A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1 SECTION 1. The legislature finds that child abuse victims 2 have as much a right to a speedy trial as do defendants. The 3 speedy trial clause of the sixth amendment to the United States 4 Constitution provides in pertinent part as follows: "In all 5 criminal prosecutions, the accused shall enjoy the right to a 6 speedy and public trial . . . " This is to protect the defendant from delay between the presentation of the indictment or similar 7 8 charging instrument and the beginning of trial.

9 The website of the Hawaii family courts states, 10 "Established by statute in 1965, the Family Court's mission is 11 to provide a fair, speedy, economical, and accessible forum for 12 the resolution of matters involving families and children." 13 (Emphasis added.) The legislature further finds that the term 14 "speedy" is not limited to the right to a speedy trial for adult 15 perpetrators of child abuse, but also confers a right to a 16 speedy trial for child abuse victims.



1 The legislature also finds that the failure to provide a 2 speedy trial to child abuse victims further traumatizes the 3 child, who may develop childhood memories of a haunting assault, 4 particularly sexual assault. Undue delays in family court 5 hearings may exacerbate traumatizing memories for the child, 6 prolong the healing process, and cause permanent emotional 7 damage. Additionally, over time and as a coping mechanism, a 8 child may suppress details of the abuse, which are critical in 9 the child's testimony.

10 The legislature additionally finds that an independent 11 state law enforcement agency is needed to investigate certain 12 child abuse cases. Locally, the murder of Peter "Peter Boy" 13 Kema, after he endured many years of physical abuse from his 14 parents is a prime example of the failure of the State's child 15 protective services. The case serves as one of Hawaii's most 16 egregious child abuse cases. It was reported that Peter Boy and 17 his siblings suffered years of extreme and prolonged child abuse 18 and neglect.

19 The purpose of this Act is to:

20 (1) Establish in the department of the attorney general a21 child abuse investigation unit;



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1 (2) Allow child abuse victims to testify via alternative 2 methods to prevent further emotional distress that may 3 be caused by in-person testimony before the defendant; 4 and 5 (3) Require an expedited disposition of cases in all 6 criminal proceedings involving abuse of minors. 7 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended 8 by adding a new part to be appropriately designated and to read 9 as follows: 10 "PART . CHILD ABUSE INVESTIGATION UNIT 11 §28-Child abuse investigation unit. (a) There is established in the department of the attorney general a child 12 13 abuse investigation unit. The unit shall employ such attorneys, 14 investigators, and other personnel as necessary to promote the 15 effective and efficient conduct of the unit's activities. 16 Except for the attorneys, all other employees of the child abuse 17 investigation unit shall be subject to chapter 76. 18 The child abuse investigation unit shall investigate (b) 19 child abuse cases under chapter 587A upon referral from a court, 20 law enforcement agency, county prosecutor, or state department.



1	(c)	As used in this section, "child abuse" shall have the
2	same mean	ing as "harm" under section 587A-4."
3	SECT	ION 3. The Hawaii Revised Statutes is amended by
4	adding a	new chapter to be appropriately designated and to read
5	as follow	s:
6		"CHAPTER
7	UNIFOR	RM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT
8	§	-1 Short title. This chapter may be cited as the
9	Uniform C	hild Witness Testimony by Alternative Methods Act.
10	S	-2 Definitions. As used in this chapter, unless the
11	context c	learly indicates otherwise:
12	"Alt	ernative method" means a method by which a child
13	witness t	estifies that does not include all of the following:
14	(1)	Having the child witness present in person in an open
15		forum;
16	(2)	Having the child witness testify in the presence and
17		full view of the finder of fact and presiding officer;
18		and
19	(3)	Allowing all of the parties to be present, to
20		participate, and to view and be viewed by the child.



