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TESTIMONY IN SUPPORT WITH AMENDMENTS TO
SENATE BILL 2899

A BILL FOR AN ACT RELATING THE HAWAII RULES OF
EVIDENCE

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 22, 2012, 9:45 AM
State Capitol, Conference Room 016

Senators Hee, Shimabukuro and Members of the Committees:

The Hawaii County Office of the Prosecuting Attorney supports Senate Bill 2899 with Amendments.

Provides that if evidence of an alleged victim's trait of character for aggressiveness is offered by an accused and admitted under rule 404(a)(2), then evidence of the same trait of character of the accused offered by the prosecution may be admissible.

This Bill reflects the 2008 work of the Standing Committee on Rules of Evidence, which was established by the Chief Justice in 1993, comprised of Judges, and Attorneys from both sides of the criminal bar. This bill originally was HB 349, HD1 and the companion SB 65 which passed this committee unanimously on February 2, 2009, and passed the full Senate unanimously as well. The states of California, Colorado, Delaware, Kentucky, Michigan, North Dakota, Pennsylvania, Utah, and Vermont have all passed similar versions.

We would recommend inserting "may be offered by the prosecution". The earlier draft in 2009 had such language, "may be" should be added to the last sentence of the first exception which is line number 12 of the present bill. The Federal rules of evidence use the language, "under Rule 404(a)(2) evidence of the same trait of character of the accused offered by the prosecution."

This Bill as amended would allow the prosecution to offer evidence of the aggressive character of the accused when the accused has offered evidence of the victim's aggressive character. The wisdom of the Federal Rules of Evidence is to allow this rebuttal testimony.

Rule 404 (a)(1), Federal Rules of Evidence, was amended in 2000 to provide the balance we seek here. The Federal rule is broader than this current bill, in that the federal rule allows evidence about any trait of character of the accused, when that specific trait of character of the

alleged victim is raised by the accused. SB 2899 has a narrower focus, in that we are asking only that evidence be allowed when the alleged victim's trait of character for aggressiveness is raised as an issue by the accused.

SB 2899 is necessary, because current state law does not allow the government to introduce negative character evidence as to the accused, unless the accused introduces evidence of good character. If the accused does not try to prove his own good character, but nevertheless goes after the character of the alleged victim, the government's hands are tied. This imbalance is unfair. SB 2899 would correct this, making 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 (aggressiveness) of the accused.

For these reasons the Hawaii County Office of the Prosecuting Attorney supports SB 2899 with the above Amendments.

Thank you for the opportunity to testify on this matter.