

JAN 18 2019

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# 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 defendant  
7 from delay between the presentation of the indictment or similar  
8 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, over time and as a coping mechanism, a  
8 child may suppress details of the abuse, which are critical in  
9 the child's testimony.

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, after he endured many years of physical abuse from his  
14 parents, is a prime example of the failure of the State's child  
15 protective services. The case serves as one of Hawaii's most  
16 egregious child abuse cases. It was reported that Peter Boy and  
17 his siblings suffered years of extreme and prolonged child abuse  
18 and neglect.

19           The purpose of this Act is to:

20           (1) Establish in the department of the attorney general a  
21           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 such 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 or noncriminal  
14 proceeding; provided that this chapter shall not preclude other  
15 procedures permitted by law for a child witness to testify.

16 **§ -4 Hearing whether to allow testimony by alternative**  
17 **method.** (a) The presiding officer of a criminal or noncriminal  
18 proceeding may order a hearing to determine whether to allow a  
19 child witness to testify by an alternative method. The  
20 presiding officer, for good cause shown, shall order the hearing  
21 upon motion of a party, a child witness, or an individual



1 determined by the presiding officer to have sufficient standing  
2 to act on behalf of the child witness.

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

11 § -5 Standards for determining whether a child witness  
12 may testify by alternative method. (a) In a criminal  
13 proceeding, the presiding officer may permit a child witness to  
14 testify by an alternative method only in the following  
15 situations:

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



1           communicate with the finder of fact if required to  
2           testify in the open forum; or

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

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

- 17           (1) The nature of the proceeding;
- 18           (2) The age and maturity of the child witness;
- 19           (3) The relationship of the child witness to the parties
- 20           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 or noncriminal proceeding orders a hearing to  
4 determine whether to allow a child witness to testify by an  
5 alternative method pursuant to section   -4(a) and one of the  
6 parties is expected to be without counsel for the examination of  
7 the 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 section   -4(b) and may be  
13 consolidated with or immediately follow a hearing on whether to  
14 allow 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 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 him or herself and that the defendant  
10 composed the questions asked by the attorney.

11 § -9 Standards to determine method by which pro se party  
12 may examine child witness in a noncriminal proceeding. (a) In  
13 a noncriminal proceeding, the presiding officer may order a pro  
14 se party:

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



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

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

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

18          (c) If, in a noncriminal proceeding, the court excludes  
19          the pro se party from the presence of the child witness during  
20          the child witness' testimony and precludes the pro se party from  
21          speaking directly to the child witness through the use of



1 available technology, the court shall make reasonable  
2 accommodations to permit examination of the child witness by the  
3 pro se party by use of available technology to contemporaneously  
4 pose questions to the child witness, including appointing a  
5 person to speak the questions composed by the pro se party.

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

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

10 (2) If the case is tried to a jury, the court shall  
11 explain to the jury that the pro se party is  
12 continuing to represent him or herself and that the  
13 pro se party composed the questions asked by the  
14 attorney.

15 § -10 Order regarding testimony by alternative method.

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

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



- 1           (1) State the method by which the child witness is to
- 2           testify;
- 3           (2) List any individuals or category of individuals
- 4           allowed to be in, or required to be excluded from, the
- 5           presence of the child witness during the child
- 6           witness' testimony;
- 7           (3) State any special conditions to facilitate a party's
- 8           right to examine or cross-examine the child witness;
- 9           (4) State any conditions or limitations upon the
- 10          participation of persons present or excluded during
- 11          the taking of the testimony of the child witness; and
- 12          (5) State any other conditions for taking or presenting
- 13          the testimony of the child witness.
- 14          (c) The alternative method ordered by the presiding
- 15          officer shall not be more restrictive of the rights of the
- 16          parties than is necessary under the circumstances to serve the
- 17          purposes of the order allowing a child witness to testify by
- 18          alternative method.

19           §   -11 Right of parties to examine child witness. An

20          alternative method ordered by the presiding officer shall permit



1 a full and fair opportunity for examination and cross-  
2 examination of the child witness by each party.

3 § -12 Uniformity of application and construction. In  
4 applying and construing this chapter, consideration shall be  
5 given to the need to promote uniformity of the law with respect  
6 to its subject matter among states that enact it."

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

10 "§587A- Authority of the attorney general to  
11 investigate. The department of the attorney general may  
12 intervene to investigate the circumstances in any adjudication."

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

16 "§806- Expedited proceedings; continuances; trial. (a)  
17 In all criminal proceedings involving an offense under section  
18 707-730, 707-731, 707-732, 707-733, or 707-733.6 perpetrated  
19 against a minor, or any other proceedings involving a minor  
20 victim or minor witness of any physical abuse, the court and the  
21 prosecution shall take appropriate action, including setting the



1 case for priority in the court docket, to ensure a prompt trial  
2 in order to minimize the length of time a minor must endure the  
3 stress of the minor's involvement in the proceedings.

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

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

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

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

21 SECTION 8. New statutory material is underscored.





# S.B. NO. 790

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

2

INTRODUCED BY:

*R. O. Ojeda*



# S.B. NO. 790

**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 in order to minimize the length of time a child abuse victim or minor witness must endure the stress of the child's involvement in the proceedings.

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