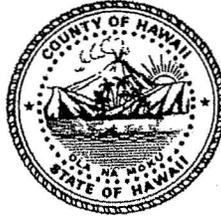


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Testimony In Support of HB 1644
Proposing An Amendment To Article Of The Hawaii State Constitution to Require The
Admission Of Relevant Evidence In Criminal Cases Unless Excluded By Law

Hearing before the State House Judiciary Committee
Tuesday, February 17, 2009, 2:00 p.m.

Submitted by Charlene Y. Iboshi, First Deputy Prosecuting Attorney for
Jay T. Kimura, Prosecuting Attorney

TO: Honorable Chair Jon Riki Karamatsu and Committee Members:

We support the House Bill HB 1644, proposing a Constitutional Amendment

The purpose of this bill is to propose a provision to the Hawaii Constitution which would give the fact-finders, as the jury or judges, the ability to use truth-finding evidence. The provision is intended to provide that evidence admissible under U.S. Supreme Court decisions would also be admissible under state constitutional provisions.

The Hawaii State Supreme Court and the Intermediate Court of Appeals, as the interpreters of the State Constitution, have not hesitated to read into the State Constitution protections for defendants far greater than those provided under interpretations by the United States Supreme Court of similar provisions in the United States Constitution. By providing greater protections to Hawaii criminal defendants, we believe the balance between the constitutional rights of the criminal defendant, and the right of victims and the public to have relevant evidence presented to judges and juries, has been skewed.

For example, in one of our double homicide cases, *State v. Valera*, the defendant made statements to the police showing that he suspected his wife was being unfaithful, so he got a gun and "laid in wait" to catch her and intended to kill her. He shot his wife, chased down the other person, and killed him, too. The judge suppressed the statement, and did not allow the state to cross-examine the defendant to impeach him to show he got the gun and was waiting to shoot his wife. This prohibited the jury from getting crucial information about the defendant's intent to kill both of the victims and that he planned it if he caught them. The jury found him guilty of manslaughter, under "heat of passion" mitigation. The Hawaii Supreme Court did not allow the sentencing court to use the suppressed information for sentencing either.

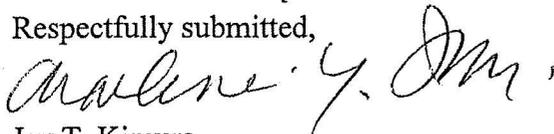
HB 1644 would address this imbalance and provide more protection to our citizenry while giving appropriate deference to the rights of an accused. The defendant's statements could not be used against him under federal law, until he put himself on the stand and lies or claims a certain state of mind different than what he told the police. Under Hawaii law, the probative and relevant evidence is kept from the jury, almost misleading them. Juries always say, if the State had the evidence, they would have produced it.

It is also fair to say that, without this amendment, large discrepancies between Hawaii case law and federal case law interpreting admissibility have been created, and the effect the Hawaii decisions have had on public safety as well as justice for crime victims and society has not been positive.

For these reasons, we ask for your favorable consideration of HB 1644, allowing the constitutional amendment proposed by this bill to be sent to the electorate for its consideration

Thank you for allowing me to testify.

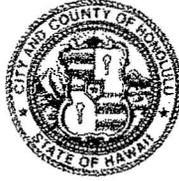
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jay T. Kimura".

Jay T. Kimura
Prosecuting Attorney

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DEPUTY CHIEFS

OUR REFERENCE KL-NTK

February 17, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 1644, Proposing an Amendment to Article I of the Hawaii State Constitution to Require the Admission of Relevant Evidence in Criminal Cases Unless Excluded by Law

I am Kevin Lima, Assistant Chief of the Investigative Bureau of the Honolulu Police Department, City and County of Honolulu.

House Bill No. 1644, Proposing an Amendment to Article I of the Hawaii State Constitution to Require the Admission of Relevant Evidence in Criminal Cases Unless Excluded by Law, unlike House Bill No. 839, Proposing an Amendment to Article I of the Hawaii Constitution, lacks the following additional wording, "any other provision of this constitution notwithstanding," from the beginning of the substantive amendments. The omitted phrase may subject the amendment to an unintended misinterpretation. The Honolulu Police Department would support this bill if the phrase were inserted.

