



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



**Testimony of the Office of the Public Defender,  
State of Hawai'i to the Senate Committee on Judiciary**

February 5, 2019

S.B. No. 120: RELATING TO SPEEDY TRIAL

Chair Rhoads, Vice Chair Wakai and Members of the Committee:

The Office of the Public Defender opposes S.B. No. 120.

Although this measure recognizes that the right to speedy trial of alleged victims and witnesses is subordinate to the defendant's constitutional right to a speedy trial, the right to speedy trial of the victims/witnesses, the measure fails to take into account the defendant's constitutional right to due process and to a fair trial, which demands that a case not be forced to trial prematurely. Due process and the right to effective assistance of counsel entitle a criminally accused to "fair and reasonable time to prepare a defense and to allow defense counsel sufficient time to prepare adequately for trial." *State v. Soto*, 60 Haw. 493, 494, 591 P.2d 119, 120 (1979) (citing *White v. Ragen*, 324 U.S. 760, 65 S.Ct. 9778, 89 L.Ed. 1348 (1945)).

Ideally, defendants, just like alleged victims and witnesses, prefer trials to commence sooner than later. Trials, however, may require continuances for a variety of reasons, many of which are unanticipated. For example, additional time to prepare for trial is often necessary for the court to make pretrial rulings and for discovery process to be completed. In sexual assault cases may involve DNA analysis, which can be a lengthy process and may necessitate independent analysis and consultation with expert witnesses. Trials may be delayed due to ongoing mental health examinations that complicate whether a defendant or a witness is fit to proceed to trial. Often, trials are postponed by agreement of the parties because additional materials are being collected -- either from law enforcement investigators or because of forensic testing. Trials are postponed because a police officer may be on injured leave or military leave. Trials are postponed because new evidence or new witnesses

are located that can provide additional information to both the prosecution or the defense. Moreover, cases in which the incidents were alleged to have occurred several years prior are especially problematic in preparing a defense, as it is often difficult to locate and interview witnesses. Trials may be continued due to illness or because a witness is unavailable or may need to be flown to Hawai'i from out-of-state.

Trial judges, who are already cognizant of the effect court continuances have on alleged crime victims and witnesses, should be allowed to use their discretion in determining whether a continuance requested by either party is reasonable and warranted. Indeed, judges only grant continuances upon a showing of good cause. In determining whether a defense continuance should be granted or denied, judges examine the following factors: (1) the length of time for preparation; (2) the complexity of the case on the facts and the law; (3) the performance of defense counsel; (4) the availability of work product of other attorneys involved in the case; and (5) the defendant's accountability for his or her attorney's unpreparedness. *See State v. Torres*, 54 Haw. 502, 506-507, 510 P.2d 494, 497 (1973).

Thank you for the opportunity to comment on S.B. No. 120.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**LATE**

**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirtieth State Legislature**  
**Regular Session of 2019**  
**State of Hawai`i**

February 7, 2019

**RE: S.B. 120; RELATING TO SPEEDY TRIAL.**

Chair Rhoads, Vice-Chair Wakai and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the concept of S.B. 120, with suggestions for further amendments.

Given the great significance placed on a defendant’s constitutional right to due process, our courts go to great lengths to allow defendants every opportunity to fully explore and prepare their possible defenses. In practice, however, this gives the defendant many opportunities to prolong pre-trial proceedings, and—given Rule 48 of the Hawaii Rules of Penal Procedure—it is often in a defendant’s strategic interests to prolong proceedings, while the State’s allotted time to commence trial (six months, with certain periods excluded) keeps ticking down. As the months—or even years—go by, some victims may run out of paid or unpaid leave from work, after appearing at numerous (continued) hearings ... some may wish to “seek closure” and put the entire incident behind them, to solidify their healing process ... and some may lose their patience with (or worse, lose their hope in) the system, becoming increasingly frustrated and/or uncooperative. In this way, if a case is continued long enough, the State may “lose” its witnesses and/or Rule 48 may simply run out, and the case will be dismissed by the court.

In an effort to address some of the issues noted above—which our deputies have seen occur time and time again—S.B. 120 seeks to grant victims a right to “speedy trial,” by requiring that judges place (nearly) as much importance on victims’ time as they do on defendants’. We support this concept, and any effort to minimize the phenomenon described above, but it’s unclear how the mechanics of this would work. For example, who would file the motion to uphold this right?

Another approach that the Department would support, to address the same issues noted above, is eliminating “Rule 48” for sexual offenses. Defendants would still be entitled to their constitutional right to speedy trial, but without the artificial six-month deadline imposed by Rule 48. Without that, defendants would potentially lose some incentive for requesting so many continuances, and cases could proceed in a more timely manner. The Department’s 2019 legislative package contains a similar bill, aimed at eliminating Rule 48 for domestic violence cases—for essentially the same reasons—which may be of use if the Committee wishes to consider that approach.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the concept of S.B. 120, with the noted suggestions. Thank for you the opportunity to testify on this matter.

**SB-120**

Submitted on: 2/6/2019 8:58:57 AM

Testimony for JDC on 2/7/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

**LATE**

**SB-120**

Submitted on: 2/7/2019 9:14:27 AM  
Testimony for JDC on 2/7/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

**WE STRONGLY SUPPORT THIS BILL. VICTIMS MUST HAVE RIGHTS & THE ABILITY TO HAVE THEIR RIGHTS ENFORCED. VICTIMS NEED CLOSURE & THE OPPORTUNITY TO MOVE ON WITH THEIR LIVES.**

**SB-120**

Submitted on: 2/4/2019 12:58:22 PM

Testimony for JDC on 2/7/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments: