

STAND. COM. REP. NO.

2448

Honolulu, Hawaii

FEB 19 2016

RE: S.B. No. 3034

S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 3034 entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF  
CONSTITUTION OF THE STATE OF HAWAII TO ESTABLISH RIGHTS FOR  
VICTIMS OF CRIMES,"

begs leave to report as follows:

The purpose and intent of this measure is to propose an  
amendment to the Hawaii State Constitution that:

- (1) Affords certain constitutional rights to victims of  
crimes and their surviving family members beginning at  
the time of their victimization;
- (2) Allows crime victims to assert and enforce crime  
victims' rights in any trial or appellate court;
- (3) Authorizes the Legislature to enact laws to further  
define, implement, and preserve the proposed  
constitutional rights of crime victims; and
- (4) Adds the definitions of "surviving family members" and  
"victim".

Your Committee received testimony in support of this measure  
from the Hawaii State Commission on the Status of Women;  
Department of the Prosecuting Attorney, City and County of  
Honolulu; Office of the Prosecuting Attorney, County of Kaua'i;

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American Association of University Women in Hawaii; Catholic Charities Hawai'i; Child & Family Service; The Children's Alliance of Hawaii; Domestic Violence Action Center; Marsy's Law Hawaii; The Pacific Alliance to Stop Slavery; Parents And Children Together; The Sex Abuse Treatment Center; Visitor Aloha Society of Hawaii; Mothers Against Drunk Driving; YWCA of Hawai'i Island; and forty-seven individuals. Your Committee received testimony in opposition to this measure from the Department of Public Safety, Office of the Public Defender, American Civil Liberties Union of Hawai'i, and two individuals. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that the basic bill of rights for victims and witnesses under chapter 801D, Hawaii Revised Statutes, ensures that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity and that these rights are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants. However, Hawaii is one of eighteen states without constitutional protections for crime victims. By elevating these statutory rights to constitutionally protected rights, this measure assures victims of crimes will be honored and protected without diminishing the rights of those accused.

Your Committee has amended this measure by:

- (1) Adopting the language suggested by the Department of the Prosecuting Attorney of the City and County of Honolulu that:
  - (A) Affords certain rights to a crime victim or a deceased victim's surviving immediate family members, which the Department believes are essential, including the right to restitution; to be notified of major developments in a case; to be present at all public court proceedings, except when the court determines that the crime victim's testimony will be materially affected; to be consulted regarding proposed plea agreements; to be heard at all criminal justice proceedings that involve sentencing, incarceration, or release of the offender; and to be treated with courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice process;



- (B) Specifies that the court ensure that the crime victims or their surviving family members are afforded their rights in any court proceedings involving an offense against a crime victim;
  - (C) Specifies that a crime victim's exercise of constitutional rights shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence;
  - (D) Establishes that the proposed constitutional rights do not create any cause of action for compensation or damages against the State or any of its political subdivisions, or any employees of the State or any of its political subdivisions;
  - (E) Extends the Legislature's authority to enact laws to further implement proposed constitutional rights of crime victims to juvenile proceedings;
  - (F) Clarifies that none of the proposed constitutional rights of crime victims shall be construed to supersede the constitutional rights of any accused person or offender;
  - (G) Replaces the term "surviving family members" with the term "surviving immediate family members" and specifies that the term "major developments" may be defined by law; and
  - (H) Makes conforming amendments to the constitutional question to reflect the proposed constitutional rights granted to a crime victim or a deceased victim's surviving immediate family members; and
- (2) Amending further the proposed language suggested by the Department of the Prosecuting Attorney of the City and County of Honolulu by:
- (A) Condensing the preamble under section 1;
  - (B) Specifically, clarifying that surviving immediate family members of a deceased crime victim are those persons who are defined by law;




- (C) Replacing the term "offender" with "accused person" for persons who are pre-adjudicated and "defendant" for persons who are adjudicated, as applicable, and reserving the term "offender" for persons who are post-adjudicated;
- (D) Broadening the requirement that the court afford a fair opportunity to the crime victim to be heard on the issue of the defendant's disposition before sentencing to all court cases rather than only circuit court cases;
- (E) Limiting other opportunities for the crime victim to be involved in sentencing to be provided by law;
- (F) Including deceased victim's surviving immediate family members as those who are allowed to assert and have their constitutional rights enforced;
- (G) Specifying that the terms "victims", "surviving immediate family members", "major developments", and "involuntarily hospitalized" may be defined by law;
- (H) Making conforming amendments to the constitutional questions to reflect these further amendments; and
- (I) Making technical, nonsubstantive amendments 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. 3034, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3034, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

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

Bill / Resolution No.:* <b>SB 3034</b>	Committee Referral: <b>JDL, WAM</b>	Date: <b>2/10/16</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
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
██████████				
KIM, Donna Mercado	/			
THIELEN, Laura H.	/			
SLOM, Sam				/
<b>TOTAL</b>	<b>5</b>			<b>1</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