Passage of this amended bill will address the imbalance of rights created by our higher courts that provide greater protection for defendants than for victims and the public. The amendment, with the phrase inserted, makes it clear that relevant evidence will always be admitted in criminal trials unless its exclusion is pursuant to the United States Constitution, the laws of the United States, or the laws of the State of Hawaii.

The Honorable Jon Riki Karamatsu, Chair
and Members

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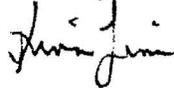
February 17, 2009

The new section would read, "Any other provision of this constitution not withstanding, relevant evidence shall not be excluded from evidence in criminal cases except pursuant to the laws or Constitution of the United States or a State of Hawaii statute."

The Honolulu Police Department urges you to pass House Bill No. 1644, Proposing an Amendment to Article I of the Hawaii State Constitution to Require the Admission of Relevant Evidence in Criminal Cases Unless Excluded by Law, with the inserted phrase.

Thank you for the opportunity to testify.

Sincerely,



KEVIN LIMA, Assistant Chief
Investigative Bureau

APPROVED:



BOISSE P. CORREA
Chief of Police

**Testimony of Ronette M. Kawakami.
Office of the Public Defender
Appellate Division to the House Judiciary Committee**

February 17, 2009

H.B. 1644: PROPOSING AN AMENDMENT TO ARTICLE I OF THE HAWAII STATE CONSTITUTION TO REQUIRE THE ADMISSION OF RELEVANT EVIDENCE IN CRIMINAL CASES UNLESS EXCLUDED BY LAW

CHAIRPERSON KARAMATSU, VICE CHAIR ITO, AND MEMBERS OF THE COMMITTEE:

The Office of the Public Defender strongly opposes HB 1644 inasmuch it is an attempt to dilute the strength of the Hawaii Constitution and circumvent the Hawaii Supreme Court's rulings on evidence in criminal cases.

This proposed amendment to the Constitution would require that all our evidentiary rulings in criminal cases follow the laws or Constitution of the United States. The inclusion of "or State of Hawaii statute" in the bill is superfluous because, as proposed, any evidence statute under Hawaii Law would be subject to the United States laws and Constitution. In other words, a Hawaii statute would not trump the U.S. Constitution, and as such, State of Hawaii law regarding evidence in criminal cases would have no effect.

Allowing the abdication of State power to the Federal Government would indicate that the citizens of Hawaii are incapable of governing themselves and thus need the patronizing hand of the Federal Government to do it for them. This position is untenable and must be quashed.

It is important to remember that Hawaii is a unique place. We are the most diverse state in the union. Now in 2009, the 50th anniversary of Hawaii's Statehood, the proponents of this bill would have us step backwards in time when Washington made all the decisions for Hawaii. To allow nine justices, living 5,000 miles away decide some of the most important decisions in our criminal justice system is without justification. In 50 years of Statehood, it was not until the current Prosecutor's administration; has there been repeated pushes to change our State Constitution. Not agreeing with the Hawaii Supreme Court's interpretation of law is no reason to change our Constitution.

Any 5th grader knows that our system of government is designed to protect against any one person or group from becoming overly powerful through our constitution, and the checks and balances of our judiciary, legislative and executive

branches. This proposed amendment to the Hawaii Constitution blatantly seeks to obliterate the balance of the State judiciary, and use only the judicial ruling body that they prefer. The checks and balances are there for a reason. They are there to protect everyone—not just the rich, or politically powerful, or popular causes. Obliterating an entire branch—the Hawaii Judiciary-- strikes at the very foundations of our government. Certainly, throughout our history, one branch will be stronger than another. But it is that ebb and flow of power between the three that keeps unbridled power in check. Taking power from the Hawaii judiciary damages our governmental foundation which will be virtually impossible to undo.

Decisions regarding the admissibility of evidence in Hawaii State Courts should be left to the Hawaii Supreme Court, who is best suited to interpret state laws and our State Constitution.

Thank you for the opportunity to comment on this matter.