

JAN 17 2013

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

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



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

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

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

12 § -3 **Applicability.** This chapter applies to the
13 testimony of child witnesses in a criminal or noncriminal
14 proceeding. However, this chapter does not preclude other
15 procedures permitted by law for a child witness to testify.

16 § -4 **Hearing whether to allow testimony by alternative**
17 **method.** (a) The presiding officer of a criminal or noncriminal
18 proceeding may order a hearing to determine whether to allow a
19 child witness to testify by an alternative method. The
20 presiding officer, for good cause shown, shall order the hearing
21 upon motion of a party, a child witness, or an individual



1 determined by the presiding officer to have sufficient standing
2 to act on behalf of the child witness.

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

11 § -5 Standards for determining whether a child witness
12 may testify by alternative method. (a) In a criminal
13 proceeding, the presiding officer may permit a child witness to
14 testify by an alternative method only in the following
15 situations:

16 (1) A child witness may testify other than in an open
17 forum in the presence and full view of the finder of
18 fact if the presiding officer finds by clear and
19 convincing evidence that the child witness would
20 suffer serious emotional distress that would
21 substantially impair the child witness' ability to



1 communicate with the finder of fact if required to
2 testify in the open forum; or

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

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

17 (1) The nature of the proceeding;

18 (2) The age and maturity of the child witness;

19 (3) The relationship of the child witness to the parties
20 in the proceeding;

21 (4) The nature and degree of emotional distress that the
22 child witness would suffer in testifying; and



1 (5) Any other relevant factor.

2 § -6 Factors for determining whether to permit
3 alternative method. If the presiding officer determines that a
4 standard under section -5 has been met, the presiding officer
5 shall determine whether to allow a child witness to testify by
6 an alternative method by considering:

7 (1) Alternative methods reasonably available;

8 (2) Available means for protecting the interests of or
9 reducing emotional distress to the child witness
10 without resort to an alternative method;

11 (3) The nature of the case;

12 (4) The relative rights of the parties;

13 (5) The importance of the proposed testimony of the child
14 witness;

15 (6) The nature and degree of emotional distress that the
16 child witness would suffer if an alternative method is
17 not used; and

18 (7) Any other relevant factor.

19 § -7 Hearing to determine procedures for pro se party
20 examination of child witness. (a) If the presiding officer of
21 a criminal or noncriminal proceeding orders a hearing to
22 determine whether to allow a child witness to testify by an



1 alternative method pursuant to -4(a) and one of the parties
2 is expected to be without counsel for the examination of the
3 child witness, the presiding officer shall also conduct a
4 hearing to determine the method by which a pro se party may
5 examine a child witness.

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

11 **§ -8 Standards to determine method by which pro se party**
12 **may examine child witness in criminal proceeding.** (a) In a
13 criminal proceeding, the presiding officer shall order a pro se
14 party:

- 15 (1) Excluded from the presence of the child witness during
16 the child witness' testimony upon a finding by clear
17 and convincing evidence that the child witness would
18 suffer serious emotional distress that would
19 substantially impair the child witness' ability to
20 communicate with the finder of fact if required to
21 testify in the presence of the pro se party; or



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

10 (b) If, in a criminal proceeding, the court excludes the
11 pro se party from the presence of the child witness during the
12 child witness' testimony and precludes the pro se party from use
13 of technology that permits the child witness to see or hear the
14 defendant, the court shall make reasonable accommodations to
15 permit examination of the child witness by the pro se party by
16 use of available technology to contemporaneously pose questions
17 to the child witness, including appointing a person to speak the
18 questions composed by the pro se party.

19 (c) If the court appoints an attorney to speak the
20 questions composed by the pro se party:

21 (1) No attorney-client privileges shall form based upon
22 the appointment; and



(2) If the case is tried to a jury, the court shall explain to the jury that the defendant is continuing to represent him or herself and that the defendant composed the questions asked by the attorney.

§ -9 Standards to determine method by which pro se party may examine child witness in a noncriminal proceeding. (a) In a noncriminal proceeding, the presiding officer may order a pro se party

(1) Excluded from the presence of the child witness during the child witness' testimony if the presiding officer finds by a preponderance of the evidence that excluding the pro se party is necessary to serve the best interests of the child witness or enable the child witness to communicate with the finder of fact; or

(2) Excluded from the presence of the child witness during the child witness' testimony and excluded from speaking or using technology so that the child witness can hear the pro se party's voice, if the presiding officer finds by a preponderance of the evidence that doing so is necessary to serve the best interests of



1 the child witness or enable the child witness to
2 communicate with the finder of fact.

3 (b) In making the findings pursuant to subsection (a), the
4 presiding officer shall consider:

5 (1) The nature of the proceeding;

6 (2) The age and maturity of the child witness;

7 (3) The relationship of the child witness to the parties
8 in the proceeding;

9 (4) The nature and degree of emotional distress that the
10 child witness would suffer in testifying; and

11 (5) Any other relevant factor.

12 (c) If, in a noncriminal proceeding, the court excludes
13 the pro se party from the presence of the child witness during
14 the child witness' testimony and precludes the pro se party from
15 speaking directly to the child witness through the use of
16 available technology, the court shall make reasonable
17 accommodations to permit examination of the child witness by the
18 pro se party by use of available technology to contemporaneously
19 pose questions to the child witness, including appointing a
20 person to speak the questions composed by the pro se party.

21 (d) If the court appoints an attorney to speak the
22 questions composed by the pro se party:



1 (1) No attorney-client privileges shall form based upon
2 the appointment; and

3 (2) If the case is tried to a jury, the court shall
4 explain to the jury that the pro se party is
5 continuing to represent him or herself and that the
6 pro se party composed the questions asked by the
7 attorney.

8 § -10 Order regarding testimony by alternative method.

9 (a) An order allowing or disallowing a child witness to testify
10 by an alternative method shall state findings of fact and
11 conclusions of law supporting the presiding officer's
12 determination.

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

15 (1) State the method by which the child witness is to
16 testify;

17 (2) List any individuals or category of individuals
18 allowed to be in, or required to be excluded from, the
19 presence of the child witness during the child
20 witness' testimony;

21 (3) State any special conditions to facilitate a party's
22 right to examine or cross-examine the child witness;



1 (4) State any conditions or limitations upon the
2 participation of persons present or excluded during
3 the taking of the testimony of the child witness; and

4 (5) State any other conditions for taking or presenting
5 the testimony of the child witness.

6 (c) The alternative method ordered by the presiding
7 officer shall not be more restrictive of the rights of the
8 parties than is necessary under the circumstances to serve the
9 purposes of the order allowing a child witness to testify by
10 alternative method.

11 § -11 Right of parties to examine child witness. An
12 alternative method ordered by the presiding officer shall permit
13 a full and fair opportunity for examination and cross-
14 examination of the child witness by each party.

15 § -12 Uniformity of application and construction. In
16 applying and construing this chapter, consideration shall be
17 given to the need to promote uniformity of the law with respect
18 to its subject matter among states that enact it."

19 SECTION 2. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act that can be given effect without the



S.B. NO. 33

1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

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

4

INTRODUCED BY:

Am He



S.B. NO. 33

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.

