



Testimony to the Twenty -Fourth Legislature, 2008 Session

House Committee on Judiciary
The Honorable Tommy Waters, Chair
The Honorable Blake K. Oshiro, Vice Chair

Friday, February 1, 2008, 4:00 p.m.
State Capitol, Conference Room 325

by
Hawaii Supreme Court Standing Committee on the Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 3044, Proposing an Amendment to the Constitution of the State of Hawaii Relating to Testimony of Defendants in Criminal Cases

Judiciary's Position:

The Judiciary respectfully opposes this measure for the following reasons:

- (1) It would overrule State v. Santiago, 53 Haw. 254, 492 P.2d 657 (1971), which has been the law of this State for thirty-five years, without any valid reason given for such a profound change in the law.

The justification for the measure assumes that ascertaining the truth will be promoted by treating all witnesses and accused persons alike. Thus, it ignores the very foundation of Santiago, that because of the potential for "unfair prejudice" presented by the impeachment of defendants -- a potential not present when witnesses other than defendants are impeached -- differential treatment is not only justified but compelled by a fair view of due process of law.

The second reason listed by the proponents of this measure is that Hawaii's rule in this regard is "virtually unique." As if being "virtually unique" were a condition calling for improvement. This purported justification requires no refutation.

- (2) The fatal flaw in the justification for this measure is that no empirical analysis is offered. Changing the law of impeachment of accused persons will presumably increase the conviction rate. The assumption must be that Hawaii's "virtual uniqueness" results in a uniquely different conviction rate that merits



House Bill No. 3044, Proposing an Amendment to the Constitution of the State of
 Hawaii Relating to Testimony of Defendants in Criminal Cases
 House Committee on Judiciary
 Page 2

improvement. If that were true, then the foundation for rational debate would be presented. And, given the wealth of statistical data available from federal agencies, there seems little doubt that the raw material from which to make such a case is available. We are thus left to assume either that the case for change can't be made, or that the proponents of House Bill No. 3044 just haven't bothered to check.

The Hawaii Supreme Court Standing Committee on the Rules of Evidence reviewed this issue in 2004 and wrote the following in its 2004 Report of the Standing Committee on the Rules of Evidence: "The majority of the Standing Committee on the Rules of Evidence believes that it is not appropriate to use the constitutional amendment process to change the effect of a Hawaii Supreme Court decision regarding a rule of evidence. This is especially so when there are alternatives available. In this case, other alternatives include the following: (1) amending Rule 609 of the Rules of Evidence so that witnesses are treated the same as defendants; (2) appealing another case which is distinguishable on the facts so as to challenge the existing Hawaii Supreme Court decision; and (3) informing the Hawaii Supreme Court of cases from other jurisdictions that support the position being taken to persuade the Supreme Court to change its ruling."

Thank you for the opportunity to comment on House Bill No. 3044.

- Attachment 1: December 1, 2004 Memorandum to the Standing Committee on the Rules of Evidence, and Committee Members, from Jack Tonaki Re: HB No. 2372
- Attachment 2: Undated Memorandum (from Judge Gary W.B. Chang) entitled Proposed Language Re: Appropriateness of Amending the State Constitution to Overrule Evidence Decisions

000187

JOHN M. TONAKI
State Public Defender

DEFENDER COUNCIL
1130 N. Nimitz Hwy., Ste. A-254
Honolulu, Hawai'i 96817

HONOLULU OFFICE
1130 N. Nimitz Hwy., Ste. A-254
Honolulu, Hawai'i 96817

APPEALS SECTION:
Tel. No. 586-2080

DISTRICT COURT SECTION:
Tel. No. 586-2100

FAMILY COURT SECTION:
Tel. No. 586-2300

FELONY SECTION:
Tel. No. 586-2200

FAX: (808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

December 1, 2004

TIMOTHY E. HO
Chief Deputy

HILO OFFICE
275 Pōnahawāi Street, Suite 201
Hilo, Hawai'i 96720
Tel. No. 974-4571 Fax: 974-4574

