

ACT 320

A Bill for an Act Relating to Crime.

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

SECTION 1. The legislature finds that there is a compelling state interest in protecting our citizens by ensuring that the State has the ability to prosecute those crimes wherein the witness is unable to attend court. There are often cases in which witnesses may be physically incapable of coming to court or attendance at court will cause physical hardship. In cases involving abuse, violence, or sexual assault where the witness is also the victim, the witness may have reasonable fears in facing the accused and may literally be unable to articulate testimony in the presence of the accused. Other situations may include instances where the witness cannot be compelled to return for trial despite reasonable efforts to obtain their presence.

The legislature further finds that the inability to prosecute cases in which the witness is unable to attend court significantly impacts the crime rate in Hawaii. In 1994, the Honolulu Police Department Survey of Victim Complaints estimated that there were 134 violent crimes and 5,402 property crimes committed against visitors to Hawaii. As a popular tourist destination, large numbers of visitors, including a significant number of foreign visitors visit Hawaii each year. Unfortunately, because visitors carry large amounts of cash or valuable property and are unfamiliar with their surroundings, some criminals target visitors. The criminals who victimize visitors do so in part because they know that crimes against visitors are less likely to result in a trial. Many visitors are not willing or able to take the time and effort to return for a trial. For example, a witness from Japan may feel stigmatized at being identified as a crime victim or may not be able to ask for additional time off from work to return for a trial because the witnesses absence will have negative repercussions on the witnesses workplace or job status. In addition, foreign visitors are unfamiliar with the American legal system and are very apprehensive about testifying. Also, the procedures the State must follow to subpoena foreign visitors and secure their appearance at trial are considerably more complicated than the process required for U.S. residents. These factors all contribute to make it extremely difficult, and in many cases impossible, to prosecute crimes against visitors.

The legislature further finds that the inability to prosecute crimes against visitors endangers the public safety because criminal offenders do not restrict their activities to visitors alone. Allowing offenders to remain free to commit other crimes against state residents not only compromises public safety, but also decreases the quality of life for residents of the State by reducing confidence in public safety when crimes are committed without fear of punishment. As a state which ranks second in the nation in larceny-theft rate, Hawaii's apparent inability to address the rising crime rate against tourists may lead career criminals to commit more violent crimes against both visitors and residents alike.

In addition, the quality of life for Hawaii's residents is diminished when crimes against visitors negatively affect tourism, because tourism is a significant economic factor to the State's economy and job market. The legislature is painfully aware that growing public perception that Hawaii is an unsafe tourist destination may damage our fragile tourism-based economy unless we are able to prosecute crimes against visitors.

Despite a current rule of evidence which specifies conditions which must be met before videoconferencing can be used, the legislature believes that two-way videoconferencing testimony does not violate the right to confront and will not constitute hearsay as defined in the Hawaii Rules of Evidence, therefore no specific rule of evidence is needed. Through the use of two-way video conference testimony,

as provided for in this Act, foreign nonresident crime victims and resident witnesses can appear in court proceedings to give their testimony. The legislature believes that as long as the witness is subject to prosecution for perjury, a defendant's constitutional right to confront witnesses under either the state or federal constitution is not violated because a live, simultaneous, real-time viewing of all parties to the video conference will be provided, i.e., the jury and the defendant will all be able to see the witness and observe the nuances of behavior and the demeanor of the witness. Additionally, a defendant will have the ability to conduct a full cross-examination of a witness on the witness' testimony.

The legislature believes that given the current advancements in videoconferencing technology, it is possible for a victim to testify in a trial through a live, simultaneous, real-time video and audio transmission. Therefore, the legislature finds that the technology of videoconferencing, as provided for in this Act, constitutes the virtual equivalent of face to face confrontation as required by the state and federal constitutions and is not hearsay as defined in the Hawaii Rules of Evidence. Because of the availability of this technology, it is in the fundamental interests of justice that this technology be utilized to prosecute persons who commit crimes against visitors and that the criminal justice system should utilize all technological advances in an effort to fairly, effectively, and efficiently administer justice.

The purpose of this Act is to allow the use of two-way video conference testimony of victims and witnesses in criminal trials.

SECTION 2. Chapter 801D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§801D- Televised testimony. Victims and witnesses shall have the right to testify at trial by televised two-way closed circuit video to be viewed by the court, the accused, and the trier of fact.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 30, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.