
A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that child abuse victims
2 have as much a right to a speedy trial as do defendants. The
3 speedy trial clause of the sixth amendment to the United States
4 Constitution provides in pertinent part as follows: "In all
5 criminal prosecutions, the accused shall enjoy the right to a
6 speedy and public trial . . . " This is to protect the
7 defendant from delay between the presentation of the indictment
8 or similar charging instrument and the beginning of trial.

9 The website of the Hawaii family courts states,
10 "Established by statute in 1965, the Family Court's mission is
11 to provide a fair, *speedy*, economical, and accessible forum for
12 the resolution of matters involving families and children."
13 (Emphasis added.) The legislature further finds that the term
14 "speedy" is not limited to the right to a speedy trial for adult
15 perpetrators of child abuse, but also confers a right to a
16 speedy trial for child abuse victims.



1 The legislature also finds that the failure to provide a
2 speedy trial to child abuse victims further traumatizes the
3 child, who may develop childhood memories of a haunting assault,
4 particularly sexual assault. Undue delays in family court
5 hearings may exacerbate traumatizing memories for the child,
6 prolong the healing process, and cause permanent emotional
7 damage. Additionally, a child may suppress details of the
8 abuse, which are critical in the child's testimony, over time
9 and as a coping mechanism.

10 The legislature additionally finds that an independent
11 state law enforcement agency is needed to investigate certain
12 child abuse cases. Locally, the murder of Peter "Peter Boy"
13 Kema is a prime example of the failure of the State's child
14 protective services. Peter Boy and his siblings suffered years
15 of extreme and prolonged child abuse and neglect from their
16 parents. This case serves as one of Hawaii's most egregious
17 child abuse cases.

18 The purpose of this Act is to:

19 (1) Establish in the department of the attorney general a
20 child abuse investigation unit;



1 (2) Allow child abuse victims to testify via alternative
2 methods to prevent further emotional distress that may
3 be caused by in-person testimony before the defendant;
4 and

5 (3) Require an expedited disposition of cases in all
6 criminal proceedings involving abuse of minors.

7 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended
8 by adding a new part to be appropriately designated and to read
9 as follows:

10 **"PART . CHILD ABUSE INVESTIGATION UNIT**

11 **§28- Child abuse investigation unit.** (a) There is
12 established in the department of the attorney general a child
13 abuse investigation unit. The unit shall employ attorneys,
14 investigators, and other personnel as necessary to promote the
15 effective and efficient conduct of the unit's activities.
16 Except for the attorneys, all other employees of the child abuse
17 investigation unit shall be subject to chapter 76.

18 (b) The child abuse investigation unit shall investigate
19 child abuse cases under chapter 587A upon referral from a court,
20 law enforcement agency, county prosecutor, or state department.



1 (c) As used in this section, "child abuse" shall have the
2 same meaning as "harm" under section 587A-4."

3 SECTION 3. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT

8 § -1 Short title. This chapter may be cited as the
9 Uniform Child Witness Testimony by Alternative Methods Act.

10 § -2 Definitions. As used in this chapter, unless the
11 context clearly indicates otherwise:

12 "Alternative method" means a method by which a child
13 witness testifies that does not include all of the following:

14 (1) Having the child witness present in person in an open
15 forum;

16 (2) Having the child witness testify in the presence and
17 full view of the finder of fact and presiding officer;
18 and

19 (3) Allowing all of the parties to be present, to
20 participate, and to view and be viewed by the child.



1 "Child witness" means an individual under the age of
2 eighteen at the time of the testimony who has been or will be
3 called to testify in a proceeding.

4 "Criminal proceeding" means a trial or hearing before a
5 court in a prosecution of a person charged with violating a
6 criminal law of this State or a proceeding involving conduct
7 that if engaged in by an adult would constitute a violation of a
8 criminal law of this State.

9 "Noncriminal proceeding" means a trial or hearing before a
10 court or an administrative agency having judicial or quasi-
11 judicial powers, other than a criminal proceeding.

12 **§ -3 Applicability.** This chapter shall apply to the
13 testimony of child witnesses in a criminal proceeding or
14 noncriminal proceeding; provided that this chapter shall not
15 preclude other procedures permitted by law for a child witness
16 to testify.

17 **§ -4 Hearing whether to allow testimony by alternative**
18 **method.** (a) The presiding officer of a criminal proceeding or
19 noncriminal proceeding may order a hearing to determine whether
20 to allow a child witness to testify by an alternative method.
21 The presiding officer, for good cause shown, shall order the



1 hearing upon motion of a party, a child witness, or an
2 individual determined by the presiding officer to have
3 sufficient standing to act on behalf of the child witness.

4 (b) A hearing to determine whether to allow a child
5 witness to testify by an alternative method shall be conducted
6 on the record after reasonable notice to all parties, any
7 nonparty movant, and any other person the presiding officer
8 specifies. The child witness' presence shall not be required at
9 the hearing unless ordered by the presiding officer. In
10 conducting the hearing, the presiding officer shall not be bound
11 by rules of evidence, except the rules of privilege.

