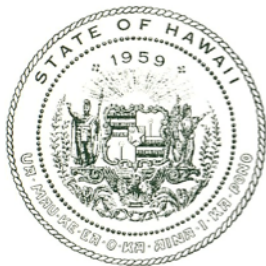


HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
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February 18, 2015

To: Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 1144, Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

Thank you for this opportunity to testify in support of HB 1144, which would create a victims' bill of rights within our state constitution. 32 other states in the nation have passed comprehensive constitutional provisions to protect victims of crime. Currently, victims in Hawaii have statutory rights but they are not enforceable. In states with constitutional provisions, victims rights are permanent and enforceable.

The rights are basic: the right to be treated with courtesy and fairness, the right to be informed of services available to them, the right to be informed of their offender's whereabouts, and the right to consult with the prosecutor before a plea bargain is offered. Although many believe that the prosecutor's office already upholds these basic dignities for a victim, this is hardly the truth and depends on the individual prosecutor. Just earlier this year, Honolulu Prosecutor Keith Kaneshiro admitted that 15-20 felony sexual assault cases had run past the statute of limitations because an individual prosecutor had left the cases in a desk file. Surely, victims can be treated with more dignity than this. Surely, these basic rights can be upheld on more than a "case by case" basis. If anything, a constitutional amendment will change the way we view victims and the criminal justice process, and will serve as a constant reminder that our system can do better for victims.

Awarding basic rights to victims does not diminish the rights of the accused, nor does it change any burden of proof in any criminal case. In light of the recent media exposure of multiple cracks in our criminal justice system (from HPD reporting on domestic violence cases, to lack of prosecution for felony sexual assaults, to the difficulty in obtaining restitution), now is the right time to pass a constitutional amendment and the fair thing to do.

The Commission respectfully urges this Committee to pass HB 1144. Thank you for this opportunity.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
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Victim/Witness Program 808-241-1898 or 800-668-5734

TESTIMONY IN SUPPORT OF
HB1144 – PROPOSING AN AMENDMENT TO ARTICLE I OF THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF
VICTIMS OF CRIME

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

House Committee on Judiciary
February 19, 2015, 2:00 p.m., Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** HB1144 - PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME. The Bill proposes an amendment to the Hawaii State Constitution guaranteeing that victims of crime and their surviving immediate family members have specific rights related to information pertaining to and participation in the criminal justice process.

Hawai'i is one of eighteen states that do not currently have a victim rights constitutional amendment. We believe the time is right to enshrine in our State's founding document the notion that victims of crime have certain rights which are central to the concept of justice. Although the crime victim bill of rights was enacted as HRS Section 801D, in 1987, those rights are the mere creature of statute and do not carry the weight and force of constitutional support.

The rights enumerated in the proposed bill are simple; basic rights to be treated with courtesy, fairness, and dignity; to be protected; to be informed and consulted. These rights should not ever be subject to dispute. Victim rights should occupy the same plateau in our justice system as the rights of the accused. Those rights should not and cannot diminish the rights of the

accused, and they should not curtail the power of the prosecution to seek justice free from extrinsic concerns, but they should be, indeed must be, more than an afterthought.

We note that this is not the first time your Committee has considered a proposed amendment to guarantee victim rights. Over the years, various amendments have been considered. In response, concerns have been raised that this amendment could allow crime victims to interfere with prosecution, diminish the rights of the accused, or create new tort rights upon which to sue the State or a prosecutor should the prosecution not end in a manner that pleases a victim. The proposed amendment now before your Committee addresses those concerns effectively.

Accordingly, we are in **STRONG SUPPORT** of HB1144. We request that your Committee **PASS** the proposed amendment.

To: Chairman Karl Rhoads, House Judiciary Committee, Vice Chair Joy, San Buenaventura, and members of the committee

From: Colleen Sheehey-Church, National President – Mothers Against Drunk Driving

February 19, 2015

Dear Hawaii Lawmakers:

On behalf of thousands of drunk driving crime victims, I write you today in support of a proposal to guarantee rights for all crime victims. Specifically, I urge you to support HB 1144 and create a State Victims' Rights Amendment to the Hawaii Constitution.