1 "Child witness" means an individual under the age of 2 eighteen at the time of the testimony who has been or will be 3 called to testify in a proceeding. 4 "Criminal proceeding" means a trial or hearing before a 5 court in a prosecution of a person charged with violating a 6 criminal law of this State or a proceeding involving conduct 7 that if engaged in by an adult would constitute a violation of a criminal law of this State. 8 9 "Noncriminal proceeding" means a trial or hearing before a 10 court or an administrative agency having judicial or guasi-11 judicial powers, other than a criminal proceeding. 12 -3 Applicability. This chapter shall apply to the S 13 testimony of child witnesses in a criminal or noncriminal 14 proceeding; provided that this chapter shall not preclude other 15 procedures permitted by law for a child witness to testify. 16 -4 Hearing whether to allow testimony by alternative S 17 method. (a) The presiding officer of a criminal or noncriminal 18 proceeding may order a hearing to determine whether to allow a 19 child witness to testify by an alternative method. The 20 presiding officer, for good cause shown, shall order the hearing 21 upon motion of a party, a child witness, or an individual



determined by the presiding officer to have sufficient standing
 to act on behalf of the child witness.

3 (b) A hearing to determine whether to allow a child 4 witness to testify by an alternative method shall be conducted 5 on the record after reasonable notice to all parties, any 6 nonparty movant, and any other person the presiding officer 7 specifies. The child witness' presence is not required at the 8 hearing unless ordered by the presiding officer. In conducting 9 the hearing, the presiding officer shall not be bound by rules 10 of evidence, except the rules of privilege.

11 § -5 Standards for determining whether a child witness 12 may testify by alternative method. (a) In a criminal 13 proceeding, the presiding officer may permit a child witness to 14 testify by an alternative method only in the following 15 situations:

16 (1) A child witness may testify other than in an open
17 forum in the presence and full view of the finder of
18 fact if the presiding officer finds by clear and
19 convincing evidence that the child witness would
20 suffer serious emotional distress that would
21 substantially impair the child witness' ability to



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1 communicate with the finder of fact if required to 2 testify in the open forum; or 3 (2) A child witness may testify other than face-to-face 4 with the defendant if the presiding officer finds by 5 clear and convincing evidence that the child witness 6 would suffer serious emotional distress that would 7 substantially impair the child witness' ability to 8 communicate with the finder of fact if required to be 9 confronted face-to-face by the defendant. 10 In a noncriminal proceeding, the presiding officer may (b) 11 order a child witness to testify by an alternative method if the 12 presiding officer finds by a preponderance of the evidence that 13 allowing the child witness to testify by an alternative method 14 is necessary to serve the best interests of the child witness or 15 enable the child witness to communicate with the finder of fact. 16 In making this finding, the presiding officer shall consider: 17 (1)The nature of the proceeding; 18 (2) The age and maturity of the child witness; 19 (3) The relationship of the child witness to the parties 20 in the proceeding;



1	(4)	The nature and degree of emotional distress that the
2		child witness would suffer in testifying; and
3	(5)	Any other relevant factor.
4	S	-6 Factors for determining whether to permit
5	alternati	ve method. If the presiding officer determines that a
6	standard	under section -5 has been met, the presiding officer
7	shall det	ermine whether to allow a child witness to testify by
8	an altern	ative method by considering:
9	(1)	Alternative methods reasonably available;
10	(2)	Available means for protecting the interests of or
11		reducing emotional distress to the child witness
12		without resort to an alternative method;
13	(3)	The nature of the case;
14	(4)	The relative rights of the parties;
15	(5)	The importance of the proposed testimony of the child
16		witness;
17	(6)	The nature and degree of emotional distress that the
18		child witness would suffer if an alternative method is
19		not used; and
20	(7)	Any other relevant factor.

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1 Hearing to determine procedures for pro se party S -7 2 examination of child witness. (a) If the presiding officer of 3 a criminal or noncriminal proceeding orders a hearing to 4 determine whether to allow a child witness to testify by an alternative method pursuant to -4(a) and one of the parties 5 6 is expected to be without counsel for the examination of the 7 child witness, the presiding officer shall also conduct a 8 hearing to determine the method by which a pro se party may 9 examine a child witness.

