

JAN 22 2015

A BILL FOR AN ACT

RELATING TO CHILD WITNESS TESTIMONY.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT**

6 **§ -1 Short title.** This chapter may be cited as the
7 Uniform Child Witness Testimony by Alternative Methods Act.

8 **§ -2 Definitions.** As used in this chapter, unless the
9 context clearly indicates otherwise:

10 "Alternative method" means a method by which a child
11 witness testifies that does not include all of the following:

12 (1) Having the child witness present in person in an open
13 forum;

14 (2) Having the child witness testify in the presence and
15 full view of the finder of fact and presiding officer;

16 and



1 (3) Allowing all of the parties to be present, to
2 participate, and to view and be viewed by the child.

3 "Child witness" means an individual under the age of
4 eighteen at the time of the testimony who has been or will be
5 called to testify in a proceeding.

6 "Criminal proceeding" means a trial or hearing before a
7 court in a prosecution of a person charged with violating a
8 criminal law of this State or a proceeding involving conduct
9 that if engaged in by an adult would constitute a violation of a
10 criminal law of this State.

11 "Noncriminal proceeding" means a trial or hearing before a
12 court or an administrative agency having judicial or quasi-
13 judicial powers, other than a criminal proceeding.

14 **§ -3 Applicability.** This chapter shall apply to the
15 testimony of child witnesses in a criminal or noncriminal
16 proceeding; provided that this chapter shall not preclude other
17 procedures permitted by law for a child witness to testify.

18 **§ -4 Hearing whether to allow testimony by alternative**
19 **method.** (a) The presiding officer of a criminal or noncriminal
20 proceeding may order a hearing to determine whether to allow a
21 child witness to testify by an alternative method. The



1 presiding officer, for good cause shown, shall order the hearing
2 upon motion of a party, a child witness, or an individual
3 determined by the presiding officer to have sufficient standing
4 to act on behalf of the child witness.

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

13 **§ -5 Standards for determining whether a child witness**
14 **may testify by alternative method.** (a) In a criminal

15 proceeding, the presiding officer may permit a child witness to
16 testify by an alternative method only in the following
17 situations:

18 (1) A child witness may testify other than in an open
19 forum in the presence and full view of the finder of
20 fact if the presiding officer finds by clear and
21 convincing evidence that the child witness would



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 open forum; or

5 (2) A child witness may testify other than face-to-face
6 with the defendant if the presiding officer finds by
7 clear and convincing evidence that the child witness
8 would suffer serious emotional distress that would
9 substantially impair the child witness' ability to
10 communicate with the finder of fact if required to be
11 confronted face-to-face by the defendant.

12 (b) In a noncriminal proceeding, the presiding officer may
13 order a child witness to testify by an alternative method if the
14 presiding officer finds by a preponderance of the evidence that
15 allowing the child witness to testify by an alternative method
16 is necessary to serve the best interests of the child witness or
17 enable the child witness to communicate with the finder of fact.
18 In making this finding, the presiding officer shall consider:

- 19 (1) The nature of the proceeding;
- 20 (2) The age and maturity of the child witness;



- 1 (3) The relationship of the child witness to the parties
- 2 in the proceeding;
- 3 (4) The nature and degree of emotional distress that the
- 4 child witness would suffer in testifying; and
- 5 (5) Any other relevant factor.

6 **§ -6 Factors for determining whether to permit**
7 **alternative method.** If the presiding officer determines that a
8 standard under section -5 has been met, the presiding officer
9 shall determine whether to allow a child witness to testify by
10 an alternative method by considering:

- 11 (1) Alternative methods reasonably available;
- 12 (2) Available means for protecting the interests of or
- 13 reducing emotional distress to the child witness
- 14 without resort to an alternative method;
- 15 (3) The nature of the case;
- 16 (4) The relative rights of the parties;
- 17 (5) The importance of the proposed testimony of the child
- 18 witness;
- 19 (6) The nature and degree of emotional distress that the
- 20 child witness would suffer if an alternative method is
- 21 not used; and



1 (7) Any other relevant factor.

2 **§ -7 Hearing to determine procedures for pro se party**

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

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

16 **§ -8 Standards to determine method by which pro se party**

17 **may examine child witness in criminal proceeding.** (a) In a
18 criminal proceeding, the presiding officer shall order a pro se
19 party:

- 20 (1) Excluded from the presence of the child witness during
21 the child witness' testimony upon a finding by clear



1 and convincing evidence that the child witness would
2 suffer serious emotional distress that would
3 substantially impair the child witness' ability to
4 communicate with the finder of fact if required to
5 testify in the presence of the pro se party; or

6 (2) Excluded from the presence of the child witness during
7 the child witness' testimony and precluded from use of
8 technology that would permit the child witness to see
9 or hear the defendant, if the presiding officer finds
10 by clear and convincing evidence that the child
11 witness would suffer serious emotional distress that
12 would substantially impair the child witness' ability
13 to communicate with the finder of fact if required to
14 testify after hearing the pro se party's voice.

15 (b) If, in a criminal proceeding, the court excludes the
16 pro se party from the presence of the child witness during the
17 child witness' testimony and precludes the pro se party from use
18 of technology that permits the child witness to see or hear the
19 defendant, the court shall make reasonable accommodations to
20 permit examination of the child witness by the pro se party by
21 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 (c) If the court appoints an attorney to speak the
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
9 to represent him or herself and that the defendant
10 composed the questions asked by the attorney.

11 **§ -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



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 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



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



- 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 shall not be more restrictive of the rights of the
- 16 parties than is necessary under the circumstances to serve the
- 17 purposes of the order allowing a child witness to testify by
- 18 alternative method.

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



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. 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 2. If any provision of this Act, or the
8 application thereof to any person or circumstance, is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 3. This Act shall take effect upon its approval.
14

INTRODUCED BY: ~~SC Rich Agnew~~
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S.B. NO. 136

Report Title:

Uniform Child Witness Testimony by Alternative Methods Act

Description:

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.

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

