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**TESTIMONY IN SUPPORT OF  
SENATE BILL NO. 509  
A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE  
HAWAII CONSTITUTION TO ESTABLISH CRIME VICTIM RIGHTS**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

Senate Committee on Judiciary and Labor

Thursday, February 7, 2013  
10:00 a.m., Room 016

Honorable Chair Hee, Vice-Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 509.

The purpose of Senate Bill No. 509 is to amend Article I of the Constitution of the State of Hawai'i to ensure that crime victims are guaranteed fair treatment, the right to be informed of the major developments of their case, to have input into plea negotiations and sentencing, and the right to restitution.

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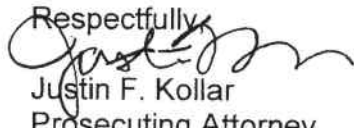
By creating a constitutional amendment establishing a crime victim's bill of rights, the weight of it will ensure that the rights of victims and witnesses are globally addressed appropriately by law enforcement agencies, prosecutors, judges, etc. Nonetheless, it would create a permanent balance in the rights for victims and defendants.

Currently, House Bill No. 236 proposes the right for a victim to be notified on the status of the defendant's whereabouts, fitness to stand trial, discharge etc. It is clear that measures within the legislature are still being proposed in order to clearly define the rights to victims to afford them the same protection and participation in their cases as defendants are given.

It is important that the Constitution of the State of Hawai'i is amended as such considering it is *the* fundamental basis of principles regarding authority and governance within our State.

For these reasons, we are in strong support of Senate Bill No. 509. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", written over the word "Respectfully".

Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Blvd. 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813

**TED SAKAI**  
INTERIM DIRECTOR

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Deputy Director of  
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Deputy Director  
Corrections

**KEITH KAMITA**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 509  
A BILL FOR AN ACT RELATING TO  
PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE  
STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS

By

Ted Sakai, Interim Director  
Department of Public Safety

Senate Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, February 7, 2013, 10:00 a.m.  
State Capitol, Room 16

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of Senate Bill 509 that proposes an amendment to the Constitution of the State of Hawaii guaranteeing that crime victims and their immediate surviving family members have specific rights.

The Department ask that this measure be considered in light of the rights already granted victims and witnesses in the Hawaii Revised Statutes, Chapter 801D.

The Department of the Attorney General (AG) has expressed concerns about various sections of the proposed bill, and PSD defers these concerns to the AGs.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE CLAYTON HEE, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2013**  
**State of Hawai`i**

February 7, 2013

**RE: S.B. 509; PROPOSING AN AMENDMENT TO ARTICLE I OF THE  
CONSTITUTION OF THE STATE OF HAWAII RELATING TO RIGHTS OF  
CRIME VICTIMS**

Good morning, Chair Hee, Vice Chair Shimabukuro and members of the Judiciary and Labor Committee, thank you for the opportunity to testify before you today. The Department of Prosecuting Attorney provides the following testimony **in strong support of S.B. 509**, which proposes an amendment to Article I of the Constitution of the State of Hawaii to establish a section on crime victims' rights.

We are strongly supportive of the concept of an amendment to Hawaii's Constitution clearly establishing the rights of crime victims, as it will help to effectuate the type of legal protections currently available to criminal defendants. As we once again approach this critical issue for victims, we find ourselves at the same crossroads we have visited before. Deciding how to effectively assure crime victims' rights in a justice system designed for the needs and rights of the accused is no easy task. It took nearly seven years to establish Hawaii's current victims' rights statute, *H.R.S. Chapter 801D*. Its passage was due in large part to the efforts of this Committee, which was at that time also headed by its current chair, Senator Hee. Although previous attempts have been made to enact constitutional rights for crime victims (most notably by this Committee in 1997), it was a road far less traveled in the past. According to the National Center for victims of Crime, thirty-two (32) states now have some type of constitutional protection for victims' rights. In states that have successfully passed such amendments (none has ever failed a public vote) an average of more than seventy percent (70%) of voters has favored the passage of these measures.

However, we do not suggest that Hawaii's constitution should be amended to protect victims simply because it is a popular idea. We are here in strong support of this measure because **it is the right thing to do**. Similar to the rights of the accused, it is justice and fairness that demand that victims be given meaningful and enforceable rights within Hawaii's criminal justice process. The rule of law that protects the rights of the accused, regardless of how unpopular, and victims have the right to expect no less. As stated in the bill's purpose clause, the rights of victims "should be protected in a manner no less vigorous than those of the accused." It is a constitutional amendment that can provide the legal backbone to assure that this slogan can become a reality.