10 (b) A hearing to determine the method by which a pro se 11 party may examine a child witness shall be conducted in the same 12 manner as established under -4(b) and may be consolidated 13 with or immediately follow a hearing on whether to allow 14 testimony by alternative method pursuant to section -4.

15 § -8 Standards to determine method by which pro se party 16 may examine child witness in criminal proceeding. (a) In a 17 criminal proceeding, the presiding officer shall order a pro se 18 party:

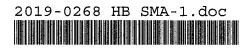
19 (1) Excluded from the presence of the child witness during
20 the child witness' testimony upon a finding by clear
21 and convincing evidence that the child witness would



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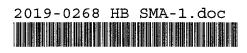
1 suffer serious emotional distress that would 2 substantially impair the child witness' ability to 3 communicate with the finder of fact if required to 4 testify in the presence of the pro se party; or 5 (2)Excluded from the presence of the child witness during 6 the child witness' testimony and precluded from use of 7 technology that would permit the child witness to see 8 or hear the defendant, if the presiding officer finds 9 by clear and convincing evidence that the child 10 witness would suffer serious emotional distress that 11 would substantially impair the child witness' ability 12 to communicate with the finder of fact if required to 13 testify after hearing the pro se party's voice. 14 (b) If, in a criminal proceeding, the court excludes the 15 pro se party from the presence of the child witness during the 16 child witness' testimony and precludes the pro se party from use 17 of technology that permits the child witness to see or hear the 18 defendant, the court shall make reasonable accommodations to 19 permit examination of the child witness by the pro se party by 20 use of available technology to contemporaneously pose questions

1 to the child witness, including appointing a person to speak the 2 questions composed by the pro se party. 3 If the court appoints an attorney to speak the (C) 4 questions composed by the pro se party: 5 (1)No attorney-client privileges shall form based upon 6 the appointment; and 7. (2) If the case is tried to a jury, the court shall 8 explain to the jury that the defendant is continuing to represent him or herself and that the defendant 9 10 composed the questions asked by the attorney. 11 S -9 Standards to determine method by which pro se party 12 may examine child witness in a noncriminal proceeding. (a) In 13 a noncriminal proceeding, the presiding officer may order a pro 14 se party: 15 (1)Excluded from the presence of the child witness during 16 the child witness' testimony if the presiding officer 17 finds by a preponderance of the evidence that 18 excluding the pro se party is necessary to serve the 19 best interests of the child witness or enable the 20 child witness to communicate with the finder of fact; 21 or



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1	(2)	Excluded from the presence of the child witness during
2		the child witness' testimony and excluded from
3		speaking or using technology so that the child witness
4		can hear the pro se party's voice, if the presiding
5		officer finds by a preponderance of the evidence that
6		doing so is necessary to serve the best interests of
7		the child witness or enable the child witness to
8		communicate with the finder of fact.
9	(b)	In making the findings pursuant to subsection (a), the
10	presiding	officer shall consider:
11	(1)	The nature of the proceeding;
12	(2)	The age and maturity of the child witness;
13	(3)	The relationship of the child witness to the parties
14		in the proceeding;
15	(4)	The nature and degree of emotional distress that the
16		child witness would suffer in testifying; and
17	(5)	Any other relevant factor.
18	(c)	If, in a noncriminal proceeding, the court excludes
19	the pro se	e party from the presence of the child witness during
20	the child	witness' testimony and precludes the pro se party from
21	speaking (directly to the child witness through the use of



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1	available technology, the court shall make reasonable	
2	accommodations to permit examination of the child witness by the	
3	pro se party by use of available technology to contemporaneously	
4	pose questions to the child witness, including appointing a	
5	person to speak the questions composed by the pro se party.	
6	(d) If the court appoints an attorney to speak the	
7	questions composed by the pro se party:	
8	(1) No attorney-client privileges shall form based upon	
9	the appointment; and	
10	(2) If the case is tried to a jury, the court shall	
11	explain to the jury that the pro se party is	
12	continuing to represent him or herself and that the	
13	pro se party composed the questions asked by the	
14	attorney.	
15	§ -10 Order regarding testimony by alternative method.	
16	(a) An order allowing or disallowing a child witness to testify	
17	by an alternative method shall state findings of fact and	
18	conclusions of law supporting the presiding officer's	
19	determination.	
20		

