

JAN 16 2014

S.B. NO. 2146

A BILL FOR AN ACT

RELATING TO VIDEO TESTIMONY OF CHILD.

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

1 SECTION 1. Section 626, Hawaii Revised Statutes, Rule 616
2 is amended to read as follows:
3 **Rule 616** [~~Televised~~] Video testimony of child.
4 (a) In any prosecution of an abuse offense or sexual
5 offense alleged to have been committed against a child less than
6 [~~eighteen~~] fourteen years of age at the time of the [~~testimony,~~]
7 offense, the court may [~~order that the testimony of the child be~~
8 ~~taken in a room other than the courtroom and be televised by~~
9 ~~two-way closed circuit video equipment to be viewed by the~~
10 ~~court, the accused, and the trier of fact, if the court finds~~
11 ~~that requiring the child to testify in the physical presence of~~
12 ~~the accused would likely result in serious emotional distress to~~
13 ~~the child and substantial impairment of the child's ability to~~
14 ~~communicate. During the entire course of such a procedure, the~~
15 ~~attorneys for the defendant and for the State shall have the~~
16 ~~right to be present with the child, and full direct and cross-~~
17 ~~examination shall be available as a matter of right.] allow the~~



1 child's evidence-in-chief to be admitted by way of, but not
2 limited to, video recording, provided:

3 (1) Upon considering the video recording and other
4 relevant evidence the trial court finds on the balance of
5 probabilities the child was competent to give evidence at the
6 time the video recording of the child's evidence was made in
7 addition to being competent to give evidence at trial; and

8 (2) The video recording of the child's evidence is
9 made contemporaneously with initial complaint made to police
10 authorities; and

11 (3) The person interviewing the child is a police
12 officer or forensic interviewer and is made available at trial
13 and authenticates the video recording; and

14 (4) The person interviewing asks the child non-leading
15 questions; and

16 (5) The child is made available at trial for cross-
17 examination.

18 (b) A forensic interviewer shall be an expert witness and
19 may include but shall not be limited to persons who are licensed
20 counsellors, social workers, psychologists and psychiatrists
21 acting under or for a law enforcement agency or government
22 department.



1 (c) If a video recording of a child's evidence contains
2 one or more leading questions and responses to the leading
3 question(s) such leading evidence may be excluded by editing the
4 video recording without excluding the entire video recording
5 provided the leading question or questions do not substantially
6 impair the reliability of the remaining video recorded evidence.

7 (d) A full copy of unedited recording of the child's
8 evidence shall be supplied to the accused or the accused's
9 attorney at least 14 days prior to hearing or as required by
10 subpoena.

11 (e) If the court orders the exclusion of any evidence from
12 the video recording as leading evidence or for any other reason
13 and the recording is subsequently edited a copy of the edited
14 tape shall be supplied to accused or the accused's attorney with
15 reasonable time for the accused to view the edited video
16 recording before the evidence is played to the trier of fact and
17 admitted into evidence.

18 (f) Notwithstanding any other provision in this section a
19 court may exclude the video recording of the child's evidence if
20 there is clear and convincing evidence that the video recorded
21 evidence is otherwise unreliable.



1 (g) Notwithstanding any other provision in this section a
 2 video recording of the child's evidence may be presented and
 3 played to a grand jury.

4 SECTION 2. Statutory material to be repealed is bracketed.
 5 New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 2146

Report Title:

Video evidence of child victims

Description:

Provides for evidence of child victims of serious crimes to be admitted into evidence through recorded interview provided interview is made around time of initial complaint; provides for the child to be made available for cross-examination; provides for exclusion of evidence that is elicited through leading questions by law enforcement; intended to lessen re-traumatization of child victims and minimize of loss of evidence from young children victims.

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