KONA OFFICE
Central Kona Center Bldg. #9
81-948 Waiāna'ī Ōihana Loop, Ste. 110
Kealahou, HI 96750
Tel. No. 322-1945 Fax: 322-1949

KAUAI OFFICE
3060 Ewa Street
Lihue, Hawai'i 96766
Tel. No. 274-3418 Fax: 274-3422

MAUI OFFICE
81 N. Market Street
Wailuku, Hawai'i 96793
Tel. No. 984-5018 Fax: 984-5022

To: Standing Committee on Evidence

Fr: Jack Tonaki

Re: HB No. 2372

H.B. No. 2372 proposes to amend our state constitution to allow the legislature to provide that witnesses, including the defendant, can be impeached with evidence of prior felony convictions. H.B. No. 2372 also proposes to allow the legislature to provide that a criminal defendant's otherwise excludable statements may be admitted as impeachment or rebuttal evidence in criminal trials if the defendant testifies.

PRIOR FELONY CONVICTIONS

Currently the Hawaii Rules of Evidence ["HRE"] allow impeachment of a witness with evidence of a prior felony only where the crime is one involving dishonesty. Rule 609. In the case of a criminal defendant who testifies, impeachment with evidence of a crime involving dishonesty can only be undertaken by the prosecution if the defendant first introduces evidence tending to support his credibility.

If the legislature believes this rule is flawed, ineffective or insufficient as it pertains to witnesses other than the defendant, the rule can be changed without a constitutional amendment. The rules of evidence are a product of statute. In 2002, the Judiciary's Standing Committee on the Rules of Evidence conducted a comprehensive review of HRE, Article VI (which included Rule 609). There was no strong sentiment expressed toward broadening the rule on impeachment of witnesses with prior felony convictions. The effect of the admissibility of prior convictions on witnesses other than the defendant would be very prejudicial to the proponent of the witness. While credibility of a witness is always an issue at trial, and crimes of dishonesty are directly relevant to a person's credibility (and thus currently admissible under Rule 609), one must seriously question why a person who has been convicted in the past of possessing a small amount of drugs should not be believed, for example, as a victim of a sexual assault.

000188

4

The proponents of H.B. No. 2372 believe that a constitutional amendment is required to enable a change in the HRE to allow a criminal defendant who takes the witness stand to be impeached with evidence of a prior felony conviction. This belief emanates from the Hawaii Supreme Court's holding in State v. Santiago, 53 Haw. 254 (1971). In a pre-HRE ruling, the supreme court held that that to convict a criminal defendant where prior crimes have been introduced to impeach his credibility as a witness violated the accused's due process right to testify in his own defense. Santiago predates the enactment of the HRE and merely held that, under the rules and procedures which existed at the time, the use of the accused prior convictions violated his right to due process. Santiago does not prohibit the legislature from amending the HRE to allow for the impeachment of a criminal defendant with the use of prior convictions. A constitutional amendment is not required in this area.

With respect to the merits of amending the HRE to allow impeachment with a prior conviction, from a criminal defendant's perspective, to allow in evidence of a prior felony conviction would have an extremely prejudicial effect against the defendant in any case.

The justices in the Santiago case wrote:

A number of authorities have come to believe that when the witness to be impeached is also the defendant in a criminal case, the introduction of prior convictions on the issue of whether the defendant's testimony is credible creates a substantial danger that the jury will conclude from the prior convictions that the defendant is likely to have committed the crime charged. The danger of prejudice is scarcely mitigated by an instruction to consider the prior convictions only in determining whether or not the defendant's testimony is credible. To inform the jury in a rape case that the defendant has a prior rape conviction and then instruct them to consider the conviction only in evaluating the defendant's credibility is to recommend "a mental gymnastic which is beyond, not only their power, but anybody else."

53 Haw. at 258.

It will be impossible for jurors to separate their knowledge of the defendant's history and background from the facts of the case. Inevitably, some jurors will refuse to do it and will be adamant about "not letting a bad guy get away" even if the evidence against him is insufficient. H.B. No. 2372 would have a chilling effect on a defendant's right to testify in his/her own defense. If a defendant can be impeached with a prior felony conviction, what defendant in that position would ever take the witness stand to testify?

