

JAN 24 2018

A BILL FOR AN ACT

RELATING TO SPEEDY TRIAL.

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

1 SECTION 1. The legislature finds that victims and
2 witnesses of sexual offenses are especially vulnerable and often
3 do not receive a speedy resolution of their cases in the legal
4 system. The legislature further finds that the lack of a right
5 to speedy trial for these crime victims and witnesses greatly
6 contributes to this phenomenon. Repeatedly postponing a trial
7 causes further harm by delaying the justice owed to crime
8 victims, causing many of them to give up hope of ever obtaining
9 vindication and recognition of their trauma and suffering. As a
10 result, a number of these crime victims eventually give up on
11 the prosecution of their cases and become uncooperative, thus
12 allowing the perpetrators to go unpunished.

13 The purpose of this Act is to:

14 (1) Establish the right of victims and witnesses to a
15 speedy trial in criminal cases involving sexual
16 offenses allegedly committed by adult defendants; and



1 (2) Require courts to consider any substantial adverse
2 impact that postponing a trial may have on a victim or
3 witness in these types of cases, particularly if the
4 trial has been postponed once before.

5 SECTION 2. Chapter 571, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

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

- 16 (1) The defendant's right to a speedy trial; and
17 (2) A victim's or witness' right to a speedy trial,
18 including any substantial adverse impact that
19 postponing the trial may have on the victim or
20 witness, particularly if the trial has been postponed
21 once before."



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

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

- (1) The defendant's right to a speedy trial; and
- (2) A victim's or witness' right to a speedy trial, including any substantial adverse impact that postponing the trial may have on the victim or witness, particularly if the trial has been postponed once before."

SECTION 4. Chapter 806, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



1 "§806- 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 a right
4 to a speedy trial that is subordinate only to a defendant's
5 right to a speedy trial. When considering a motion to postpone
6 a trial in any of these cases, the court shall consider the
7 totality of the circumstances, including:

- 8 (1) The defendant's right to a speedy trial; and
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 been postponed
13 once before."

14 SECTION 5. Section 801D-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§801D-4 Basic bill of rights for victims and witnesses.**

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

- 19 (1) To be informed by the police and the prosecuting
20 attorney of the final disposition of the case. If the
21 crime charged is a felony, the victim or a surviving



1 immediate family member shall be notified of major
2 developments in the case and whenever the defendant or
3 perpetrator is released from custody. The victim or a
4 surviving immediate family member shall also be
5 consulted and advised about plea bargaining by the
6 prosecuting attorney;

7 (2) To be notified by the prosecuting attorney if a court
8 proceeding to which they have been subpoenaed will not
9 proceed as scheduled;

10 (3) To receive protection from threats or harm;

11 (4) To be informed by the police, victim/witness
12 counselor, or other criminal justice personnel, of
13 financial assistance and other social services
14 available as a result of being a witness to or a
15 victim of crime, including information on how to apply
16 for the assistance and services;

17 (5) To be provided by the court, whenever possible, with a
18 secure waiting area during court proceedings that does
19 not require them to be in close proximity to
20 defendants and families and friends of defendants;



1 (6) To have any stolen or other personal property
2 expeditiously returned by law enforcement agencies
3 when the property is no longer needed as evidence. If
4 feasible, all the property, except weapons, currency,
5 contraband, property subject to evidentiary analysis,
6 and property, the ownership of which is disputed,
7 shall be returned to the person within ten days of
8 being taken; and

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

17 (b) Upon written request, the victim or the parent or
18 guardian of a minor or incapacitated victim of an offense under
19 section 707-730, 707-731, or 707-732(1)(a) shall have the right
20 to be informed of the human immunodeficiency virus (HIV) status
21 of the person who has been convicted or a juvenile who has been



1 adjudicated under that section and to receive counseling
2 regarding HIV. The testing shall be performed according to the
3 protocols set forth in section 325-17. Upon request of the
4 victim, or the parent or guardian of a minor or incapacitated
5 victim, the department of health shall provide counseling.

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



1 (d) Notwithstanding any law to the contrary, payment of
2 restitution and judgments to victims, or surviving immediate
3 family members of a victim, shall be a precondition for release
4 on parole for any imprisoned person whom the Hawaii paroling
5 authority determines has the financial ability to make complete
6 or partial restitution payments or complete or partial judgment
7 payments to the victim of the person's crime, or to the
8 surviving immediate family members of a victim.

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

18 (f) Victims and witnesses in cases involving an offense
19 charged under part V of chapter 707 shall have a right to a
20 speedy trial that is subordinate only to a defendant's right to
21 a speedy trial. When considering a motion to postpone a trial



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1 in any of these cases involving an adult defendant, the court
2 shall consider the totality of the circumstances, including:

- 3 (1) The defendant's right to a speedy trial; and
4 (2) A victim's or witness' right to a speedy trial,
5 including any substantial adverse impact that
6 postponing the trial may have on the victim or
7 witness, particularly if the trial has been postponed
8 once before."

9 SECTION 6. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 7. New statutory material is underscored.

13 SECTION 8. This Act shall take effect upon its approval.

14

INTRODUCED BY: Will Egan



S.B. NO. 2882

Report Title:

Penal Code; Criminal Procedure; Victims and Witnesses of Sexual Offenses; Right to Speedy Trial

Description:

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

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