My son, Dustin Church, was killed in June 2004 when a drunk and drugged driver ran off the road, hit an embankment and landed upside-down in a Connecticut river. The driver was an impaired teenager, who had been illegally drinking underage and using drugs. Dustin was in the backseat of the two-door car as it sank into the river. The two in the front seat survived. But my son Dustin could not escape and died as the car continued to sink into the river.

This is important legislation and will protect the rights of all crime victims in Hawaii. Passing this legislation would make Hawaii the 33rd state in the nation to enact such rights for both residents and visitors that become victims of crimes. Since 1980, MADD has fought tirelessly to ensure that crime victims are afforded fundamental rights through the justice process. Together with a coalition of crime victims' rights partners, we have made remarkable progress for crime victims, despite many challenges. Only 30 years ago, crime victims had no rights, no access to crime victim compensation, and limited basic services to help rebuild their lives.

Crime victims are often excluded from courtrooms, treated as an afterthought by the criminal justice system, and denied an opportunity to speak at the sentencing of their offenders. To date, 32 states have enacted state constitutional amendments for victims' rights. Through decades of advocacy and hard work, we have come a long way. Today, all states have established crime victim compensation funds. More than 10,000 victim service agencies help victims throughout the nation.

But all too often, we hear from a disparaged family of individual victims which remind us that many challenges remain. Crime victims' rights are not universal and are often not enforced. Only a small percentage of victims receive crime victim compensation, which is usually limited to victims of violent crime. According to last year's National Crime Victimization Survey, more than 50 percent of violent crimes were not reported to police between 2006 and 2010. In addition, a 2011 report called the Use of Victim Services Agencies by Victims of Serious Violent Crime showed that only nine percent of violent crime victims received needed services in the 1993-2009 timeframe.

You have an opportunity to ensure that rights of crime victims are protected by enacting this vital legislation.

Passage of HB 1144 would protect crime victims by ensuring that they are guaranteed:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay, and
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

Thank you for your consideration of this important legislation.

Best wishes.

Sincerely,

Colleen Sheehey-Church
National President, Mothers Against Drunk Driving



TO: Chair Della Au Belatti
Vice Chair Richard Creagan
Members of the Committee

FR: Nanci Kreidman, M.A

RE: HB 1144 Support

Aloha. And thank you for your consideration of this testimony. It is our responsibility to urge you to examine, improve and support the needs of survivors and their family members. This Bill, pertaining to a Victims Bill of Rights deserves your careful review.

The express statements included as Rights of Victims of Crime seem quite obvious, and would be basic features of a system that has been built to secure our safety and freedom. The fact that this Bill is before you underscores the reality that many victims, survivors and their family members have not been informed, included or empowered by the system after they have been victimized. We would like to see the system more responsive, timely and effective in holding offenders accountable for their crimes and certainly more compassionate for those who are forced to engage with it, because of victimization.

Avoiding re-victimization by the system is an important step in the right direction. And one that is long overdue. With all the wisdom we have gained and experiences we have had these last 30 years in Hawaii, may we respectfully urge your favorable action to advance our work to inform, support, empower and protect victims of crime.

Thank you.



February 19, 2015

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: HB 1144 Proposing a Constitutional Amendment to Article I of the Constitution of the State of
Hawaii Relating to the Rights of Victims of Crime

Hearing: Thursday, February 19, 2015, 2:00 p.m., Room 325

Position: Support

The Hawai'i State Democratic Women's Caucus writes in support of HB 1144 Proposing an amendment to Article I of the Hawaii State Constitution relating to the rights of victims of crime.

Although victim's rights are available statutorily, Hawai'i is one of 18 states that does not have a constitutional provision protecting victims' rights. While offenders have various rights under the Hawai'i State Constitution, crime victims and their survivors currently have no constitutional protections. This measure aims to provide a better balance between the rights of the offenders and those of the victims. Including crime victims' rights in state constitutions increases the strength, permanence, and enforceability of victims' rights.

