

JAN 19 2023

A BILL FOR AN ACT

RELATING TO SPEEDY TRIALS.

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

1 SECTION 1. Chapter 571, Hawaii Revised Statutes, is
2 amended by adding a new section to part VIII to be appropriately
3 designated and to read as follows:

4 "§571- Victims and witnesses; right to speedy trial in
5 certain adult cases. Victims and witnesses in cases involving
6 an offense charged under part V of chapter 707 shall have the
7 right to a speedy trial that is subordinate only to a
8 defendant's state and federal constitutional rights. When
9 considering a motion to postpone a trial in any of these cases
10 involving an adult defendant, the court shall consider the
11 totality of the circumstances, including:

- 12 (1) The defendant's right to a speedy trial;
13 (2) A victim's or witness' right to a speedy trial,
14 including any substantial adverse impact that
15 postponing the trial may have on the victim or
16 witness, particularly if the trial has previously been
17 postponed; and



1 (3) The requirements of section 806-B, if applicable."

2 SECTION 2. Chapter 604, Hawaii Revised Statutes, is
3 amended by adding a new section to be appropriately designated
4 and to read as follows:

5 "§604- Victims and witnesses; right to speedy trial in
6 certain cases. Victims and witnesses in cases involving an
7 offense charged under part V of chapter 707 shall have the right
8 to a speedy trial that is subordinate only to a defendant's
9 state and federal constitutional rights. When considering a
10 motion to postpone a trial in any of these cases, the court
11 shall consider the totality of the circumstances, including:

- 12 (1) The defendant's right to a speedy trial;
- 13 (2) A victim's or witness' right to a speedy trial,
14 including any substantial adverse impact that
15 postponing the trial may have on the victim or
16 witness, particularly if the trial has previously been
17 postponed; and

18 (3) The requirements of section 806-B, if applicable."

19 SECTION 3. Chapter 806, Hawaii Revised Statutes, is
20 amended by adding two new sections to be appropriately
21 designated and to read as follows:



1 "§806-A Victims and witnesses; right to speedy trial in
2 certain cases. Victims and witnesses in cases involving an
3 offense charged under part V of chapter 707 shall have the right
4 to a speedy trial that is subordinate only to a defendant's
5 state and federal constitutional rights. When considering a
6 motion to postpone a trial in any of these cases, the court
7 shall consider the totality of the circumstances, including:

- 8 (1) The defendant's right to a speedy trial;
9 (2) A victim's or witness' right to a speedy trial,
10 including any substantial adverse impact that
11 postponing the trial may have on the victim or
12 witness, particularly if the trial has previously been
13 postponed; and
14 (3) The requirements of section 806-B, if applicable.

15 §806-B Expedited proceedings; continuances; trial. (a)
16 In all criminal proceedings of criminal offenses perpetrated
17 against a minor, or any other criminal proceedings involving a
18 minor victim or minor witness of any physical abuse, the court
19 and the prosecution shall take appropriate action, including
20 setting the case for priority in the court docket, to ensure a
21 prompt trial in order to minimize the length of time the minor

1 endures the stress of the minor's involvement in the
2 proceedings.

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

10 SECTION 4. Section 801D-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§801D-4 Basic bill of rights for victims and witnesses.**

13 (a) Upon written request, victims and surviving immediate
14 family members of crime shall have the following rights:

15 (1) To be informed by the police and the prosecuting
16 attorney of the final disposition of the case. If the
17 crime charged is a felony, the victim or a surviving
18 immediate family member shall be notified of major
19 developments in the case and whenever the defendant or
20 perpetrator is released from custody. The victim or a
21 surviving immediate family member shall also be



- 1 consulted and advised about plea bargaining by the
2 prosecuting attorney;
- 3 (2) To be notified by the prosecuting attorney if a court
4 proceeding to which they have been subpoenaed will not
5 proceed as scheduled;
- 6 (3) To receive protection from threats or harm;
- 7 (4) To be informed by the police, victim/witness
8 counselor, or other criminal justice personnel, of
9 financial assistance and other social services
10 available as a result of being a witness to or a
11 victim of crime, including information on how to apply
12 for the assistance and services;
- 13 (5) To be provided by the court, whenever possible, with a
14 secure waiting area during court proceedings that does
15 not require them to be in close proximity to
16 defendants and families and friends of defendants;
- 17 (6) To have any stolen or other personal property
18 expeditiously returned by law enforcement agencies
19 when the property is no longer needed as evidence. If
20 feasible, all the property, except weapons, currency,
21 contraband, property subject to evidentiary analysis,