12 § -5 Standards for determining whether a child witness
13 may testify by alternative method. (a) In a criminal
14 proceeding, the presiding officer may permit a child witness to
15 testify by an alternative method only in the following
16 situations:

17 (1) A child witness may testify other than in an open
18 forum in the presence and full view of the finder of
19 fact if the presiding officer finds by clear and
20 convincing evidence that the child witness would
21 suffer serious emotional distress that would



1 substantially impair the child witness' ability to
2 communicate with the finder of fact if required to
3 testify in the open forum; or

4 (2) A child witness may testify other than face-to-face
5 with the defendant if the presiding officer finds by
6 clear and convincing evidence that the child witness
7 would suffer serious emotional distress that would
8 substantially impair the child witness' ability to
9 communicate with the finder of fact if required to be
10 confronted face-to-face by the defendant.

11 (b) In a noncriminal proceeding, the presiding officer may
12 order a child witness to testify by an alternative method if the
13 presiding officer finds by a preponderance of the evidence that
14 allowing the child witness to testify by an alternative method
15 is necessary to serve the best interests of the child witness or
16 enable the child witness to communicate with the finder of fact.
17 In making this finding, the presiding officer shall consider:

- 18 (1) The nature of the proceeding;
- 19 (2) The age and maturity of the child witness;
- 20 (3) The relationship of the child witness to the parties
- 21 in the proceeding;



1 (4) The nature and degree of emotional distress that the
2 child witness would suffer in testifying; and

3 (5) Any other relevant factor.

4 § -6 Factors for determining whether to permit

5 alternative method. If the presiding officer determines that a
6 standard under section -5 has been met, the presiding officer
7 shall determine whether to allow a child witness to testify by
8 an alternative method by considering:

9 (1) Alternative methods reasonably available;

10 (2) Available means for protecting the interests of or
11 reducing emotional distress to the child witness
12 without resort to an alternative method;

13 (3) The nature of the case;

14 (4) The relative rights of the parties;

15 (5) The importance of the proposed testimony of the child
16 witness;

17 (6) The nature and degree of emotional distress that the
18 child witness would suffer if an alternative method is
19 not used; and

20 (7) Any other relevant factor.



1 § -7 Hearing to determine procedures for pro se party
2 examination of child witness. (a) If the presiding officer of
3 a criminal proceeding or noncriminal proceeding orders a hearing
4 to determine whether to allow a child witness to testify by an
5 alternative method pursuant to -4(a) and one of the parties
6 is expected to be without counsel for the examination of the
7 child witness, the presiding officer shall also conduct a
8 hearing to determine the method by which a pro se party may
9 examine a child witness.

10 (b) A hearing to determine the method by which a pro se
11 party may examine a child witness shall be conducted in the same
12 manner as established under -4(b) and may be consolidated
13 with or immediately follow a hearing on whether to allow
14 testimony by alternative method pursuant to section -4.

15 § -8 Standards to determine method by which pro se party
16 may examine child witness in a criminal proceeding. (a) In a
17 criminal proceeding, the presiding officer shall order a pro se
18 party:

19 (1) Excluded from the presence of the child witness during
20 the child witness' testimony upon a finding by clear
21 and convincing evidence that the child witness would



1 suffer serious emotional distress that would
2 substantially impair the child witness' ability to
3 communicate with the finder of fact if required to
4 testify in the presence of the pro se party; or
5 (2) Excluded from the presence of the child witness during
6 the child witness' testimony and precluded from use of
7 technology that would permit the child witness to see
8 or hear the defendant, if the presiding officer finds
9 by clear and convincing evidence that the child
10 witness would suffer serious emotional distress that
11 would substantially impair the child witness' ability
12 to communicate with the finder of fact if required to
13 testify after hearing the pro se party's voice.
14 (b) If, in a criminal proceeding, the court excludes the
15 pro se party from the presence of the child witness during the
16 child witness' testimony and precludes the pro se party from use
17 of technology that permits the child witness to see or hear the
18 defendant, the court shall make reasonable accommodations to
19 permit examination of the child witness by the pro se party by
20 use of available technology to contemporaneously pose questions



1 to the child witness, including appointing a person to speak the
2 questions composed by the pro se party.

3 (c) If the court appoints an attorney to speak the
4 questions composed by the pro se party:

5 (1) No attorney-client privileges shall form based upon
6 the appointment; and

7 (2) If the case is tried to a jury, the court shall
8 explain to the jury that the defendant is continuing
9 to represent the defendant's self and that the
10 defendant composed the questions asked by the
11 attorney.

12 § -9 Standards to determine the method by which pro se
13 party may examine a child witness in a noncriminal proceeding.

14 (a) In a noncriminal proceeding, the presiding officer may
15 order a pro se party:

16 (1) Excluded from the presence of the child witness during
17 the child witness' testimony if the presiding officer
18 finds by a preponderance of the evidence that
19 excluding the pro se party is necessary to serve the
20 best interests of the child witness or enable the



1 child witness to communicate with the finder of fact;
2 or

3 (2) Excluded from the presence of the child witness during
4 the child witness' testimony and excluded from
5 speaking or using technology so that the child witness
6 can hear the pro se party's voice, if the presiding
7 officer finds by a preponderance of the evidence that
8 doing so is necessary to serve the best interests of
9 the child witness or enable the child witness to
10 communicate with the finder of fact.