As to the specifics of the proposed language in the constitutional amendment, we reiterate our belief that the enumerations of each specific right to be granted to victims be included in the amendment. Among those that we view as critical are: the right to restitution, the right to be notified of "major developments" in a case, the right to be present at all public court proceedings on their case (except where a court determines that the victim's testimony will be materially affected), the right to be consulted by the prosecution regarding proposed plea agreements, the right to be heard at all criminal justice proceedings that involve the sentencing, incarceration or release of an offender, and finally, the right to be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice process. Just as importantly, an effective constitutional amendment should empower the Legislature to enact some type of meaningful enforcement measure. We agree with the bill's provisions for enforcement as the lack of legislative enforcement power could ultimately render any implementation ineffective and futile.

A constitutional amendment would not take away any of the precious rights of the accused that we all cherish. It would only give victims the essential rights of participation that the constitution currently provides to defendants. Nor would it curtail the discretion our system provides for such decision makers as prosecutors and judges. However, it would guarantee that victims would be able to see and hear the way that their cases are being handled, and to have their concerns heard by the decision makers.

There will be no fair and equal treatment of victims until their rights are guaranteed by our state and federal constitutions. Our constitution is our most powerful legal document. It is the final authority assuring the rights of the accused. The victims deserve no less. The constitution is the measure of what we believe basic justice should be. It reflects what we are as a people, and should assure the fundamental fairness that we expect from our government.

In conclusion, we urge your strong support for S.B. 509. Thank you for your time and consideration.



Mothers Against Drunk Driving HAWAII  
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February 7, 2013

To: Senator Clayton Hee, Chair –Senate Committee on Judiciary and Labor; Senator Maile S.L. Shimabukuro, Vice Chair; and members of the committee

From: Carol McNamee/Arkie Koehl — Co-chairmen, Public Policy Committee - MADD Hawaii

Re: Senate Bill 509 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims

---

I am Carol McNamee, representing MADD Hawaii and speaking in support of SB 509 which calls for a Constitutional Amendment for Victims Rights. MADD is one of the largest victim service organizations in the Country. In Hawaii, MADD provides services for victims of homicide as well as for negligent homicide, negligent injury, manslaughter, failure to render aid and for any victim of an impaired driving crash, whether or not the offender is charged or convicted. A MADD memorial in Kaka'ako Waterfront Park stands as testimony to the indescribable pain resulting from the losses that hundreds and hundreds of victims of violent crime experienced after the tragedy which either killed or injured their loved one – or loved ones.

Too often, these victims are destined to suffer more pain when they are revictimized by the criminal justice system which is supposedly designed to support victims through the court process and deliver justice in the end. There is no doubt that gains have been made over the 29 years that MADD has been serving victims in Hawaii. The Victim Bill of Rights in Hawaii Revised Statutes was enacted in 1987 and certainly provides the basis for more rights than were even articulated before the 1980's. However, in Hawaii and in other states across the country, victims have found that there are times when statutory rights are not enough. There is no guarantee the justice described on paper will actually be delivered. "Victims still do not receive justice that affords rights of access and participation that are equal to those of accused." (*National Association of Attorneys General – 2000*). For this reason, 33 states have now given victims the gift of a state constitutional amendment for Victims Rights. In most states a high percentage of the electorate voted to adopt the constitutional amendment. MADD is hopeful that there will also eventually be a U. S. Constitutional amendment.

Senate Bill 509 will offer Hawaii victims important protections including the right :

- To be treated with courtesy, fairness and dignity
- To be protected from threats of harm
- To be informed of their constitutional rights and available programs of assistance (financial and other)

- To a speedy trial or disposition of their case
- To be notified, in a timely manner, of various proceedings and developments in their case
- To be present at all public court proceedings unless their presence could materially affect their testimony
- To be advised of plea agreements
- To be notified in a timely manner, to be heard in, and participate in any process or deliberation that could result in an offender's release, negotiated plea, or sentencing – or in a change in the offender's status
- To have property expeditiously returned, and
- To receive prompt restitution from the convicted offender

It is important to stress that the request to strengthen victims' rights through a state constitutional amendment is not intended to diminish any rights of the offender. It is important that victims gain more equality with offenders in how they are treated by the criminal justice system. This feeling of equality can help the victim regain a feeling of control and contribute to their eventual healing. As our statue in Kaka,ako Park portrays, the families of victims will always have a hole in their hearts but the knowledge that they have constitutionally protected rights will help them through the difficult criminal justice process and beyond. As a MADD past president who attended the dedication of our Victim Memorial said, "Criminal defendants have the *right* to remain silent; crime victims all too often are *required* to remain silent. Where is the justice in that?"

