

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

GOV. MSG. NO. 1307

July 8, 2014

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of
the House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

I am transmitting herewith SB60 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB60 SD1 HD1 CD1

RELATING TO VICTIMS OF CRIMES

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2014

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 60

Honorable Members
Twenty-Seventh Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 60, entitled "A Bill for an Act Relating to Victims of Crimes."

The purpose of this bill is to give victims and surviving immediate family members of crime the right to be informed by the police and prosecutors of their right to participate in restorative justice processes. The bill provides that victims, surviving immediate family members, and "any accompanying loved ones thereof" shall be allowed to participate in restorative justice processes "to discuss and address how they were affected by the wrongful act, and any actions or outcomes desired that may mitigate or repair the harm." The processes include the victim or surviving family members meeting with the accused person or a representative of the accused person.

Restorative justice can be used to promote the healing of both crime victims and offenders. The restorative justice process should be victim-centered and empower the victim to meet with the offender in structured and controlled in-person encounters in order to voice the victim's perspective and to address personal impacts of the crime. Recidivism can be reduced by holding the offender directly accountable to the victim, or to surviving family members, and by requiring the offender to recognize the detrimental consequences of the crime, accept personal responsibility, and make amends.

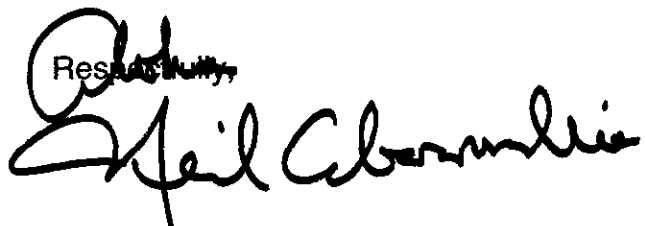
While I support the concept of restorative justice, Senate Bill No. 60 is objectionable because, as written, it does not provide adequate protection for victims of domestic violence, child sexual assault, or elder abuse from intimidation, coercion, and manipulation by the offenders. These vulnerable victim populations are susceptible to

STATEMENT OF OBJECTIONS
SENATE BILL NO. 60
Page 2

undue influence by offenders who may want the victims to recant or alter their testimony or advocate for the offender's early release at a parole hearing. The bill does not limit requests for a restorative justice dialog with offenders to cases involving offenders who have already been convicted and sentenced. Victims of offenders whose cases are pending investigation or charges, or pending trial or sentencing, will be particularly vulnerable. Offenders may take advantage of the process to try to better their positions in the criminal cases. Furthermore, the bill does not require that: (1) mediators, or restorative justice facilitators, are knowledgeable about, and experienced with, the dynamics of domestic violence, child sexual assault, and elder abuse; (2) an evidence-based safety assessment has been conducted to ensure victim safety; or (3) the domestic violence offender has received programming in accordance with the Hawaii Batterer Intervention Program Standards while incarcerated. This bill may result in greater harm to victims and detrimental impact on pending criminal cases.

While the goals and objectives of restorative justice may be laudable this bill needs to be more tightly written to achieve them.

For the foregoing reasons, I am returning Senate Bill No. 60 without my approval.

Respectfully,
Neil Abercrombie

NEIL ABERCROMBIE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO VICTIMS OF CRIMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 801D-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Upon written request, victims and surviving immediate
4 family members of crime shall have the following rights:

5 (1) To be informed by the police and the prosecuting
6 attorney of the final disposition of the case. If the
7 crime charged is a felony, the victim or a surviving
8 immediate family member shall be notified of major
9 developments in the case and whenever the defendant or
10 perpetrator is released from custody. The victim or a
11 surviving immediate family member shall also be
12 consulted and advised about plea bargaining by the
13 prosecuting attorney;

14 (2) To be notified by the prosecuting attorney if a court
15 proceeding to which they have been subpoenaed will not
16 proceed as scheduled;

17 (3) To receive protection from threats or harm;



- 1 (4) To be informed by the police, [~~victim/witness~~] victim
2 or witness counselor, or other criminal justice
3 personnel, of financial assistance and other social
4 services available as a result of being a witness to
5 or a victim of crime, including information on how to
6 apply for the assistance and services;
- 7 (5) To be provided by the court, whenever possible, with a
8 secure waiting area during court proceedings that does
9 not require them to be in close proximity to
10 defendants and families and friends of defendants;
- 11 (6) To have any stolen or other personal property
12 expeditiously returned by law enforcement agencies
13 when the property is no longer needed as evidence. If
14 feasible, all the property, except weapons, currency,
15 contraband, property subject to evidentiary analysis,
16 and property, the ownership of which is disputed,
17 shall be returned to the person within ten days of
18 being taken; [~~and~~].
- 19 (7) To be informed by the department of public safety of
20 changes planned by the department in the custodial
21 status of the offender that allows or results in the
22 release of the offender into the community, including



1 escape, furlough, work release, placement on
2 supervised release, release on parole, release on bail
3 bond, release on appeal bond, and final discharge at
4 the end of the prison term[-]; and

5 (8) To be informed by the police or the prosecuting
6 attorney of their right to participate in restorative
7 justice processes. The victim, surviving immediate
8 family members, and any accompanying loved ones
9 thereof, shall be allowed to participate in
10 restorative justice processes to discuss and address
11 how they were affected by the wrongful act, and any
12 actions or outcomes desired that may mitigate or
13 repair the harm. Participation in restorative justice
14 processes includes the victim or surviving immediate
15 family members, and any accompanying loved ones
16 thereof, meeting directly with the accused person or a
17 representative of the entity, if the accused person or
18 entity is identified and is willing to participate, or
19 the victim or surviving immediate family members, or
20 the representative thereof, is willing to meet with a
21 representative of the accused person or entity.



1 For the purposes of this paragraph, "restorative
 2 justice processes" include restorative dialogues,
 3 restorative conferences, restorative justice circles,
 4 restorative sessions, native Hawaiian reconciliation
 5 practices such as ho'oponopono, or any type of
 6 restorative justice group process where victims or
 7 immediate surviving family members meet individually
 8 or with their loved ones, with a trained restorative
 9 justice facilitator. The restorative justice
 10 processes shall be scheduled at places and times that
 11 are convenient and respectful for the victim or
 12 immediate surviving family members."

13 SECTION 2. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.

APPROVED this day of , 2014