11 (b) In making the findings pursuant to subsection (a), the
12 presiding officer shall consider:

- 13 (1) The nature of the proceeding;
- 14 (2) The age and maturity of the child witness;
- 15 (3) The relationship of the child witness to the parties
16 in the proceeding;
- 17 (4) The nature and degree of emotional distress that the
18 child witness would suffer in testifying; and
- 19 (5) Any other relevant factor.

20 (c) If, in a noncriminal proceeding, the court excludes
21 the pro se party from the presence of the child witness during



1 the child witness' testimony and precludes the pro se party from
2 speaking directly to the child witness through the use of
3 available technology, the court shall make reasonable
4 accommodations to permit examination of the child witness by the
5 pro se party by use of available technology to contemporaneously
6 pose questions to the child witness, including appointing a
7 person to speak the questions composed by the pro se party.

8 (d) If the court appoints an attorney to speak the
9 questions composed by the pro se party:

10 (1) No attorney-client privileges shall form based upon
11 the appointment; and

12 (2) If the case is tried to a jury, the court shall
13 explain to the jury that the pro se party is
14 continuing to represent the pro se party's self and
15 that the pro se party composed the questions asked by
16 the attorney.

17 § -10 Order regarding testimony by alternative method.

18 (a) An order allowing or disallowing a child witness to testify
19 by an alternative method shall state findings of fact and
20 conclusions of law supporting the presiding officer's
21 determination.



1 (b) An order allowing a child witness to testify by an
2 alternative method shall:

3 (1) State the method by which the child witness is to
4 testify;

5 (2) List any individuals or category of individuals
6 allowed to be in, or required to be excluded from, the
7 presence of the child witness during the child
8 witness' testimony;

9 (3) State any special conditions to facilitate a party's
10 right to examine or cross-examine the child witness;

11 (4) State any conditions or limitations upon the
12 participation of persons present or excluded during
13 the taking of the testimony of the child witness; and

14 (5) State any other conditions for taking or presenting
15 the testimony of the child witness.

16 (c) The alternative method ordered by the presiding
17 officer shall not be more restrictive of the rights of the
18 parties than is necessary under the circumstances to serve the
19 purposes of the order allowing a child witness to testify by
20 alternative method.



1 § -11 **Right of parties to examine child witness.** An
2 alternative method ordered by the presiding officer shall permit
3 a full and fair opportunity for examination and cross-
4 examination of the child witness by each party.

5 § -12 **Uniformity of application and construction.** In
6 applying and construing this chapter, consideration shall be
7 given to the need to promote uniformity of the law with respect
8 to its subject matter among states that enact it."

9 SECTION 4. Chapter 587A, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§587A- Authority of the attorney general to
13 investigate. The department of the attorney general may
14 intervene to investigate the circumstances in any adjudication."

15 SECTION 5. Chapter 806, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§806- Expedited proceedings; continuances; trial. (a)
19 In all criminal proceedings involving an offense under section
20 707-730, 707-731, 707-732, 707-733, or 707-733.6 perpetrated
21 against a minor, or any other proceedings involving a minor



1 victim or minor witness of any physical abuse, the court and the
2 prosecution shall take appropriate action, including setting the
3 case for priority in the court docket, to ensure a prompt trial
4 to minimize the length of time a minor must endure the stress of
5 the minor's involvement in the proceedings.

6 (b) In deciding whether to grant a continuance, the court
7 shall take into consideration the age of the minor and the
8 potential adverse impact the delay may have on the minor's well-
9 being; provided that no more than three continuances shall be
10 permissible by either party; provided further that a trial shall
11 commence within twelve months of the charge or indictment.

12 (c) The court shall impose sanctions against an attorney
13 for the defense who is unprepared to commence trial."

14 SECTION 6. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 7. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



H.B. NO. 2225

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 8. New statutory material is underscored.

4 SECTION 9. This Act shall take effect upon its approval.

5

INTRODUCED BY:

Do Helt

Carl Lee

Richard Schinze

Diakritagawa

James King

Paul McTernan

A

Stanford

Chris Todd

JAN 2 1 2020



H.B. NO. 2225

Report Title:

Child Abuse; Attorney General; Investigation Unit; Expedited Criminal Proceedings; Uniform Child Witness Testimony by Alternative Methods Act

Description:

Establishes in the department of the attorney general a child abuse investigation unit. Allows the department of the attorney general to intervene in adjudications in family court. Enacts the Uniform Child Witness Testimony by Alternative Methods Act, which authorizes courts to allow for children to testify in a place other than an open forum or away from the finder of fact, court, or parties. Requires the court and the prosecution to take appropriate action to ensure a prompt trial to minimize the length of time a child abuse victim or minor witness must endure due to the stress of the child's involvement in the proceedings.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