Rights that are guaranteed by a constitution are stronger than rights that are set out only in statutes and makes those rights enforceable. Incorporating victims' rights into constitutions also gives those rights a degree of permanence. If an official or a state agency violates a constitutional right, a court usually has the power to order that official or agency to comply with the constitution.

The rights requested in this measure are basic rights of being treated with courtesy, dignity, fairness, and respect for privacy.

We respectfully request that the committee pass this measure. Thank you for the opportunity to provide testimony.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls.



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004

February 19, 2015

To: Representative Karl Rhoads, Chair –Senate Committee on Judiciary; Representative Joy A. San Buenaventura, Vice Chair; and members of the committee

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

Re: House Bill 1144 – 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 strong support of HB 1144 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 31 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, 32 states have now given victims the benefit of a state constitutional amendment for Victims Rights. In most states a high percentage of the electorate voted to adopt the constitutional amendment.

House Bill 1144, which proposes a constitutional amendment that we – and other states -are calling Marsy’s Law in memory of a young girl murdered in California, will offer Hawaii victims important protections and will also include a section on “enforcement” in order for a victim to assert the rights that are established in this bill.

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. A constitutional amendment also establishes a sense of permanence. Statutes can be changed at any time at any time by the Legislature whereas it is much more likely that rights included in a state constitution will remain indefinitely.

The Amendment will not result in any case being retried; nor will it cause any interference with the work of prosecutors who have been assigned to a case.

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 give them more confidence as they go 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?”

There will be additional members of the MADD organization testifying this afternoon and there are others who send their support but were unable to be here because of work or other conflicts or because their cases may not have been concluded.

MADD encourages this committee to pass HB 1144. 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 19, 2015

Advisory Board

TO: The Honorable Karl Rhoads, Chair
The Honorable Joy San Buenaventura, Vice Chair
House Committee on Judiciary

President
Mimi Beams

Vice President
Peter Van Zile

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

RE: Testimony in Support of House Bill 1144
Proposing an Amendment to Article I of the Constitution of the State of
Hawai'i Relating to the Rights of Victims of Crime

Marilyn Carlsmith

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in strong support of House Bill 1144 (H.B. 1144).

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

H.B. 1144 proposes an amendment to the Hawai'i State Constitution guaranteeing that victims of crime and their surviving immediate family members have specific rights with respect to being informed about, and participating in, the criminal justice process.

David I. Haverly

Linda Jameson

Michael P. Matsumoto

As a sexual assault center that provides crisis services in the immediate aftermath of a crime; legal advocacy to support survivors through judicial proceedings; and ongoing mental health services, the SATC assists clients on a daily basis to deal with challenges that survivors of violent crime encounter when navigating the criminal justice system.

Robert H. Pantell, MD

Gidget Ruschetta

Joshua A. Wisch

We strongly believe that survivors should be informed about, and be afforded the opportunity to participate in, the investigation, prosecution, and ongoing management of their cases. Survivors' voices in these matters are an important reminder to other key participants in Hawai'i's criminal justice system of the high stakes involved in handling perpetrators of violent crime: these crimes cause extreme, sometimes permanent physical and emotional harm to real people. Moreover, assisting survivors to participate in the process can help to empower and heal them, and sends a strong message that the State of Hawai'i cares about and will protect its people.

It is also crucial that survivors' rights be guaranteed by our State Constitution. Although Hawai'i has, in the past, enumerated these rights in Chapter 801D of the Hawai'i Revised Statutes, the existing law lacks the force of a Constitutional mandate. This is particularly troubling because our State Constitution, while remaining silent with respect to the rights of survivors, explicitly protects criminal defendants. As a result, the fundamental legal framework of Hawai'i's criminal justice system prioritizes the needs of survivors well below those of accused criminals.

