



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Finance

Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Friday, February 27, 2015, 1:30 p.m.

State Capitol, Conference Room 308

WRITTEN TESTIMONY ONLY

By

Judge Glenn J. Kim, Chair

Supreme Court Standing Committee on the Hawai‘i Rules of Evidence

Bill No. and Title: House Bill No. 792, House Draft 1 Relating to Evidence.

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

Judiciary's Position:

The Hawai‘i Supreme Court’s Committee on Rules of Evidence respectfully opposes House Bill No. 792, House Draft 1, which would authorize video testimony of a nonresident in a prosecution for a misdemeanor or petty misdemeanor property offense. The measure would allow a Hawai‘i court to receive testimony by live, two-way closed circuit television from a property crime victim located outside Hawai‘i. The procedure contained in House Draft 1 is no less violative of the Confrontation Clauses of both the U.S. and Hawai‘i Constitutions than the procedure contained in the original bill and, given that, the Evidence Committee continues to oppose this proposed legislation.

The proponents of House Bill No. 792 apparently recognize the applicability of the rule of Maryland v. Craig, 497 U.S. 836, 860 (1990) (approving closed circuit broadcast of testimony given by a child sexual abuse victim at a remote location out of the accused’s presence), requiring a “case-specific finding of necessity” to satisfy the Sixth Amendment’s Confrontation



Clause. They claim, in the preamble to this measure, that the denial of face-to-face confrontation “is necessary to further an important public policy of ensuring public safety for visitors and residents.” But there are no case-specific findings of necessity contemplated, other than (1) “the crime is a misdemeanor or petty misdemeanor” and (2) the victim-witness is a nonresident of this state. These findings are not case-specific, and the link between this procedure and the stated goal of ensuring public safety is not stated, not apparent, and not inferable.

We invite the Committee’s attention to United States v. Yates, 438 F.3d 1307 (11th Cir. 2006)(en banc), where the testimony of two witnesses located in Australia was broadcast into an Alabama courtroom by means of a two-way, closed circuit television procedure. The witnesses were unwilling to travel to the United States, and they were beyond the federal district court’s subpoena power. Yates holds:

The district court made no case-specific findings of fact that would support a conclusion that this case is different from any other criminal prosecution in which the Government would find it convenient to present testimony by two-way video conference. All criminal prosecutions include at least some evidence crucial to the Government’s case, and there is no doubt that many criminal cases could be more expeditiously resolved were it unnecessary for witnesses to appear at trial. If we were to approve introduction of testimony in this manner, on this record, every prosecutor wishing to present testimony from a witness overseas would argue that providing crucial prosecution evidence and resolving the case expeditiously are important public policies that support the admission of testimony by two-way video conference. . . . In this case, there simply is no necessity of the type Craig contemplates. When one considers that Rule 15 (which provides for depositions in criminal cases) supplied an alternative, this lack of necessity is strikingly apparent.

The Yates court added that Fed. R. Crim. P. 15 allows the Government to depose witnesses and guarantees “the defendant’s right to physical face-to-face confrontation by specifically providing for his presence at the deposition.” 438 F.3d at 1317. The court reasoned: “On this record, there is no evidentiary support for a case-specific finding that the witnesses and defendants could not be placed in the same room for the taking of pretrial deposition testimony pursuant to Rule 15.” Id.

We have presented Yates in some detail for several reasons. To begin with, it is a proper application of Maryland v. Craig. Secondly, it closely parallels any record that would be developed in a court adopting the House Bill 792 procedure. And it shows that necessity is absent whenever a deposition procedure like that furnished by Fed. R. Crim. P. is available to the

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February 25, 2015

TESTIMONY OF MEL RAPOZO
COUNCIL CHAIR, KAUAI COUNTY COUNCIL
ON
HB 792, HD 1, RELATING TO EVIDENCE
House Committee on Finance
Friday, February 27, 2015
1:30 p.m.
Conference Room 308

Dear Chair Luke and Members of the Committee:

Thank you for this opportunity to submit testimony in support of HB 792, HD 1, Relating to Evidence. My testimony is submitted in my individual capacity as the Council Chair of the Kaua'i County Council.

HB 792, HD 1 is very similar to a proposal submitted and approved by the Hawai'i State Association of Counties, which was subsequently approved by all four County Councils. HB 792, HD 1 amends the Hawai'i Rules of Evidence to authorize non-resident property crime victims to testify in misdemeanor or petty misdemeanor property criminal proceedings by a live two-way video connection.