ADMISSION OF EXCLUDED STATEMENTS

In Santiago, the Hawaii Supreme Court also held that statements taken in violation of a criminal defendant's Miranda rights could not be used either as direct evidence in the prosecutor's case-in-chief or to impeach the defendant's credibility during rebuttal or cross-examination. In doing so, the supreme court chose to fashion greater protection under the Hawaii Constitution in this

area than the U.S. Supreme Court granted under the U.S. Constitution. Previously, in Harris v. New York, 401 U.S. 222 (1971), the U.S. Supreme Court held that that statements inadmissible under Miranda could nevertheless be used to impeach the testimony of a defendant who took the stand.

Quoting Justice Brennan's dissenting opinion in Harris, the Santiago court powerfully stated the reasons for its decision:

All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government . . . must accord to the dignity and integrity of its citizens. These values are plainly jeopardized if an exception against admission of tainted statements is made for those used for impeachment purposes. Moreover, it is monstrous that courts should aid or abet the law-breaking police officer. It is abiding truth that "[n]othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."

53 Haw. at 264.

Harris was a five to four decision which remains very controversial today. If the Hawaii Constitution is amended to adopt the Harris rule, Miranda protections would be significantly watered down in this state. Except for the fact that they would not be able to use a defendant's statement in their case-in-chief, law enforcement officers would not be deterred in using illegal tactics to obtain statements. A prosecutor would be able to unabashedly threaten a defendant who is contemplating testifying in his/her own defense with confrontation using an illegally obtained statement. In issuing the ruling in Santiago, our supreme court sought to preserve the dignity and security of the citizens of our state. The proposals in H.B. 2372 would rescind the protections extended by the Santiago court.

000190

Undated Memorandum (from Judge Gary W.B. Chang) entitled Proposed Language
Re: Appropriateness of Amending the State Constitution to Overrule Evidence
Decisions.

000191

Proposed Language Re: Appropriateness of Amending the State
Constitution to Overrule Evidence
Decisions

The Committee respectfully submits the following concerns with regard to the matter of amending the State constitution to overrule court decisions that pertain to evidentiary matters which turn upon constitutional principles. First, the doctrine of separation of powers does empower the legislature to make laws, including initiating the process for amending the constitution. However, it was the Committee's hope that legislators appreciated the sacredness of the constitution and that the practice of amending it to overrule court decisions should be used sparingly, if at all.

Second, the constitution, as the basic governing document from which all state authority derives, shapes the principles of government. Some expressed concern that the constitution should not be relegated to a supplemental repository of legislative enactments that change with the tides of public opinion. The constitution is more enduring. And the constitution should definitely not become a super code of evidence.

Third, when the legislature seeks to amend the constitution to overrule a court decision, what the legislature is actually doing is trumping the function of the judiciary, which is to interpret the law. Hawaii has a due process clause and our court's have interpreted it. Once the legislature starts down that slippery slope of amending the constitution every time there is a public outcry against a court decision, we will find ourselves in a situation where the constitution will become a super Hawaii Revised Statutes instead of a true constitution.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 3044, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE TESTIMONY OF DEFENDANTS IN CRIMINAL CASES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 1, 2008 **TIME:** 4:00 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Attorney General strongly supports this bill.

The purpose of this bill is to amend the State Constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

This amendment is intended to overrule the 1971 decision of the Hawaii State Supreme Court in the case of State v. Santiago, 53 Haw. 254 (1971), which held that the due process clause of the Hawaii Constitution barred the introduction of a criminal defendant's prior convictions to assist the trier of fact in evaluating that defendant's credibility.