H.B. 1144 remedies this by allowing the People of the State of Hawai'i to join with their peers in 32 other States to enact a constitutional amendment that protects the basic rights of survivors of crime. The proposed Constitutional amendment would not take away any of the protections afforded to accused criminals or curtail the discretion of prosecutors or judges. Rather, it is narrowly tailored to provide only reasonable, necessary rights to ensure that survivors receive sufficient information about, and are able to participate meaningfully in, the criminal justice process.

Therefore, we urge you to pass H.B. 1144, and grant the People the authority to appropriately prioritize the needs of survivors of crime in our State Constitution, our most powerful legal document.

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

From: Mary Spears & Phil Slott
PO Box 847, Kamuela, HI 96743
mary@maryspears.com
(808) 987-0357

TO: House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

RE: House Bill 1144 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii
relating to the Rights of Victims of Crime

Date: February 19, 2015

Dear Chair Rhoads, Vice Chair SanBuenaventura and members of the House Judiciary Committee:

My name is Mary Spears and I am writing in strong support of HB 1144.

Victim is an ugly word.

Twenty-two years ago on October 1, 1993 at 8:30 am, my husband became the victim of a drunk driver.

That moment on Highway 250 on the island of Hawaii forever changed our lives.

As Phil says in our newly released book, *Damage Control: A Brain Injury Survivor Helps You Beat the Odds*, "the new me stinks. I said goodbye to the guy who wrote *Never let 'em see you sweat* for Gillette and hello to the guy who had to sweat everything. I said goodbye to the guy who was chairman of BBDO/London and hello to the guy who got lost in airports. I said goodbye to the guy who competed in triathlons and hello to the guy who could barely walk."

Our experience in Hawaii's criminal justice system, illustrates how the rights of victims and families are denied.

While we were never treated with contempt, we were treated as an afterthought.

We weren't provided with timely information to attend hearings. Due to his extensive physical injuries and traumatic brain injury, Phil needed several days to recover from a trip across the island. When proceedings were announced at the last minute, he was incapable of handling the trip and, at that time, I was unable to leave him alone. When we were notified early enough, we would spend two days at a hotel to prepare Phil for the court appearance only to have the proceeding cancelled at the last minute.

The inefficiencies of the system were evident.

In a case where none of the facts were disputed, the process took almost two years from the day of the crash to sentencing.

Immediately after the crash, the drunk driver who ran Phil over was profoundly disturbed by what he had done. As almost two years passed before he was prosecuted, he returned to drinking and, in his mind, became the victim of the system. By the time he was sentenced to four (4) weekends in the county jail, he opted to leave the country and return to Germany, the country of his birth. Despite requests to the prosecuting attorneys office to have his passports confiscated, he left to avoid both criminal and civil penalties. The process lasted so long that the driver forgot the horrible act he perpetrated.

We were disappointed by the sentence.

It was impossible to understand the minimization of the drunk driver's crime. If he had stolen the million dollars Phil's accident cost, he would have spent many years in jail. If he had used a baseball bat instead of a Ford F-250 truck to beat Phil's body within an inch of life, he would have spent many years in jail. If he had crushed Phil's skull with a rock instead of the front end of his vehicle, he would have spent many years in jail.

Instead we were told that the driver was not a high risk to society.

I beg to differ.

Victims and their families need to know that they are accorded a place in the justice system; a place that provides equally for the rights of the accused and the rights of the victim.

We are grateful that the Legislature is considering passage of Marsy's Law. This amendment would be a great step in ensuring that victims of all crimes are provided the protections and comforts necessary to endure court already exhausting and emotional court proceedings to find justice.

Sharing our story with you is one way to personalize the victims' experience. We've included a copy of our book for each of you in hopes that it will broaden your understanding of what it means to be a victim.

As we've learned, there is no end, there is just learning to live and cope with grace and humor.

Thank you for your consideration.

