
A BILL FOR AN ACT

RELATING TO EVIDENCE.

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

1 SECTION 1. Section 626-1, Hawaii Revised Statutes, is
2 amended by amending rule 702 to read as follows:

3 **"Rule 702 Testimony by experts[+]; intimate partner**
4 **battering.** (a) If scientific, technical, or other specialized
5 knowledge will assist the trier of fact to understand the
6 evidence or to determine a fact in issue, a witness qualified as
7 an expert by knowledge, skill, experience, training, or
8 education may testify thereto in the form of an opinion or
9 otherwise. In determining the issue of assistance to the trier
10 of fact, the court may consider the trustworthiness and validity
11 of the scientific technique or mode of analysis employed by the
12 proffered expert.

13 (b) In a criminal action, expert testimony regarding
14 intimate partner battering and its effects, including the nature
15 and effect of physical, emotional, or mental abuse on the
16 beliefs, perceptions, or behavior of victims of domestic
17 violence, may be offered by either the prosecution or the
18 defense except when offered against a criminal defendant to



1 prove the occurrence of the act or acts that form the basis of
2 the criminal charge. Expert opinion testimony on intimate
3 partner battering and its effects shall not be considered a new
4 scientific technique whose reliability is unproven."

5 SECTION 2. (a) Notwithstanding any other law or rule of
6 court governing post-conviction relief to the contrary, a person
7 who was convicted of and sentenced for a felony crime of
8 violence may file a motion for a new trial or to withdraw the
9 person's plea of guilty or no contest, at any time, on the basis
10 that expert testimony relating to intimate partner battering and
11 its effects, within the meaning of Rule 702, Hawaii Rules of
12 Evidence, was offered, but not received in evidence at the trial
13 court proceedings relating to the person's conviction, and is of
14 such substance that, had it been received in evidence, there is
15 a reasonable probability, sufficient to undermine confidence in
16 the judgment of conviction, that the result of the proceedings
17 would have been different. As used in this section, "trial
18 court proceedings" means those court proceedings that occur from
19 the time the accusatory pleading is filed until and including
20 judgment and sentence.

21 (b) If a person who files a motion under this section has
22 previously filed a petition for post-conviction relief, it is



1 grounds for denial of the motion that a court determined on the
2 merits in proceedings on the petition that the omission of
3 expert testimony relating to battered women's syndrome or
4 intimate partner battering and its effects at trial was not
5 prejudicial and did not entitle the petitioner to post-
6 conviction relief.

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval;
10 provided that section 2 shall be repealed on July 1, 2010.

11

INTRODUCED BY: _____

Cindy Evans

JAN 22 2008



Report Title:

Evidence; Intimate Partner Battering

Description:

Amends the rules of evidence to make expert testimony relating to intimate partner battering and its effects admissible in criminal cases. Authorizes petition for post-conviction relief until 7/1/2010 on the grounds that expert testimony relating to intimate partner battering and its effects was offered but not received in evidence.

