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Testimony of the Office of the Public Defender to the Senate Committee on the Judiciary re: S.B. 200: RELATING TO SPEEDY TRIALS

Chair Sen. Karl Rhoads, Vice-Chair Sen. Mike Gabbard and Members of the Committee:

The Office of the Public Defender respectfully **opposes SB 200**.

Although SB 200 recognizes that the right to a speedy trial for alleged victims and witnesses is subordinate to the defendant's right to a speedy trial guaranteed by the Hawai'i and United States Constitutions, this measure may aid in violating a defendant's constitutional right to due process, and to a fair trial, as well as cause several unintended harms. The defendant's right to due process and fair trial are enshrined in Article 1, § 5 and 14 of the Hawai'i Constitution and the Sixth Amendment to the United States Constitution and guarantee that a case cannot 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 prefer trials to commence sooner than later. Trials, however, may require continuances for a variety of reasons, many of which are not anticipated. For example, additional time to prepare for trial is often necessary for the court to make pretrial rulings, and for the discovery process to be completed. Many cases today involve DNA and digital fingerprint analysis, which can be lengthy processes and may necessitate independent review, 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, when a police officer is on injured leave or military duty. Trials are postponed because new evidence or new witnesses are located that can provide additional information to both the prosecution and defense. Moreover, "cold cases" are especially problematic for the defense, as it is often difficult to locate and interview witnesses, collect evidence, and to have said evidence properly evaluated. Trials may be continued due to illness, or because a witness is unavailable. There are too many viable and proper possibilities to list, and that is why the decision to postpone a case lies with the trial judge.

Trial judges, are already guided to only grant continuances upon the 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).

It is our concern, that the language of this bill may create the need to have witnesses testify at hearings for continuances, so that a trial judge can determine if such a continuance would have a "substantial adverse impact" on an alleged victim or "potential adverse impact" on a minor witness. Furthermore, this bill would require the trial court to prioritize cases, because of the impact on an alleged victim, and not which case would be the fairest to those in-custody and out-of-custody defendants waiting for a trial. This bill further seeks to set a limit of three continuances, and a requirement that a trial commence within a year in cases involving alleged minor victims or witnesses unless "good cause" can be shown, without any definition of "good cause".

The determination of when a trial proceeds should be guided by the protections of the constitution, and the competency and experience of the trial judge to whom said responsibility currently lies, and from who's decisions an appeal can be taken. To add factors that must be considered into this calculation only invites more litigation, and thus more stress for all those involved in the case. A trial should proceed when it is certain that justice can be found, and at no time sooner.

Thank you for the opportunity to comment on this measure.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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The Honorable Joy A. San Buenaventura, Chair
Senate Committee on Health & Human Services
Thirty-third State Legislature
Regular session of 2025
State of Hawai'i
January 26, 2025

RE: SB 200 Relating to Speedy Trials

Dear Chair San Buenaventura:

SB 200 would create a statutory right for victims and witnesses in sexual offenses to a speedy trial. It requires the court and prosecution to ensure a prompt trial, mandating that a trial take place within 12 months of the charge or indictment unless good cause is shown to the court.

Our Office provides the testimony below in OPPOSITION to Senate Bill 200. The single greatest challenge we face in prosecuting sexual offenses is preparing minor victims and witnesses to testify in court.

We acknowledge that our criminal justice system is not perfect and that delays in the process can be stressful for victims and witnesses. Our preference in charging cases is to wait until a victim is able to testify against their abuser. However, sometimes public safety concerns take precedence over a child victim's ability to confront their accuser. Requiring these trials to commence within 12 months of charging could have unintended consequences, including dismissal of these cases.

We suggest considering accommodations for children and minor victims to make the process less traumatic for them. We suggest mandating introduction of the recording of the forensic interview conducted at the Children's Justice Center during Grand Jury proceedings in lieu of live testimony. Also, mandating child victims testify from a separate room during trial, rather than sitting across from their abuser in open court would lessen stress for victims and their families.

This bill does not seem fair or equitable for other victims of crime who face the same frustrations in trial delays.

Hawaii Rules of Penal Procedure Rule 48 already articulates that delays can only be for certain reasons, including “good cause.”

Requiring that these cases take priority on an already crowded court docket means that older cases or cases where Defendants are in custody could be further postponed. Our courts do their best to prioritize cases based on the factors articulated in this bill in addition to the protections guaranteed to defendants by our federal and state constitution, statutes, court rules and case law.

Because of the above articulated concerns, the Kauai Office of the Prosecuting Attorney submits this testimony in OPPOSITION to SB 200.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
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TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

January 26, 2025

TO: The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Health and Human Services

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 200 – RELATING TO SPEEDY TRIALS.**

Hearing: January 27, 2025, 1:00 p.m.
Conference Room 225 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill and offers comment.

PURPOSE: Creates a statutory right of victims and witnesses of sexual offenses under part V of chapter 707, Hawai'i 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 to minimize the length of time a child abuse victim or minor witness must endure the stress of the proceedings.