20 (b) An order allowing a child witness to testify by an21 alternative method shall:

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1	(1)	State the method by which the child witness is to
2		testify;
3	(2)	List any individuals or category of individuals
4		allowed to be in, or required to be excluded from, the
5		presence of the child witness during the child
6		witness' testimony;
7	(3)	State any special conditions to facilitate a party's
8		right to examine or cross-examine the child witness;
9	(4)	State any conditions or limitations upon the
10		participation of persons present or excluded during
11		the taking of the testimony of the child witness; and
12	(5)	State any other conditions for taking or presenting
13		the testimony of the child witness.
14	(c)	The alternative method ordered by the presiding
15	officer s	hall not be more restrictive of the rights of the
16	parties t	han is necessary under the circumstances to serve the
17	purposes of the order allowing a child witness to testify by	
18	alternati	ve method.

19 § -11 Right of parties to examine child witness. An 20 alternative method ordered by the presiding officer shall permit



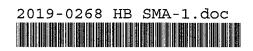
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1 a full and fair opportunity for examination and cross-2 examination of the child witness by each party. 3 -12 Uniformity of application and construction. S In 4 applying and construing this chapter, consideration shall be 5 given to the need to promote uniformity of the law with respect 6 to its subject matter among states that enact it." 7 SECTION 4. Chapter 587A, Hawaii Revised Statutes, is 8 amended by adding a new section to be appropriately designated 9 and to read as follows: 10 "<u>§587A-</u> Authority of the attorney general to 11 investigate. The department of the attorney general may 12 intervene to investigate the circumstances in any adjudication." 13 SECTION 5. Chapter 806, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated 14 15 and to read as follows: 16 "§806-Expedited proceedings; continuances; trial. (a) 17 In all criminal proceedings involving an offense under section 18 707-730, 707-731, 707-732, 707-733, or 707-733.6 perpetrated 19 against a minor, or any other proceedings involving a minor 20 victim or minor witness of any physical abuse, the court and the 21 prosecution shall take appropriate action, including setting the



1	case for priority in the court docket, to ensure a prompt trial
2	in order to minimize the length of time a minor must endure the
3	stress of the minor's involvement in the proceedings.
4	(b) In deciding whether to grant a continuance, the court
5	shall take into consideration the age of the minor and the
6	potential adverse impact the delay may have on the minor's well-
7	being; provided that no more than three continuances shall be
8	permissible by either party; provided further that a trial shall
9	commence within twelve months of the charge or indictment.
10	(c) The court shall impose sanctions against an attorney
11	for the defense who is unprepared to commence trial."
12	SECTION 6. This Act does not affect rights and duties that
13	matured, penalties that were incurred, and proceedings that were
14	begun before its effective date.
15	SECTION 7. If any provision of this Act, or the
16	application thereof to any person or circumstance, is held
17	invalid, the invalidity does not affect other provisions or
18	applications of the Act that can be given effect without the
19	invalid provision or application, and to this end the provisions
20	of this Act are severable.

21 SECTION 8. New statutory material is underscored.



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SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:

Jund Sking

JAN 1 8 2019



Report Title:

Child Abuse; Attorney General; Investigation Unit; Expedited Criminal Proceedings; Uniform Child Witness Testimony by Alternative Methods Act

Description:

Establishes in the department of the attorney general a child abuse investigation unit. Allows the department of the attorney general to intervene in adjudications in family court. Enacts the Uniform Child Witness Testimony by Alternative Methods Act, which authorizes courts to allow for children to testify in a place other than an open forum or away from the finder of fact, court, or parties. 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 child's involvement in the proceedings.

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