

JAN 22 2021

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 be appropriately designated
3 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 a
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 been postponed
17 once before; and



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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 a 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 been postponed
17 once before; 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 a 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 been postponed
13 once before; 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 a minor



1 must endure 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 well-
6 being; provided that no more than three continuances shall be
7 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 (c) The court shall impose sanctions against an attorney
11 for the defense who is unprepared to commence trial as
12 scheduled, unless good cause is shown."

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

15 **"§801D-4 Basic bill of rights for victims and witnesses.**

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

18 (1) To be informed by the police and the prosecuting
19 attorney of the final disposition of the case. If the
20 crime charged is a felony, the victim or a surviving
21 immediate family member shall be notified of major



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

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

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

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

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

20 (6) To have any stolen or other personal property
21 expeditiously returned by law enforcement agencies



1 when the property is no longer needed as evidence. If
2 feasible, all the property[] except weapons[];
3 currency[]; contraband[]; property subject to
4 evidentiary analysis[]; and property, the ownership
5 of which is disputed, shall be returned to the person
6 within ten days of being taken; and

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

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



1 protocols set forth in section 325-17. Upon request of the
2 victim, or the parent or guardian of a minor or incapacitated
3 victim, the department of health shall provide counseling.

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

20 (d) Notwithstanding any law to the contrary, payment of
21 restitution and judgments to victims, or surviving immediate



1 family members of a victim, shall be a precondition for release
2 on parole for any imprisoned person whom the Hawaii paroling
3 authority determines has the financial ability to make complete
4 or partial restitution payments or complete or partial judgment
5 payments to the victim of the person's crime, or to the
6 surviving immediate family members of a victim.

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

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



1 defendant, the court shall consider the totality of the
2 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; and
9 (3) The requirements of section 806-B, if applicable."

10 SECTION 5. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 6. In codifying the new sections added by section
14 3 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 7. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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

20

INTRODUCED BY: _____



S.B. NO. 886

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, HRS, 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 child's involvement in 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.