DHS appreciates that the proposed measure provides victims and witnesses with the right to a speedy trial and will require the Court to consider the victim's or witness' rights and the substantial adverse impact that postponing the trial may have on the victim or witness. Ensuring timely legal proceedings helps minimize prolonged stress for victims and supports their emotional recovery. The speedy trial provisions may improve outcomes for child victims and child witnesses by providing closure for child victims, allowing them to heal and move forward. Additionally, if the legal process is able to proceed promptly, rather than unduly

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prolonged, the child victim or witness may be more cooperative and develop more trust in the justice system.

In addition to improved legal procedures, child victims and child witnesses need ongoing support and services before and after legal proceedings, regardless of the outcome. Child Welfare Services, Children's Justice Centers, Victim Witness, and Victim Compensation programs need resources to maintain trauma-informed services so that child victims, child witnesses, and their caregivers are safe and supported.

Thank you for the opportunity to provide comments on this bill.

LATE

SB-200

Submitted on: 1/27/2025 8:34:56 AM

Testimony for HHS on 1/27/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michelle Rocca	Individual	Support	Written Testimony Only

Comments:

I strongly support the proposed measure to establish a statutory right to a speedy trial for victims and witnesses of sexual offenses under part V of chapter 707, Hawai'i Revised Statutes.

Prolonged legal proceedings can exacerbate the trauma experienced by victims, particularly children. Research indicates that repeated questioning and lengthy delays increase anxiety and a sense of helplessness among child victims.

[Department of the Attorney General](#)

In Hawai'i, the average time from arrest to sentencing in violent sex offense cases is approximately 419 days, with over 44% of cases exceeding 300 days.

[Department of the Attorney General](#)

Implementing a statutory right to a speedy trial would help minimize the emotional distress endured by victims and witnesses, thereby promoting a more compassionate and effective justice system.

LATE

SB-200

Submitted on: 1/27/2025 8:57:38 AM

Testimony for HHS on 1/27/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ron Musch	Individual	Support	Written Testimony Only

Comments:

I strongly support the proposed measure to establish a statutory right to a speedy trial for victims and witnesses of sexual offenses under part V of chapter 707, Hawai'i Revised Statutes.

Prolonged legal proceedings can exacerbate the trauma experienced by victims, particularly children. Research indicates that repeated questioning and lengthy delays increase anxiety and a sense of helplessness among child victims.

The Department of the Attorney General states that in Hawai'i, the average time from arrest to sentencing in violent sex offense cases is approximately 419 days, with over 44% of cases exceeding 300 days.

Implementing a statutory right to a speedy trial would help minimize the emotional distress endured by victims and witnesses, thereby promoting a more compassionate and effective justice system.

SB-200

Submitted on: 1/27/2025 2:08:24 PM

Testimony for HHS on 1/27/2025 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shelby Billionaire	Testifying for Kingdom of The Hawaiian Islands	Support	Written Testimony Only

Comments:

Subject: Strong Support for Senate Bill No. 200 - Speedy Trials for Victims of Sexual Offenses

Dear Members of the Hawaii State Senate,

I am writing to express my full support for Senate Bill No. 200, which aims to establish a statutory right to a speedy trial for victims and witnesses of sexual offenses in Hawaii. This bill is a crucial step toward alleviating the additional trauma that victims, particularly young ones, experience during prolonged legal proceedings.

Key Points in Support of S.B. No. 200:

1. **Victim Support:** The bill acknowledges the psychological toll that long court processes can take on victims, particularly those of sexual offenses, who may suffer from depression, emotional distress, and PTSD. By ensuring a faster trial, we can significantly reduce this secondary trauma.
2. **Child Protection:** S.B. No. 200 specifically considers the well-being of minors involved in these cases, setting a precedent for expedited proceedings to minimize their stress. This is vital as children are especially vulnerable to the adverse effects of legal involvement.
3. **Balanced Rights:** While recognizing the constitutional rights of defendants, this legislation ensures that the rights of victims are not overlooked. It mandates that courts consider the impact of trial delays on victims when deciding on continuances, creating a more balanced judicial approach.
4. **Addressing a Gap:** Hawaii has been one of the few states without a specific "speedy trial" statute for victims of sexual crimes. This bill would rectify this deficiency, aligning Hawaii with best practices nationwide for supporting victims through the judicial process.

5. Efficiency in Justice: By setting clear guidelines on when and how trials should proceed, this bill could streamline court operations, potentially reducing case backlogs and improving the overall efficiency of the judicial system.
6. Victim and Witness Rights: The amendment to section 801D-4 strengthens the basic bill of rights for victims and witnesses, ensuring they are not just passive participants but have active rights in the legal process.

Conclusion:

S.B. No. 200 represents a compassionate and practical approach to justice that prioritizes the mental and emotional health of victims while still respecting the legal rights of defendants. By implementing this law, Hawaii can lead by example in supporting those who have suffered from sexual offenses, making the journey through the justice system less traumatic and more humane.

I urge you to pass this bill with the understanding that it will significantly aid in the healing process for many victims, allowing them to move forward with their lives more swiftly after experiencing such profound violations. Thank you for your consideration and for your commitment to justice and victim support.

Sincerely,

Master Shelby "Pikachu" Billionaire

The Kingdom of The Hawaiian Islands, HRM