

by

Rodney A. Maile  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 509, Relating to Dismissal of Criminal Cases.

**Purpose:** Requires trials in criminal cases to commence within six months pursuant to Rule 48(b)(c), and (d) of the Hawai‘i Rules of Penal Procedure, and provides that any periods of delay for court congestion be excluded from the computation of time. This section shall not apply to certain traffic cases and criminal cases involving abuse of a family or household member.

**Judiciary's Position:**

The Judiciary acknowledges the good intentions behind this proposed legislation. The Judiciary, however, opposes this bill and offers the following comments.

The courts of the State all strive to handle criminal cases in an expeditious manner. Issues related to court congestion are caused by the increased number of criminal cases filed each year, limited courtrooms, judges, and staff.

To address these issues, the Judiciary, in its 2019 legislative package, requested the authorization for one additional district court judge for the first circuit and one additional district court judge for the second circuit. As noted in our testimony submitted in support of House



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Bill No. 511, Relating to District Court Judges, the additional judgeships will allow the Judiciary to increase the overall effectiveness of the district courts and help alleviate court congestion, case backlog, and case dismissals.

In addition to requesting additional judge positions, the Supreme Court, pursuant to its rulemaking power set forth in Article VI, section 7 of the Hawai‘i Constitution, is continually reviewing court procedures and rules of court, including Rule 48 of the Hawai‘i Rules of Penal Procedure, to address the effective and timely handling of cases by the trial courts. With these administrative tools, the Judiciary believes that it can efficiently handle issues related to court congestion without the need for legislation.

Thank you for the opportunity to testify and for your consideration of the Judiciary’s comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai`i**

February 12, 2019

**RE: H.B. 509; RELATING TO DISMISSAL OF CRIMINAL CASES.**

Chair Lee, Vice Chair San Buenaventura, members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of H.B. 509, with one suggested amendment. This bill is part of the Department’s 2019 legislative package.

The purpose of H.B. 509 is to create a statutory requirement for criminal cases to be brought to trial within six months, with certain periods of time excluded for various reasons. Specifically, any delays in commencing trial due to court congestion would expressly be excluded from (and thus push back) the six-month deadline. In addition, we suggest amending the bill to exclude all time between a defendant being found mentally fit to proceed, and the next available trial date. Both of these delays are completely out of the hands of prosecutors—relying almost entirely on the availability of a judge to preside over the matter—yet that time currently counts against the six months, sometimes wasting up to two months of time.

The general proposal to commence trial within six months is consistent with existing court rules, namely Rule 48 of the Hawaii Rules of Penal Procedure (“HRPP” and “Rule 48”). Currently, Rule 48 only excludes time for court congestion if the court finds such delay was due to “exceptional circumstances.” Thus, our Department has repeatedly argued that the current backlog of cases awaiting trial, for various types of cases—particularly operating a vehicle under the influence of an intoxicant (HRS §291E-61) and misdemeanor criminal cases in District Court—is exceptional, and should be excluded from the six-month deadline under Rule 48. However, our courts have ruled that congestion of the trial docket, due to multiple trials being ready to proceed at the same time, is not an exceptional circumstance.

Similarly, after a defendant is found mentally unfit to proceed on a case, then later found fit again, the time between the finding of fitness and the next available trial date is currently counted against the six-month deadline. This, too, can take up to two months to wait for availability. As a

result of these delays—which have no bearing on the merits of the case, nor the preparedness of the prosecution and its witnesses—many cases are being dismissed by the courts for lack of time.

In addition to excluding any delays due to court congestion, or obtaining a trial date after a defendant regains mental fitness to proceed, H.B. 509 expressly states that the six-month deadline would not apply to traffic offenses not punishable by imprisonment (i.e. infractions & violations)—this is already stated in Rule 48, so we will not discuss that portion—nor would it apply to criminal cases involving abuse of a family or household member (i.e. domestic violence). We understand there may be interest in adding other types of offenses to the exclusions, such as child abuse or child sex offenses, and would support excluding those as well.

