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TESTIMONY IN SUPPORT OF  
HB792 HD1 – RELATING TO EVIDENCE

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

Senate Committee on Judiciary and Labor  
March 24, 2015, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, 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.

Although concerns have been raised that the proposed Bill could potentially conflict with the rights of an accused to confrontation under the Constitution of the United States, it should be noted that there are **MANY** situations in which a declarant is not physically present within the courtroom. For example, there are more than twenty exceptions to the hearsay rule. These

exceptions are founded in the idea that there are certain categories of testimony that are inherently reliable. Our Office submits that the testimony of a property crime victim, carefully limited to subject-matter areas of ownership and value of the property in question, lack of consent to the taking thereof, are inherently reliable. Simply put, these are not the kinds of things that witnesses are likely to lie about. Moreover, our Office notes that there are already provisions in the Hawai'i Rules of Evidence that permit for victims of certain offenses (child sex abuse victims) to testify from outside the courtroom. We also note that in certain matters (grand jury proceedings), the State of Alaska offers witnesses the opportunity to testify, in limited circumstances, remotely. This is due to the difficulty and demonstrable inconvenience of requiring certain limited categories of witnesses to travel vast distances at great expense to testify on routine matters. In this respect, Alaska is very similar to Hawai'i.

Finally, our Office notes that technological improvements already have created a situation where any accused would be afforded full and fair rights to confrontation and cross-examination; the demeanor, reactions, affect and countenance of the witness testifying can all be easily observed via high-definition video and audio connection.

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.