In federal court and in the courts of almost all other states, when a criminal defendant testifies, some of the criminal defendant's prior convictions can be used to impeach that criminal defendant -- that is, to help the jury decide if he or she is telling the truth. But in Hawaii, State v. Santiago prohibits the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crime can be impeached in this way. In other words, if both a criminal defendant and a victim testify in the same case, and both have the same prior

conviction involving dishonesty, the jury will learn of the victim's prior conviction but not the defendant's. This is both unfair and makes no sense. And to our knowledge, although the Santiago case was decided 37 years ago, not one court anywhere has followed it or adopted the Santiago rule. This speaks volumes about its wisdom.

Hawaii is virtually unique, and as a result, the truth-finding function of trials suffers. This amendment would provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help juries find the truth and render fairer verdicts.

We respectfully request passage of this measure.

000194

Testimony of the State Office of the Public Defender
To the House Committee on Judiciary

February 1, 2008

RE: HB No. 3044: Proposing An Amendment to the Constitution of the State of Hawai'i Relating to Testimony of Defendants in Criminal Cases

Chair Waters and Members of the Committee:

HB No. 3044 proposes an amendment to our State Constitution to allow evidence that a defendant testifying in his/her own behalf in a criminal trial has been convicted of a prior crime involving dishonesty.

We oppose this bill. Our current caselaw and statutory provisions already make reasonable allowance for such evidence.

Evidence of any witness's prior conviction for a crime is generally not admissible except under certain specific circumstances which are set out in Rules 404 (b) and 403, Hawai'i Rules of Evidence. HRE Rule 404 permits the admission of other crimes, wrongs or acts against witnesses, for example, where the prosecution is attempting to prove identification, intent, or modus operandi.

As with any evidence found to be relevant, the court must still weigh whether or not the probative value of the evidence is outweighed by unfair prejudice. For example, in State v. Reyes, 66 Haw. 613 (1983), the state Supreme Court held that evidence of defendant's two prior escape convictions was relevant and probative for purpose of rebutting the defendant's claim of necessity.

Rule 609, Hawai'i Rules of Evidence, allows the impeachment of a witness with evidence that he has been convicted of a crime involving dishonesty. In criminal cases where the defendant takes the stand to testify, evidence of a prior criminal conviction, for the sole purpose of attacking credibility, is not admissible unless the defendant has "opened the door" by introducing testimony to establish credibility. In other words, a defendant who testifies "I've never been in trouble before" or "I would never break the law", etc., may be determined to have "opened the door" to such evidence.

The stated purpose of H.B. 3044 is to overrule the Hawai'i Supreme Court decision in State v. Santiago, 53 Hawai'i 254, 492 P.2d 657 (1971) in which the Court decided that admission of evidence of a prior conviction only to impeach a defendant's credibility when he takes the stand to testify in his own behalf imposes an unreasonable burden on a defendant's right to testify in denial of due process. The Court noted:

It is apparent, however, that prior convictions are of little real assistance to the jury in its determination of whether the defendant's testimony as a witness is credible. When the prior crime has nothing to do with

000195

dishonesty, there may be no logical connection whatsoever between the prior crime and the determination of whether the defendant may be believed. Furthermore, since the jury is presumably qualified to determine whether or not a witness is lying from his demeanor and his reaction to probing cross-examination, there would appear to be little need for evidence of prior convictions even if the crime involves false statements.

In Santiago, the Hawai`i Supreme Court did **not** deal with crimes of dishonesty or the situation covered by Rule 609 when the defendant has himself raised the issue of his own credibility:

We do not today deal with the situation where the defendant has himself introduced testimony for the sole purpose of establishing his credibility as a witness. Whether in those circumstances, the prosecutor may introduce evidence of prior convictions is a question which is not before us. (Emphasis added).

However, in State v. Pacheco, 96 Hawai`i 83, 26 P.3d 572 (2001), the Court confirmed that evidence of a prior conviction involving a crime of dishonesty is admissible against a defendant if offered in conformity with Rule 609:

This court therefore adopted the rule that “a prior conviction may come in if, but only if, the trial judge, in his [or her] discretion, feels that the party offering the evidence has satisfactorily shown that the conviction to be proved rationally carries probative value on the issue of the truth and veracity of the witness.”