MADD encourages this committee to pass SB 509. Thank you for the opportunity to testify in support of this important measure.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

*Executive Director*  
Adriana Ramelli

DATE: February 7, 2013

*Advisory Board*

TO: The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

Joanne H. Arizumi

FROM: Alana Peacott-Ricardos, Policy Research Associate  
The Sex Abuse Treatment Center

Mark J. Bennett

Andre Bisquera

RE: S.B. 509  
Proposing an Amendment to Article I of the Constitution of the State of  
Hawai'i Relating to Rights of Crime Victims

Marilyn Carlsmith

*Senator*

Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

*Councilmember*

Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruschetta

Good morning Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC strongly supports S.B. 509 to propose an amendment to the Constitution of the State of Hawai'i to provide recognized and protected constitutional rights for crime victims and their survivors.

SATC serves hundreds of victims of sexual violence each year. As our services include legal systems advocacy to support victims through judicial proceedings, we are well-aware of the challenges victims can encounter in the criminal justice system. We firmly believe that victims must be afforded certain basic rights throughout the process. In particular, victims should have the right to a speedy trial; to be notified of major developments in the case; to be present a public court hearings (unless it would affect the victim's testimony); to be consulted and advised of plea agreements; to be notified and able to participate in processes relating to sentencing, release, or other dispositions of the offender; and to receive restitution. We further believe that these rights should be guaranteed by our state constitution.

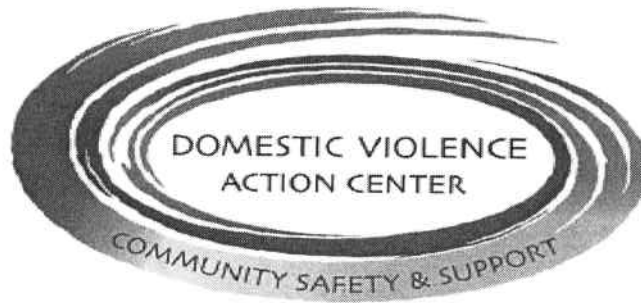
Although Hawai'i has a basic bill of rights for crime victims and witnesses, victims still do not have the type of legal protections currently available to criminal defendants. In enacting Chapter 801D of the Hawai'i Revised Statutes, the Legislature expressly stated that its intent was "to ensure that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." Despite this, the Constitution of the State of Hawai'i affords criminal defendants a number of protections, yet is silent with respect to the rights of victims.



The proposed amendment would not take away any of the rights currently afforded to the accused or curtail the discretion our system provides for prosecutors and judges. Instead, it would give victims the essential rights of participation that are now provided to defendants and guarantee that victims would be aware of how their cases are being handled and have their voices heard.

We urge you to pass S.B. 509. Our constitution is our most powerful legal document. It is the authority that assures that the rights of the accused are protected and victims deserve no less.

Thank you for the opportunity to testify.



Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice-Chair  
Committee on Judiciary and Labor

Nanci Kreidman, M.A.  
Chief Executive Officer  
P.O. Box 3198  
Honolulu, Hawaii 96801  
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Thursday, February 7, 2013; 10:00 am  
State Capitol, Conference Room 016

TESTIMONY IN SUPPORT OF  
SENATE BILL 509  
A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE  
HAWAII CONSTITUTION TO ESTABLISH CRIME VICTIM RIGHTS

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

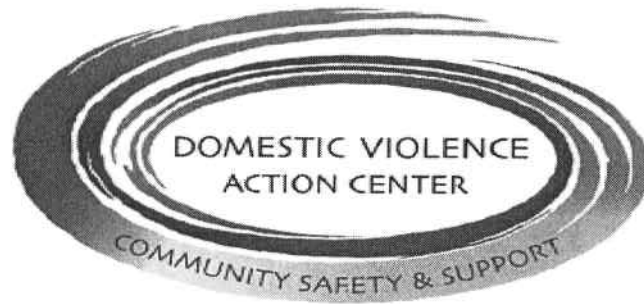
Thank you for providing the Domestic Violence Action Center (DVAC) with the opportunity to testify in support of Senate Bill 509, proposing an amendment to Article I of the Constitution of the State of Hawaii relating to Rights of Crime Victims.