1 and property, the ownership of which is disputed,
2 shall be returned to the person within ten days of
3 being taken; and

4 (7) To be informed by the department of public safety of
5 changes planned by the department in the custodial
6 status of the offender that allows or results in the
7 release of the offender into the community, including
8 escape, furlough, work release, placement on
9 supervised release, release on parole, release on bail
10 bond, release on appeal bond, and final discharge at
11 the end of the prison term.

12 (b) Upon written request, the victim or the parent or
13 guardian of a minor or incapacitated victim of an offense under
14 section 707-730, 707-731, or 707-732(1)(a) shall have the right
15 to be informed of the human immunodeficiency virus (HIV) status
16 of the person who has been convicted or a juvenile who has been
17 adjudicated under that section and to receive counseling
18 regarding HIV. The testing shall be performed according to the
19 protocols set forth in section 325-17. Upon request of the
20 victim, or the parent or guardian of a minor or incapacitated
21 victim, the department of health shall provide counseling.



1 (c) Notwithstanding any law to the contrary, the
2 department of public safety, the Hawaii paroling authority, the
3 judiciary probation divisions and branches, and the department
4 of the attorney general shall make good faith efforts to notify
5 the victim of a crime, or surviving immediate family members of
6 a victim, of income received by a person imprisoned for that
7 crime when the imprisoned person has received a civil judgment
8 that exceeds \$10,000, a civil settlement that exceeds \$10,000,
9 or any income that exceeds \$10,000 in one fiscal year, whenever
10 the income is known to the agency, and, in addition, the
11 department of public safety shall make good faith efforts to
12 notify the victim of a crime or surviving immediate family
13 members of a victim, whenever it is known to the agency that a
14 person imprisoned for that crime has a financial account, of
15 which the department of public safety is aware, of a value
16 exceeding \$10,000.

17 (d) Notwithstanding any law to the contrary, payment of
18 restitution and judgments to victims, or surviving immediate
19 family members of a victim, shall be a precondition for release
20 on parole for any imprisoned person whom the Hawaii paroling
21 authority determines has the financial ability to make complete



1 or partial restitution payments or complete or partial judgment
2 payments to the victim of the person's crime, or to the
3 surviving immediate family members of a victim.

4 (e) Notwithstanding any law to the contrary, the State of
5 Hawaii, any political subdivision of the State of Hawaii, any
6 department or agency of the State, any officer of the State, and
7 any employee of the State shall be immune from damages in any
8 lawsuit based on noncompliance with subsection (c) or (d).
9 Nothing in this subsection shall be construed to prevent
10 disciplinary action against any employee of the State who
11 intentionally fails to comply with subsection (c) or (d) after
12 being warned that compliance is required.

13 (f) Victims and witnesses in cases involving an offense
14 charged under part V of chapter 707 shall have the right to a
15 speedy trial that is subordinate only to a defendant's state and
16 federal constitutional rights. When considering a motion to
17 postpone a trial in any of these cases involving an adult
18 defendant, the court shall consider the totality of the
19 circumstances, including:

20 (1) The defendant's right to a speedy trial; and



1 (2) A victim's or witness' right to a speedy trial,
2 including any substantial adverse impact that
3 postponing the trial may have on the victim or
4 witness, particularly if the trial has previously been
5 postponed; and

6 (3) The requirements of section 806-B, if applicable."

7 SECTION 5. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 6. In codifying the new sections added by section
11 3 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2023.

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INTRODUCED BY: *Kurt Fendler*



S.B. NO. 242

Report Title:

Penal Code; Criminal Procedure; Victims and Witnesses of Sexual Offenses; Right to Speedy Trial; Child Abuse; Expedited Criminal Proceedings

Description:

Creates a statutory right of victims and witnesses of sexual offenses under part V of chapter 707, Hawaii Revised Statutes, to a speedy trial in criminal cases involving adult defendants. 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 proceedings.

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

