
A BILL FOR AN ACT

RELATING TO EVIDENCE.

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

1 SECTION 1. The legislature finds that criminals frequently
2 target tourists for property crimes, as tourists are less likely
3 to testify in a criminal case because they live elsewhere.
4 Thieves target vacation rental homes and rental cars, and
5 reports of crimes committed against tourists significantly
6 damage Hawaii's visitor industry.

7 The legislature further finds that the fundamental
8 constitutional right of criminal defendants is the opportunity
9 to confront and cross-examine opposing witnesses. This right
10 may be satisfied absent a physical, face-to-face confrontation
11 at trial where necessary to further an important public policy
12 of ensuring public safety for visitors and residents and where
13 the reliability of the testimony is otherwise assured, as held
14 by the United States Supreme Court in *Maryland v. Craig*, 497
15 U.S. 836 (1990).

16 The purpose of this Act is to authorize a court to allow
17 live video testimony of a victim of property crime if:



- 1 (1) The crime is a misdemeanor or petty misdemeanor;
- 2 (2) The victim was a nonresident of this State at the time
- 3 the crime was committed and remains a nonresident at
- 4 the time of providing testimony;
- 5 (3) The testimony is limited to identification and
- 6 ownership of the property taken, the value of the
- 7 property, lack of consent to take the property, and
- 8 identification of the person or persons who took the
- 9 property;
- 10 (4) The victim testifies under oath;
- 11 (5) The requisite video connection is two-way, so that the
- 12 victim can see the defendant and the trier of fact can
- 13 see the victim; and
- 14 (6) The defendant and the State have the right to have
- 15 legal counsel physically present with the victim
- 16 during the provision of testimony.

17 SECTION 2. Section 626-1, Hawaii Revised Statutes, is
 18 amended by adding a new rule to article VI to be appropriately
 19 designated and to read as follows:

20 "Rule Video testimony of nonresident in a misdemeanor
 21 or petty misdemeanor property offense. In any prosecution of a



1 misdemeanor or petty misdemeanor property offense alleged to
2 have been committed in this State against a person who is a
3 nonresident of this State, the court may order that the
4 testimony of the nonresident be taken under oath through a live
5 two-way video connection to be viewed by the court, the accused,
6 and the trier of fact; provided that:

7 (1) The witness remains a nonresident at the time the
8 testimony is to be given;

9 (2) The testimony is given only for the purpose of
10 establishing:

11 (A) Identification and ownership of the property
12 taken;

13 (B) The value of the property;

14 (C) Lack of consent to take the property; and

15 (D) Identification of the person or persons who took
16 the property; and

17 (3) The whole body of the witness is visible at all times
18 during the witness's testimony.

19 During the entire course of the procedure, the attorneys for the
20 defendant and for the State shall have the right to be



1 physically present with the nonresident, and full direct cross-
2 examination shall be available as a matter of right.
3 This rule shall be liberally construed to further the important
4 public policy of protecting the safety of visitors and residents
5 by addressing crimes that are rarely prosecuted because the
6 expense of transportation, lodging, and time for a nonresident
7 witness to appear in person at trial exceeds the value of the
8 property at issue."

9 SECTION 3. 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 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Rules of Evidence; Nonresident Property Crime Victims; Video Testimony by Witnesses

Description:

Amends the Hawaii Rules of Evidence to authorize nonresident property crime victims to testify in misdemeanor or petty misdemeanor property criminal proceedings by a live two-way video connection. (HB792 HD1)

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