This Bill will serve to ensure that visitors who may have to return to their residences or who may be unable to return to Hawai'i to testify are given a fair opportunity to testify against those who have committed crimes against them. We have heard from the Prosecuting Attorney's Offices from across the State and they have informed us that property crimes committed against our visitors are very difficult to prosecute because of the high cost of travel and the inconvenience of bringing visitors back to the islands to testify.

For the reasons stated above, I strongly encourage the House Committee on Finance to pass this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kaua'i County Council

COUNTY COUNCIL

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February 25, 2015

**TESTIMONY OF KIPUKAI KUALI'I
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
HB 792, HD 1, RELATING TO EVIDENCE
House Committee on Finance
Friday, February 27, 2015
1:30 p.m.
Conference Room 308**

Dear Chair Luke and Members of the Committee:

Thank you for this opportunity to submit testimony in support of HB 792, HD 1, Relating to Evidence. My testimony is submitted in my capacity as the Economic Development & Intergovernmental Relations Committee Chair and in my individual capacity as a Councilmember of the Kaua'i County Council.

HB 792, HD 1 amends the Hawai'i Rules of Evidence to authorize non-resident property crime victims to testify in misdemeanor or petty misdemeanor property criminal proceedings by a live two-way video connection. This Bill will serve to ensure that visitors who may have to return to their residences or who may be unable to return to Hawai'i to testify are given a fair opportunity to testify against those who have committed crimes against them. During testimony to the Kaua'i County Council, we heard from our law enforcement personnel who stated that property crimes committed against our visitors are very difficult to prosecute because of the high cost of travel and the inconvenience of bringing visitors back to the islands to testify. HB 792, HD 1 will allow our visitors to seek justice for crimes committed against and provide testimony which may not otherwise be heard. This Bill is very similar to a proposal submitted and approved by the Hawai'i State Association of Counties, which was subsequently approved by all four County Councils.

For the reasons stated above, I strongly encourage the House Committee on Finance to pass this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALI'I
Councilmember, Kaua'i County Council

AN EQUAL OPPORTUNITY EMPLOYER

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
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**TESTIMONY IN SUPPORT OF
HB792 HD1 – RELATING TO EVIDENCEe**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Finance
February 27, 2015, 1:30 p.m., Conference Room 308

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in **STRONG SUPPORT** of HB792 HD1, Relating to Evidence.

The proposed bill recognizes that in a substantial portion of the property crimes committed in the State of Hawaii, the victims are visitors from outside the state who may lack the financial or time resources to return to Hawaii to testify at trials or other evidentiary hearings, and that alternative measures are necessary to ensure that justice is done in these cases. Many thieves target obvious tourist vehicles or lodging specifically due to this logistical impediment to prosecution.

Although Hawaii Revised Statutes Section 801D-7 already gives victims and witnesses the right to testify at trial by video, that right has never been implemented by the necessary amendment to the Hawaii Rules of Evidence. This bill would address that, and provide a reasonable and efficient framework for allowing the testimony of victims and witnesses to crimes which may otherwise never reach a just resolution.

For these reasons, we are in **STRONG SUPPORT** of HB792 HD1. We ask the Committee to **PASS** this Bill. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



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TESTIMONY
ON
HB 792, HD 1 - RELATING TO EVIDENCE

February 27, 2015

The Honorable Sylvia Luke
Chair
The Honorable Scott Y. Nishimoto
Vice Chair
and Members of the House Committee on Finance

Chair Luke, Vice Chair Nishimoto and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 792, HD 1 - Relating to Evidence. The bill 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.

Hawaii's economy relies heavily on the tourism industry. Often times, property crimes committed against our visitors are difficult if not impossible to prosecute because of the high cost of travel as well as the great inconvenience in bringing a non-resident tourist back to testify in court. This bill will greatly assist law enforcement officials in prosecuting those individuals who commit property crimes against non-residents. The bill brings the Hawaii Rules of Evidence in conformance with Hawaii Revised Statutes § 8021D-7. It also is aligned with Hawaii Rules of Evidence, Rule 616, which already provides for televised testimony of a child under certain circumstances.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committee PASS HB 792 , HD 1.

Thank you very much for the opportunity to provide testimony on this bill.