
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 state interest
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 felony;
- 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 felony
21 property offense. In any prosecution of a property offense



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

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

8 (2) The witness is competent to testify and must testify
9 under oath;

10 (3) Full cross-examination shall be available as a matter
11 of right;

12 (4) The court, accused, and jury are able to view the
13 demeanor of the witness as the witness testifies;

14 (5) The court has made a case-specific finding that the
15 taking of video testimony pursuant to this rule is
16 necessary because the witness is a nonresident;

17 (6) The court has made a case-specific finding that the
18 taking of depositions pursuant to rule 15 of the
19 Hawaii rules of penal procedure is not feasible or
20 practical due to the nonresident status of the
21 witness; and



(7) The testimony is limited to:

(A) Identification and ownership of the property
taken;

(B) The value of the property;

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

(D) Identification of the person or persons who took
the property.

During the entire course of the procedure, the attorneys for the
defendant and for the State may elect to be physically present
at the location of the witness; provided that nothing in this
rule shall be construed to require the State to pay for any
expenses associated with a decision to be physically present.
This rule shall be liberally construed to further the important
public policy of protecting the safety of visitors and residents
by addressing crimes that are rarely prosecuted because the
expense of transportation, lodging, and time for a nonresident
witness to appear in person at trial exceeds the value of the
property at issue."

SECTION 3. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.



H.B. NO. 1777

- 1 SECTION 4. New statutory material is underscored.
2 SECTION 5. This Act shall take effect upon its approval.
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H.B. NO. 1777

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 felony criminal proceedings
by a live two-way video connection.

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not legislation or evidence of legislative intent.*

