

STAND. COM. REP. NO.

1202

Honolulu, Hawaii

APR 09 2009

RE: H.B. No. 349  
H.D. 1  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred H.B. No. 349, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII RULES OF EVIDENCE,"

begs leave to report as follows:

The purpose of this measure is to allow the admission of character evidence showing the aggressiveness of the defendant if the court allows the admission of character evidence, offered by the defendant, showing the aggressiveness of the alleged victim.

Your Committee received testimony in support of this measure from several entities. Testimony in opposition was received from one organization. Written testimony presented to the Committee may be reviewed on the Legislature's website.

This measure is recommended for adoption by the Hawaii Supreme Court's Standing Committee on the Rules of Evidence. This measure would conform the Hawaii Rule of Evidence 404(a) to its federal counterpart, Federal Rule of Evidence 404(a), which received a similar amendment in 2000.

This measure makes clear that the accused cannot attack the alleged victim's character and yet remain shielded from the disclosure of equally relevant evidence concerning the same character trait of the accused. Commonly, in a homicide or assault case the defense asserts self defense. The question typically presented is whether the accused or the victim was the



first aggressor. If the accused seizes the initiative under Rule 404(a)(2) and offers evidence of the violent character of the victim, then this amendment will allow the prosecution to offer similar evidence of the same character trait of the accused.

According to testimony of the State Attorney General, under this measure, judges still retain their discretion to determine whether particular evidence or testimony is admissible at trial. This measure does not open the doors to all evidence of aggressiveness. Nonetheless, your Committee has concerns about this measure as raised by the Office of the Public Defender concerning possible distraction of the jury away from the facts of the case and the chilling effect on the defendant's right to present evidence in his or her own defense.

Accordingly, your Committee has amended this measure by changing the effective date to July 1, 2075 to continue the discussions.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 349, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 349, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Government Operations,



BRIAN T. TANIGUCHI, Chair



