

STAND. COM. REP. NO.

2459

Honolulu, Hawaii

MAR 01 2012

RE: S.B. No. 2899

S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 2899 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to amend the Hawaii Rules of Evidence to allow the prosecution to attack the character of the accused when the accused attacks the character of the alleged victim.

Your Committee received testimony in support of this measure from the Judiciary, and the Office of the Prosecuting Attorney of the County of Hawaii. Testimony in opposition to this measure was submitted by the Office of the Public Defender.

Your Committee finds that in general, evidence of a person's character or a trait of a person's character is not admissible for the purpose of proving action in conformity with a particular occasion. As such, the accused may attack the alleged victim's character and remain shielded from equally relevant evidence concerning the same character trait of the accused. This measure conforms rule 404(a)(2), Hawaii Rules of Evidence, to its federal counterpart, the Federal Rules of Evidence, and provides that when the accused attacks the character of the alleged victim, the door is open for an attack on the same character trait of the accused.

Your Committee notes the example provided in the Judiciary's testimony that involves a homicide or assault case in which the



defense asserts self defense. The question typically presented is whether the accused or the victim was the first aggressor. If the accused offers evidence of the violent character of the victim under Rule 404(a), Hawaii Rules of Evidence, this measure then allows the prosecution to offer similar evidence of the same character trait of the accused.

Your Committee has amended this measure by:

- (1) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (2) Making a technical, nonsubstantive amendment for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2899, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2899, 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  
Labor,



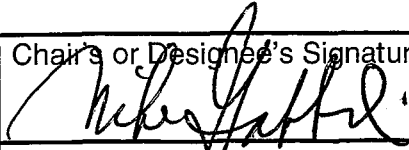
---

CLAYTON HEE, Chair



The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 2899</b>	Committee Referral: <b>JDL</b>	Date: <b>2-22-12</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les				✓
SLOM, Sam	✓			
<b>TOTAL</b>	<b>3</b>	<b>—</b>	<b>—</b>	<b>2</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original             Yellow             Pink             Goldenrod (File with Committee Report)             Clerk's Office             Drafting Agency             Committee File Copy				

\*Only one measure per Record of Votes