From: Theresa Paulette
628 Hanale Place, Kailua HI 96734
TPaule1229@aol.com

TO: House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

RE: House Bill 1144 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii
relating to the Rights of Victims of Crime

Date: February 19, 2015

Dear Chair Rhoads, Vice Chair San Buenaventura and members of the House Judiciary Committee:

My name is Theresa Paulette, a victim and MADD Board member, and I am writing in strong support of HB 1144.

I believe that there is a real need for Crime Victims' Rights to be included in the Constitution of the State of Hawaii. Victims of violent crimes – like negligent homicide or manslaughter – should be provided with basic assurances pertaining to the person who was allegedly responsible for the crime.

My life was changed forever twenty-two years ago, when my only son was killed in a crash involving a 6x DUI arrestee. My daughter and I were devastated and overwhelmed with shock, grief, and anger.

In my grief, I was immediately thrown into the unfamiliar world of the "criminal justice system" and left to figure it out on my own. I found it lacking in regard for me, the victim, and my son, who lost his life. From the start, if I sought information or tried to give information, I felt as though I was imposing. I didn't receive information after the crash, so I initiated calls to the Police. I felt resistance every step of the way as I inquired or met to discuss the status of the investigation and whether charges would be filed. It was agonizing waiting for the traffic accident investigation report, which took nearly a year, and the final decision was not to press charges. No accountability. No justice for my son.

Even though the driver wasn't charged, I have lived and felt the gamut of emotions that all victims of violent crime feel. As a volunteer Victim Advocate I hear about the range of emotions and injustices that prevail as I support victims of impaired driving, such as the following current case:

"My name will remain anonymous due to the fact my case is still active, but I am writing in strong support of HB 1144.

On the night of XXXX 2014. I was on my way driving to work. I have worked night-shift the past eight (8) years and have driven the same route all those years. Per the police report I was hit head on by a drunk driver. I have no memory of the car "crash" as I suffered a severe concussion from the "crash. My car was totaled and I was transported to the hospital via ambulance. The driver of the truck was given an alcohol test, arrested and taken to jail. I later learned the drunk driver was bailed out the following morning. While I was admitted to the hospital he was already out back to his life. Mind you he suffered no injuries in the crash, walked away free of injury.

I was released from the hospital and approximately a week later I was on the phone trying to find out what is happening with the drunk driver who hit me. I called the prosecutor's office on Maui and the Victim Advocates office about a week after the crash, but was told to call back because they had no information on the accident from the police. When I called them back approximately a week later I was told there was an arraignment set for December but was told it wasn't necessary for me to be there. It would be a quick 5 minute deal and no need for me to go. I called again and was told there was a pre-trial date set for January. Again I called the Victim Advocate's office after I got off work that morning to find out where and what time. I was told again that I did not need to attend, a rep from their office would go and give me a call to update me as to what is happening. But I wanted to go to see for myself exactly how this is being handled and to meet the prosecutor in person, I wanted them to know my face and know that I was serious and wanted justice for what he did to me. A representative from the Victim's Advocate office did meet me up on the floor and sat with me and explained what was going on. I would find out at that pre-trial that there would be another pre-trial set for February. The fact is that I have had to call and find out this information. I have yet to receive a phone call or an email from the prosecutor to update me or just to talk about the "crash". It is very frustrating, I feel the defendant is recognized and acknowledged but I am not. But I will be there for every pre-trial, trial, hearing, etc. whatever it takes. My face and story will be known."

Victims count. The victims of crime need to have the rights, we should be recognized and acknowledge and informed every step of the way. Our rights should be guaranteed by the State Constitution. I urge the committee to support HB 1144.

Thank you for the opportunity to submit testimony.

Good afternoon, Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary.

Thank you for the opportunity to submit testimony in strong support of HB 1144. My name is Diane Krieger and I wish to share with you my experiences as a victim and going through the court system.

The following victim's testimony involves an incident which happened to my dog Pua and myself, on November 29, 2011. My court experience ensued and it took 3 years to resolve. My case involved requesting reimbursement for veterinarian and medical expenses from the owner of an aggressive dog who attacked my dog and to have him contain his dog in the future so this would not happen to anyone else.



