

ACT 279

H.B. NO. 28

A Bill for an Act Relating to Evidence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 626, Hawaii Revised Statutes, is amended by adding a new rule to the Hawaii Rules of Evidence to be appropriately designated and to read as follows:

**“Rule Videotaping the testimony of a child who is a victim of an abuse offense or a sexual offense.** (a) This rule applies only to a proceeding in the prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than sixteen years of age at the time of the offense, and applies only to the statements or testimony of that child.

(b) The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

- (1) No attorney of either party was present when the statement was made;

- (2) The recording is both visual and aural and recorded on film or videotape or by other electronic means;
- (3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and unaltered;
- (4) The statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) Every voice on the recording and every person present at the interview is identified;
- (6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify for or be cross-examined by either party and every other person present at the interview is available to testify;
- (7) The defendant or the attorney for the defendant is afforded discovery of the recording before it is offered into evidence; and
- (8) The child is present to testify.

(c) If the electronic recording of the statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

(d) On the motion of the attorney for any party, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit equipment in the courtroom to be viewed by the court, the prosecuting attorney, defense attorney, the defendant, and the trier of fact in the proceeding. During the child's testimony, persons necessary to operate the equipment and such other persons as determined by the court shall be present in the room with the child. Attorneys for the defendant and for the State may be present in the room with the child. Only the attorneys or the judge may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall supervise the video monitoring to ensure that the defendant can see the victim while testifying, but that the defendant's presence is not unduly emphasized to the child.

(e) If the court orders the testimony of the child to be taken under subsection (d) the child may not be required to testify in court at the proceeding for which the testimony was taken."

**SECTION 2.** This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 7, 1985.)

**Note**

1. Edited pursuant to HRS §23G-16.5.