....

In the context of criminal matters, then, it is incumbent upon the prosecution to establish, and upon the trial court expressly to find, that a **defendant’s** prior conviction, which has been proffered to **impeach** the **defendant’s** testimony, is of a “**crime of dishonesty**,” such that it is relevant to and probative of the **defendant’s** veracity as a witness. (Emphasis in the original).

It is clear that our current caselaw in Hawai`i permits evidence of a prior conviction for a crime of dishonesty in cases where the defendant has raised the issue of his or her credibility. We believe that is appropriate and no additional change is required.

Thank you for the opportunity to comment on this matter.

000190

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE TOMMY WATERS, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-fourth State Legislature
Regular Session of 2008
State of Hawaii

February 1, 2008

**RE: H.B. 3044; PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE
STATE OF HAWAII RELATING TO TESTIMONY OF
DEFENDANTS IN CRIMINAL CASES.**

Chair Waters and members of the House Judiciary Committee, the Department of the Prosecuting Attorney submits the following testimony in strong support of House Bill 3044.

The purpose of this bill is to propose amendments to Article VI of the State Constitution that would permit convictions of crimes of dishonesty to be admitted against criminal defendants when it would assist a judge or jury in evaluating the credibility of the defendant to the same extent as with any other testifying witness.

In Hawaii, witnesses other than the defendant may be impeached by use of prior convictions. However, based upon a ruling by the Hawaii Supreme Court in State v. Santiago, 53 Haw. 254 (1971) the defendant may not be impeached by use of prior convictions, even if those prior convictions involves crimes relating to the making of false statements or dishonesty. This is in direct contrast with the federal rules of evidence which permit the introduction of the prior conviction as long as the probative value of the evidence outweighs its prejudicial effect to the defendant. In addition, the federal rules of evidence permit the use of any conviction of dishonesty or false statement for impeachment of the defendant.

We strongly support this amendment. Not only does it bring the state law in conformity with the federal practice and the practice in almost all other states, it also ensures that all witnesses, i.e. crime victims, defendants and other witnesses will be more similarly treated for the purposes of impeachment.

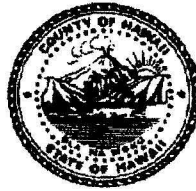
000197

Under this amendment, even if the statement was excluded in the State's case, it could be admissible to impeach the defendant if the defendant testifies. The defendant's statement could be excluded from the state's case for a variety of reasons, such as the failure to give Miranda warnings; however the mere fact that the statement is excludable in the state's case should not prevent the statement from being used to confront a defendant who is testifying differently at trial. To prevent the use of the excludable statement against a testifying defendant who is now telling a version of events inconsistent with the prior excludable statement simply amplifies the likelihood that a defendant will testify untruthfully.

For these reasons, we strongly support the passage of this bill and thank you for this opportunity to testify.

000198

Harry Kim
Mayor



Lawrence K. Mahuna
Police Chief

Harry S. Kubojiri
Deputy Police Chief

County of Hawaii

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawaii 96720-3998
(808) 935-3311 • Fax (808) 961-8865

January 31, 2008

Representative Tommy Waters
Chairperson and Members
Committee on Judiciary
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

**Re: HOUSE BILL 3044, PROPOSING AN AMENDMENT TO THE CONSTITUTION
OF THE STATE OF HAWAII RELATING TO TESTIMONY OF DEFENDANTS
IN CRIMINAL CASES**


Dear Representative Waters and Members:

The Hawai'i Police Department supports the passage of House Bill 3044, Proposing an Amendment to the Constitution of the State of Hawai'i Relating to Testimony of Defendants in Criminal Cases, to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

As pointed out by the Office of the Attorney General, in federal courts and in the courts in almost all other states, when a criminal defendant or any other witness testifies, the witness's prior convictions for crimes involving dishonesty can be used to impeach the witness; thus, to help the jury decide if the witness is telling the truth. In Hawai'i, the truth-finding function of trials in Hawai'i State Courts suffers as a result of the Hawai'i Supreme Court ruling in the case of State v. Santiago. The passage of this amendment would reverse the effects of this (Santiago) decision and allow for testifying defendants to be impeached with evidence of prior convictions for crimes involving dishonesty, like other witnesses testifying in criminal cases.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on H.B. No. 3044.

