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**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 as  
7 with any other testifying witness. The amendment of article XVI  
8 is intended to overrule the 1971 decision of the Hawaii supreme  
9 court in the case of State v. Santiago, 53 Haw. 254 (1971), which  
10 held that the due process clause of the Hawaii Constitution  
11 barred the introduction of a criminal case defendant's prior  
12 convictions to assist the trier of fact in evaluating that  
13 defendant's credibility.

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

1 of prior convictions to impeach a defendant (unless the defendant  
2 puts the defendant's credibility at issue), while at the same  
3 time allowing victims and all other witness to be so impeached,  
4 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 involving  
13 dishonesty should also be allowed. This would help, rather than  
14 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 the

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

14  
15 INTRODUCED BY:

Calvin K. Ay

16 BY REQUEST

JAN 26 2009

**Report Title:**

Constitutional Amendment; Testimony

**Description:**

Amends Hawaii's Constitution so that in criminal cases, juries and fact finders can learn of prior convictions involving dishonesty of testifying defendants, to the same extent as with any other testifying witness in a criminal case.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO TESTIMONY OF DEFENDANTS IN CRIMINAL CASES.

PURPOSE: The purpose of this bill is to propose an amendment to the Constitution of the State of Hawaii to permit testifying criminal defendants to be impeached with evidence of prior convictions for crimes involving dishonesty.

MEANS: Add a new section to article XVI of the Constitution of the State of Hawaii.

JUSTIFICATION: When a defendant or any other witness testifies in federal court, a prior conviction can be used for impeachment purposes if the prior conviction involves dishonesty or false statement.

Currently, state law prohibits the use of an accused's prior convictions to impeach the accused person. The proposed constitutional amendment would allow an accused's prior convictions for crimes involving dishonesty to be used to impeach the accused person if the accused person testifies in that person's own trial. It would bring state law in line with federal law regarding the admissibility of prior convictions to impeach witnesses.

Impact on the public: This bill will be beneficial to the public because it will allow juries to have important information that will aid in their evaluation of a defendant's credibility when the defendant chooses to testify.

Impact on the department and other agencies: This bill will help the department and other

criminal justice agencies because prosecutors will be required to rebut false testimony by defendants less often.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.