The resulting injuries to my innocent dog and myself were due to a negligent owner of a free roaming dangerous dog. This extremely vicious dog charged and then repeatedly attacked my 20 lb, 12 year old dog, for no reason. It was totally unprovoked. Both my dog, who was in my arms, and myself were injured as I tried to protect her from his terrifying attack. This experience was extremely traumatizing, but far worse, my dog had to undergo 2 surgeries and subsequent medications for her injuries. Within a few months, she went from being absolutely healthy and youthful to developing all kinds of problems related to her injuries and medications stemming from this incident and my beautiful girl ended up dying.

I came to find out, this same dog had a history of attacking other dogs and had killed his neighbor's dog. This same dog actually attacked 2 other dogs while the court proceedings were under way. All of these events, including our own, would not have occurred had the owner been accountable for the actions of his dog and kept the dog contained and leashed in public.

I had prepared a victims statement for the court, which included photographs showing my dog and her injuries and a photo of the attacking dog. These photographs were an essential part of my statement. When the statement was presented to the judge, the photographs were not there. They had been removed.

Fortunately, the prosecutor was present and had copies of the photographs and was able to present them to the judge. The Judge's face clearly reflected the impact these photos had on her understanding of the magnitude of what had happened.

Unlike the defendant, I was present for nearly every court date for over 3 years and missed work to do so, because this case was very important to me. I did not want to see this happen to anyone else.

I strongly urge your Committee to pass HB 1144 so victims like myself and my family can feel as though we are being heard through every phase of the judiciary system.

Thank you for your time.

Diane Krieger
PO Box 208
Hanalei, HI 96714
2/17/15

Karlotta Carvalho
Mother of Waika Wila Carvalho killed at the hands of a Drunk Driver
MADD (Mothers Against Drunk Driving)
Victim Services Committee Chair

Regarding:
HB 1144 STATUS
PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII
RELATING TO THE RIGHTS OF VICTIMS OF CRIME

Hearing Date: Thursday, February 19, 2015 2p
Measure Number: H.B. 1144

Dear Judiciary Committee,

My name is Karlotta Carvalho, mother of Waika Wila Carvalho killed at the hands of a Drunk Driver on November 14, 2009, and I am the Victim Services Committee Chair for Mothers Against Drunk Driving.

I would like to provide a brief yet hopefully compelling testimony as to why I advocate for this amendment. My son was killed at the hands of a drunk driver a short five minutes from our home. As a parent the words "your child has been killed" are something you never want to hear. The initial shock, disbelief and trauma is long lasting and alters your life forever. The impact of such a crime scars your life and all those connected beyond the moment and through generations. This crime is often understated and sometimes even dismissed. Let there be no mistake about it, that drunk driving is a preventable crime that does not respect race, age, status or gender. We in short are all affected by its lethal consequences whether we like it or not.

One may believe it to be unthinkable that a crime of such magnitude could be the ultimate pain, loss and sufferings of a victim and their family... however, I testify to you that a second trauma is often common place within our legal system as victims are subjected to limited rights super-ceded by that of the defendants rights. How is it that victims such as my son an outstanding law abiding citizen with great contributions to society has less rights than that of the man who killed him so recklessly and negligently? My son a victim and we as a family of surviving victims deserve to have equal rights parallel to that of the defendants. We are so blessed to live in a country of freedom, equality and honor. It is my belief that we must ensure that all citizens of this great country and the State of Hawaii be afforded EQUAL rights.

It is my plea, that you carefully consider the immediate need for victim rights to be parallel with that of those who have offended and in my case killed an innocent child of mine. We as surviving victims deserve at least that, as we are left with the heartache, loss, trauma and devastation by no fault of our own. No parent should have to bury their child, their dreams, their aspirations and most importantly, no parent should be victimized for a second time with an unequal rights and further negative impacts that make the path to healing an even more painful journey than it already has to be. As a Victim Services Committee Chair the victim stories are ever so similar, Victims shocked and dismayed at unequal rights, victims further traumatized and heartbroken as they struggle to pick up the pieces of their shattered life, all while being victimized a second time with unequal rights in the legal process they are thrust into. Please I ask you to afford all victims with EQUAL , PARALLEL rights to that of the defendants. It is the right, responsible and honorable course of action.