Sincerely,


LAWRENCE K. MAHUNA
POLICE CHIEF

000199

"Hawai'i County is an Equal Opportunity Provider and Employer"

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

February 1, 2008

The Honorable Tommy Waters, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

Subject: House Bill No. 3044, Proposing an Amendment to the Constitution of the State of Hawaii
Relating to Testimony of Defendants in Criminal Cases

I am Janet Crotteau, Captain of the Criminal Investigation Division of the Honolulu Police
Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 3044, which proposes an amendment
to the Constitution of the State of Hawaii, allowing prior convictions of defendants to be presented in court
to impeach their testimony.

The current guidelines do not allow the use of a defendant's prior convictions for impeachment
purposes although it does allow this practice with victims and witnesses. This bill is very specific and only
allows the admission of the defendant's convictions involving dishonesty to be used if a defendant
provided testimony. This will align state laws with federal laws in this area.

Passage of this bill would benefit everyone involved in the judicial process because juries and
judges would have additional information upon which to weigh the credibility of any statements made by
the defendant.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Janet Crotteau in cursive script.

JANET CROTTEAU, Captain
Criminal Investigation Division

APPROVED:

for: Handwritten signature of Boisse P. Correa in cursive script.
BOISSE P. CORREA
Chief of Police

000200

Serving and Protecting With Aloha



POLICE DEPARTMENT
COUNTY OF MAUI



CHARMAINE TAVARES
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

January 31, 2008

The Honorable Tommy Waters, Chair
And Members of the
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members of the Committee:

**SUBJECT: House Bill No. 3044, Proposing an Amendment to the
Constitution of the State of Hawaii relating to Testimony of
Defendants in Criminal Cases.**

I am Thomas M. Phillips, Chief of Police of the Maui County Police Department. We are supporting House Bill No. 3044, relating to the proposed amendment to the Constitution of the State of Hawaii related to Testimony of Defendants in Criminal cases.

The purpose of this bill is to amend the State Constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

This amendment is intended to overrule the 1971 decision of the Hawaii State Supreme Court in the case of State v. Santiago, which held that the due process clause of the Hawaii Constitution barred the introduction of a criminal defendant's prior conviction to assist the trier of fact in evaluating that defendant's credibility.

Federal courts and in the courts of almost all other states, when a criminal defendant testifies, some of the criminal defendant's prior convictions can be used to impeach that criminal defendant. But in Hawaii, State v. Santiago prohibits the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crimes can be impeached in this way. For example, if both a criminal defendant and a victim testify in the same case, and both have the same prior conviction involving dishonesty, the jury will learn of the victim's prior conviction, but not the defendants. This is unfair.

000201

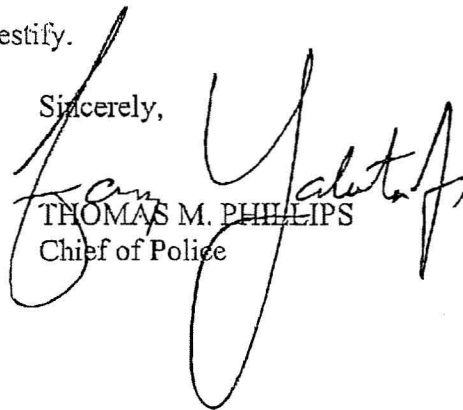
The Honorable Tommy Waters, Chair
And Members of the
Committee on Judiciary
January 31, 2008
Page 2

This amendment would provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help jurors find the truth and render fairer verdicts.

The Maui County Police Department respectfully urges you to support the passage of House Bill No. 3044, proposing an Amendment to the Constitution of the State of Hawaii related to the Testimony of Defendants in Criminal cases.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS
Chief of Police

000000