

JAN 18 2019

S.B. NO. 120

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."



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

4 "§604- Victims and witnesses; right to speedy trial in
5 certain cases. Victims and witnesses in cases involving an
6 offense charged under part V of chapter 707 shall have a right
7 to a speedy trial that is subordinate only to a defendant's
8 right to a speedy trial. When considering a motion to postpone
9 a trial in any of these cases, the court shall consider the
10 totality of the circumstances, including:

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

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

20 "§806- Victims and witnesses; right to speedy trial in
21 certain cases. Victims and witnesses in cases involving an



1 offense charged under part V of chapter 707 shall have a right
2 to a speedy trial that is subordinate only to a defendant's
3 right to a speedy trial. When considering a motion to postpone
4 a trial in any of these cases, the court shall consider the
5 totality of the circumstances, including:

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

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

14 "**§801D-4 Basic bill of rights for victims and witnesses.**

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

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



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

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

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

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

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

19 (6) To have any stolen or other personal property
20 expeditiously returned by law enforcement agencies
21 when the property is no longer needed as evidence. If



1 feasible, all the property, except weapons, currency,
2 contraband, property subject to evidentiary analysis,
3 and property, the ownership of which is disputed,
4 shall be returned to the person within ten days of
5 being taken; and

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

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



1 victim, or the parent or guardian of a minor or incapacitated
2 victim, the department of health shall provide counseling.

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

19 (d) Notwithstanding any law to the contrary, payment of
20 restitution and judgments to victims, or surviving immediate
21 family members of a victim, shall be a precondition for release



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

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

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

21 (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 been postponed
5 once before."

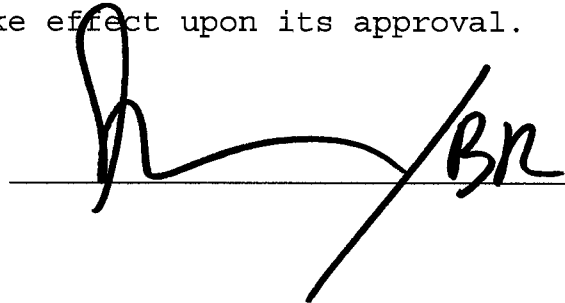
6 SECTION 6. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 7. New statutory material is underscored.

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

11

INTRODUCED BY:

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be 'BR' followed by a long horizontal stroke and a diagonal slash. The initials 'BR' are written in a larger, bolder font at the end of the signature.

S.B. NO. 120

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.