The proposed bill provides victims with the opportunity to be heard, kept informed, to receive restitution, and the return on their property. Consulting victims before making plea agreements does not provide victims with the right to refuse the plea agreement. It does, however, provide an opportunity for the prosecutor to learn information that may be pertinent to the plea negotiations. The bill does not require the prosecutor to consult with victims regarding the technical or tactical aspects of prosecuting the case. Therefore, the bill would not create a danger of a victim interfering in the prosecution of the case.

Every day, victims are thrust into the criminal justice system and asked to navigate its complexities in the midst of their trauma. Sadly, this means that victims' rights are often forgotten or ignored. Crime victims deserve to have permanent, constitutional, and enforceable rights. Hawaii is one of just eighteen states that does not constitutionally recognize the rights of crime victims.

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[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)





Passage of the Victims Rights Amendment to protect basic rights for victims of crime will provide the balance in our criminal justice system that many Americans may incorrectly presume exists. Sadly, it does not. Even with robust state laws, without providing the protections afforded by the VRA through words to be read clearly in our Constitution at all levels of our criminal justice system, the mirage of 'justice for all' will go on.

Thank you for allowing me to testify.

P. O. Box 3198 Honolulu, HI 96801-3198  
'Oahu Helpline:: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228  
[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)



## hee2 - Kathleen

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**From:** Douglas S. Chin [dchin@carlsmith.com]  
**Sent:** Wednesday, February 06, 2013 8:48 AM  
**To:** JDLEstimony  
**Subject:** SB 509 - PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS

Aloha, Chair Hee, Vice Chair Shimabukuro and Judiciary and Labor Committee Members.

My name is Doug Chin and I am submitting testimony in advance of the Senate Committee on Judiciary and Labor's hearing on Thursday, February 7 at 10 am.

As a prosecutor for over 10 years and the City & County of Honolulu's First Deputy Prosecutor from 2006 through 2010, I prosecuted several murder and sex assault cases and brought over 40 cases to jury trial. A significant portion of these cases included victims, often a child or someone with very unfortunate other circumstances happening in their life. Being the victim of an assault, robbery or a sexual assault is only the beginning of the hardship. The criminal justice system is a lengthy, complicated process and it's very difficult for many to commit the time and energy to seeing a case prosecuted to completion.

As a lawyer educating victims through the process, I often found myself educating victims and their families about a defendant's various constitutional rights, often as a way to explain why things were happening the way they were – the right to privacy, the right to remain silent, the right to a jury trial, etc. Very few complained about a defendant's rights, but they all asked, "What about my rights? Do I have any rights as a victim?" The current answer is "No". Placing this measure before voters will offer the opportunity to change this.

Mahalo for the opportunity to offer testimony.

**Douglas S. Chin**  
**Partner | Carlsmith Ball LLP**

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**From:** Cora Speck  
Honolulu, HI 96815  
Cora.speck@gmail.com

**To:** *Senate Committee on Judiciary and Labor*  
Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Senator Sam Slom  
Senator Mike Gabbard  
Senator Les Ihara

February 7, 2013 – 10:00 am  
Conference Room 16

**RE: IN STRONG SUPPORT OF SB509:** Proposing An Amendment To Article I of The Constitution Of The State Of Hawaii Relating To Rights Of Crime Victims.

Dear Chair Hee, Chair Ige, Vice Chair Shimabukuro, and members of the Committee;

My name is Cora Speck, and I am writing in strong support of SB509.

Professionally, I am on the board of Mothers Against Drunk Driving (MADD Hawaii) and understand there is a real need for a Crime Victims' Bill of Rights that would, at the very least, provide victims of violent crimes with basic assurances pertaining to the alleged perpetrators of crimes.

Personally, I also support this bill. In February, 2003, my father was randomly held hostage at gunpoint by a convicted felon who was abusing methamphetamine while on parole. This hostage situation had a tremendous impact on my father, who developed PTSD, and our family's well-being. After seeing what my father and our family has had to deal with in regards to the legal system (which almost seems to cater to criminals, and ignore the victims), I came to the conclusion that Hawaii should not wait any longer for a Crime Victims Bill of Rights.

Let me ask you this: If a criminal were sent to jail because they held a gun to your head (for many hours overnight) and seriously contemplated murdering you (a complete stranger to them, and their situation), wouldn't you want to be notified in writing of their early release from prison, or even when they were up for parole? My family lived through this situation and did not receive adequate notification, which caused tremendous and unnecessary emotional stress. Many victims of violent crimes wrongly assume they have basic rights that are at least on par with criminals, but they learn they are mistaken.

The time to act on behalf of victims is now. I urge you to support SB509.

Mahalo,

Cora Speck