

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Human Services**

February 16, 2021

S.B. No. 886: RELATING TO SEX TRAFFICKING

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

The Office of the Public Defender respectfully opposes S.B. No. 886.

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)). Indeed, the Hawai‘i Supreme Court has repeatedly stated, “[T]he more heinous the crime, the more care must be exercised by the presiding judge to see that defendant’s rights are protected.” Territory v. Hays, 43. Haw. 58, 65 (Haw. Terr. 1958); State v. Uyesugi, 100 Hawai‘i 442, 462, 60 P.3d 843, 863 (2002); State v. Baker, 147 Hawai‘i 413, 436, 465 P.3d 860, 883 (2020).

The courts and society (including this legislative body) have an interest in final judgments that are not susceptible to direct or collateral attacks. Put another way, it would be foolish to rush a case to trial (in particular, a case involving a heinous crime) and obtain a guilty verdict only to have the conviction reversed or vacated on direct appeal or by post-conviction relief pursuant to Rule 40 of the Hawai‘i Rules of Penal Procedure due to a violation of the defendant’s due process rights and/or ineffective assistance of counsel. The result, should the defendant prevail on appeal or by petition, would translate to a new trial or a “do-over” three to four years¹ later, at which time the new trial would have to be conducted all over again.

¹ It is not unheard of that criminal cases may take over five years to resolve on appeal or on post-conviction relief. See, e.g., State v. Williams, 137 Hawai‘i 230, 368 P.3d 972 (2020) (alleged

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 and/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 also 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).

Lastly, the Office of the Public Defender takes exception to the language included in proposed HRS § 806-B(c). (*See* page 4, lines 10-12). Delays in cases that may involve a child victim or a child witness are shared by the trial judges, the defense

crime took place in 2012; defendant convicted and sentenced in 2013; appellate decision overturning conviction and an order for new trial in 2020); *State v. Calara*, 132 Hawai'i 391, 322 P.3d 931 (2014) (alleged offenses occurred in 2007, trial commenced in December 2008; defendant convicted and sentenced in 2009; appellate decision overturning conviction and an order for new trial in 2014).

bar, and the prosecuting attorneys. The “attorney for the defense” should not be singled out for sanctions. This implies that only the attorney for the defense (and never the assigned deputy prosecuting attorney) are “unprepared to commence trial,” and the sole cause of delay in ongoing cases. The trial judges have the ability to sanction any and all parties appearing before them for issues relating to trial readiness. Subsection (c) is inappropriate and unnecessary in achieving the goal of commencing trials as fairly, efficiently and expeditiously as possible.

Thank you for the opportunity to comment on S.B. No. 886.

SB-886

Submitted on: 2/10/2021 5:52:36 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	No

Comments:

We strongly support SB886. Please pass.

Mike Golojuch, Sr.

Secretary, Rainbow Family 808

SB-886

Submitted on: 2/13/2021 4:04:18 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Yamamoto	Testifying for Hawaii Family Advocacy Team	Support	No

Comments:

Senator SanBuenaventura and HMS committee,

I strongly support SB886.

I have first hand knowledge of a family case where the Victims Witness office reported that the parent accused of a crime had learned to “play” the system to extend inevitable conviction. The consequences of that was that 2 of his own children languished in foster care needlessly for 2 years.

While the circumstances may not exactly match the cause for this bill, I am in support of any legal means to curb abuse of the system and in particular the language in 806-B (c).

SB-886

Submitted on: 2/13/2021 5:13:37 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Roth	Individual	Support	No

Comments:

I believe this bill should be considered because the victims of these crimes are already heightened emotionally with anxiety and anticipation of the impending trial and those delays lead to further and unnecessary trauma, furthermore several other states have adopted this and acknowledge and protect a victims interest with a speedy trial

SB-886

Submitted on: 2/14/2021 6:04:57 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Ahn	Individual	Support	No

Comments:

The goal of this bill is to reduce the secondary traumatization of long-term consequences for children providing testimony about abuse they have experience or witnessed. There are also practical aspects to the Integrity of the judicial process that are affected when a trial is prolonged unnecessarily.

SB-886

Submitted on: 2/15/2021 1:10:39 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Roth-Tijerina	Individual	Support	No

Comments:

The failure to provide a speedy trial to child abuse victims is horrific. Not only is the event traumatizing enough for the child, their childhood memories are haunted by the assault. Undue delays in trial exacerbate traumatizing memories and prolong the healing process by creating more anxiety for the child. This can be extremely emotionally damaging for a child. Also the abuser could have access to other children who can also become victims. As the years goes by, details of the abuse (that are crucial to the child's testimony) can be suppressed as a coping mechanism for the child and evidence can be lost and tampered with as well. As hope for justice starts to fade, families of the abused child will be so desperate to "forget" and help their child "forget" (just to get them a normal life back) that they will start to give up and drop charges, offer or accept plea deals that don't match the crime; all in order to resolve the case without true justice. After witnessing this, other families of abused children will be hesitant to report crimes because of the lack of urgency of the Justice System to speed up these trials.

Other damaging consequences to the child, due to the abuse and chronic stress, may not only contribute to disease and ill health via allostatic load (which is the sum total of stress encountered over the life of an individual), but also disrupts areas of the brain responsible for stress regulation and coping. Chronic stress and allostatic load during childhood has been proven to change the architectural structure of the developing brain causing permanent brain damage as well as increase the susceptibility of the child to diseases as varied as arthritis, adolescent alcohol abuse, depression and other mental illnesses that can continue on into adulthood.

A number of jurisdictions including California, our sister state give crime victims the "right to a speedy trial" or disposition of the case free from unreasonable delay. This usually takes the form of a limitation on continuances. I hope you put the well being of your constituents children above any minor reservation you might have.

SB-886

Submitted on: 2/14/2021 6:19:45 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Ahn	Individual	Support	No

Comments:

Every child in America is born with the right for life, liberty and the pursuit of happiness. No parent should ever have to choose between justice and any chance of a normal childhood. It is not right that any child should have to suffer the mental and emotional strain and damage that will haunt them for their entire life due to prolonging these trials that should have been completed swiftly and in a timely manner.

SB-886

Submitted on: 2/15/2021 2:02:34 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kai Kupihea	Individual	Support	No

Comments:

I know children that have been denied this right, waiting over 4 years to have to be heard. How can they ever move on and become survivor by having to replay these moments over and over for years. I feel If this right is allowed for criminal who are adults why not victims who deserve it. I also know mothers who do not go to court knowing that this will take a long time and even more toll on the child. There for the victims never get their justice. I support this bill.

SB-886

Submitted on: 2/15/2021 2:02:53 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Uehara	Individual	Support	No

Comments:

The website of the Hawaii family courts states, "Established by statute in 1965, the Family Court's mission is to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children." The term "speedy" is not limited to the right to a speedy trial for adult perpetrators of child abuse, but should also recognize a right to a speedy trial for child abuse victims.

This really matters because you want to show the people of Hawaii that children matter too. No child should have to endure child abuse but the ones who do should be able to get over with a trial quickly so they can start to heal & move on with their life. It's so important for the child to close this chapter in their life which was a horrific event that they had to suffer through as soon as possible.