The reason for having the six-month deadline not apply to domestic violence cases is similar to the reasons for excluding periods of court congestion. Currently, our Family Court on Oahu is regularly seeing more domestic violence cases ready to proceed to trial, than there are available judges to preside over those trials. Thus, when multiple cases are ready for trial, in any given week, prosecutors are forced to choose which case to proceed on first (second, third, etc), while all other cases get continued and pushed back to the next available court date; any witnesses and victims are re-subpoenaed, and the six-month deadline continues to run pursuant to Rule 48. Our courts can generally accommodate four misdemeanor domestic violence trials per week (the two designated courtrooms/judges can each handle about two trials per week), even though there are often more than that ready to proceed.

Because of the current system and Rule 48, what typically happens in misdemeanor domestic violence cases on Oahu is that the defendant (and their attorney) will simply wait to see which cases the prosecutor is “not ready” on, then wait for the prosecutor to seek continuances in those cases, such as that the six-month deadline will continue to run. Of those cases in which the prosecutor is “ready” to commence trial, the defendant will wait to see which cases the prosecutor actually chooses to proceed on that week; those that are not selected will get pushed back for court congestion, such as that the six-month deadline will continue to run. At that time, or anytime up to the beginning of trial, the defendant can also choose to seek a continuance. If the defendant requests a continuance—and assuming it is granted—that time will generally be excluded from the six-months under Rule 48; however, both parties will then have to reappear for the next hearing, one to two months later, to see if the prosecutor (and all witnesses/victims) are ready again.

This entire process can be repeated over and over, until the case either proceeds to trial, or “time runs out” and the case is dismissed. Even on the day of trial, defendants may wait to see if all necessary witnesses for prosecution actually show up; once that has been confirmed, some defendants will then seek a plea agreement. For victims and other witnesses who valiantly cooperate with prosecution on domestic violence cases, this system of appearing (or making themselves available to appear) time and time again can be excruciatingly frustrating; some may even stop cooperating or appearing, either due to sheer frustration or due to running out of time off from work. If that happens, the Department cannot proceed to trial without a necessary witness/victim, and the case may eventually be dismissed for lack of time.

While it is natural to wonder whether removing domestic violence cases from the six-month deadline requirement could negatively impact the rights of a defendant, defendants would still have all rights and protections afforded by the “right to speedy trial,” under the United States Constitution’s Sixth Amendment. In determining whether a particular defendant has been deprived of that right, courts are generally called upon to balance four relevant factors: length of delay, the

reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 503, 91 S.Ct. 2182, 2192, U.S. Ky. 1972.

Thus, with defendants' rights still protected, the Department strongly believes that H.B. 509 would better reflect and accommodate the realities of our court system, which would result in less frustration and wasted time for victims and witnesses, and less cases being dismissed simply because there are not enough judges to preside over those cases that are ready to proceed to trial.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 509. Thank you for the opportunity to testify on this matter.

**HB-509**

Submitted on: 2/10/2019 7:51:21 PM

Testimony for JUD on 2/12/2019 4:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Comments	No

Comments:

"provided that any periods that delay the commencement of trial and are caused by court congestion shall be excluded from the computation of time."???

This provision cannot be used to delay commencement since such a law should mandate the provision of resources for the case load.

If this bill delays trial longer than the current delays, this bill should be opposed. That is, if this bill extends the maximum time the current law says a person may be held without trial, it should be opposed.

[www.WeAreOne.cc](http://www.WeAreOne.cc)



**HB-509**

Submitted on: 2/9/2019 5:29:12 AM

Testimony for JUD on 2/12/2019 4:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Quartero	Individual	Oppose	Yes

Comments:

Aloha Kakou,

I VEHEMENTLY OPPOSE HB 509 because it violates our constitutional rights to a speedy trial. The Speedy Trial Clause of the Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy trial." The Speedy Trial clause protects a defendant from delay between the presentation of the indictment or similar charging instrument and the beginning of trial. HB509 seeks to remove constitutional protections and is a detriment to a constitutional society.

Regards,

Robert Quartero

**HB-509**

Submitted on: 2/11/2019 10:32:35 AM

Testimony for JUD on 2/12/2019 4:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert K. Allen, Esq.	Individual	Oppose	No

Comments:

Accused persons are not responsible for court congestion and should not be penalized for it. The legislature should be finding ways to alleviate court congestion rather than trampling on the rights of defendants to accomodate the problem.