

---

---

# A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO TESTIMONY OF DEFENDANTS IN CRIMINAL CASES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to propose an  
2 amendment to article XVI of the Constitution of the State of  
3 Hawaii to provide that, in a criminal case, evidence that a  
4 testifying defendant has been convicted of a crime involving  
5 dishonesty shall be admissible to assist the jury or judge in  
6 evaluating the credibility of the defendant to the same extent  
7 as with any other testifying witness. The amendment of article  
8 XVI is intended to overrule the 1971 decision of the Hawaii  
9 Supreme Court in the case of State v. Santiago, 53 Haw. 254  
10 (1971), which held that the due process clause of the Hawaii  
11 Constitution barred the introduction of a criminal case  
12 defendant's prior convictions to assist the trier of fact in  
13 evaluating that defendant's credibility.

14           Some impeachment of defendants with convictions is  
15 permitted in federal court, as it is consistent with the United  
16 States Constitution, and it is permitted in the courts of almost  
17 all of our sister states. Hawaii's strict policy of prohibiting



1 all use of prior convictions to impeach a defendant (unless the  
2 defendant puts the defendant's credibility at issue), while at  
3 the same time allowing victims and all other witness to be so  
4 impeached, is virtually unique.

5 Victims of crime and other witnesses in Hawaii can be, and  
6 are, impeached with evidence of prior convictions: so should  
7 those accused of crimes when they choose to become witnesses in  
8 their own trials. The legislature finds that, because evidence  
9 of prior convictions can be used to impeach victims and other  
10 witnesses, then correspondingly, for those defendants who choose  
11 to testify in their own trial, similar impeachment of these  
12 defendants with evidence of prior convictions of crimes  
13 involving dishonesty should also be allowed. This would help,  
14 rather than impede, the truth-finding function.

15 SECTION 2. Article XVI of the Constitution of the State of  
16 Hawaii is amended by adding a new section to be appropriately  
17 designated and to read as follows:

18 **"TESTIMONY OF DEFENDANTS IN CRIMINAL CASES**

19 Section . In a criminal case, evidence that a testifying  
20 defendant has been convicted of a crime involving dishonesty  
21 shall be admissible to assist the jury or judge in evaluating

1 the credibility of the defendant to the same extent as with any  
2 other testifying witness."

3 SECTION 3. The question to be printed on the ballot shall  
4 be as follows:

5 "Shall evidence that a testifying defendant in a criminal  
6 case has been convicted of a crime involving dishonesty be  
7 admissible to assist the jury or judge in evaluating the  
8 credibility of the defendant to the same extent as with any  
9 other testifying witness?"

10 SECTION 4. New constitutional material is underscored.

11 SECTION 5. This amendment shall take effect upon  
12 compliance with article XVII, section 3, of the Constitution of  
13 the State of Hawaii.

SB679, SD1

**Report Title:**

Defendants in Criminal Cases

**Description:**

Proposes an amendment to the Constitution to permit testifying criminal defendants to be impeached with evidence of prior convictions for crimes involving dishonesty. (SD1)