Thank you again for even your consideration in this matter,

Karlotta Carvalho

DATE: February 18, 2015

TO: The Honorable Karl Rhodes, Chair
The Honorable Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

FROM: Lorna Kanehira

RE: Testimony in Strong Support of H.B. 1144
Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to Rights of Crime Victims

Thank you for the opportunity to testify in support of H.B. 1144 regarding a proposed victims' rights constitutional amendment.

My husband was killed in the Xerox shooting in 1999. I was in a fog after my husband's death. There were so many things to take care of, and I was suddenly a single parent. I had to be strong for my 5-year-old son. All I remember about that time is funerals.

The prosecutor assigned two victim witness advocates to the seven wives of Xerox victims. All of us testified on the first day right after the opening statements. We were allowed to sit in the courtroom for the rest of the trial, which lasted a month. The advocates sat with the wives in the courtroom. We depended on them to explain what had happened in court. They would let us know if the testimony would be emotionally difficult, and we could choose to leave the courtroom. They told us what to expect in each phase of the trial. I was given an opportunity to submit a victim impact statement to include with the pre-sentencing report and to address the court before the defendant was sentenced.

It's hard to imagine a surviving family member or a victim going through the criminal justice system without information and support. The process was complicated and intimidating, and I found it hard to concentrate. My mind was elsewhere, on my son. The advocates made the process understandable and prepared me for whatever would happen. There was never a time that I didn't know what was going on.

I would have been lost in the criminal justice system without the victim witness advocates. I strongly believe that victims and surviving relatives should have a constitutional right to the same services and respectful treatment that I received. I therefore ask the House Judiciary Committee to approve HB 1144.

DAVID Y. IGE
GOVERNOR

LATE



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Mall, Suite 600
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Telephone: 808 587-1143
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MARI MCCAIG
Chair

ABELINA SHAW
Commissioner

MARTHA ROSS
Interim Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY IN SUPPORT OF
HOUSE BILL 1144
A BILL PROPOSING AN AMENDMENT TO
ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII
RELATING TO THE RIGHTS OF VICTIMS OF CRIME

PAMELA FERGUSON-BREY, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 19, 2015, 2:00 pm
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in strong support of House Bill 1144, referred to as Marsy's Law, proposing an amendment to Article I of the Constitution of the State of Hawai'i relating to the Rights of Victims of Crime. The Commission is dedicated to helping provide compensation to crime victims and promoting the rights of crime victims in general.

Over the years, the legislature has shown commitment to improving the status of crime victims by creating statutes that make restitution mandatory (HRS § 706-646), requiring that crime victim statements be included in the Presentence Report (HRS § 706-602), allowing crime victims to speak prior to sentencing (HRS§ 706-604), and setting forth basic crime victim rights (HRS ch. 801D). The intent has always been "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." HRS § 801-D-1. That intent cannot be truly realized until crime victims have their own constitutional bill of rights.

A constitutional amendment is necessary because “[r]ules to assist victims frequently fail to provide meaningful protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia or the mere mention of an accused’s right – even when those rights are not genuinely threatened.” Lawrence H. Tribe and Paul G. Cassell, Let’s Protect Victims’ Rights, www.nvcap.org/docs/cassell/9807_cassell_tribe.html.

In criminal cases, the Hawai`i constitution provides rights to everyone involved (defendant, media and the public) EXCEPT the crime victim. Yet, the crime victim has more at stake than the media and the public and just as much interest in the outcome of the case as the defendant. While HRS § 801D-4 was intended to provide a basic bill of rights for victims and witnesses, it does not establish permanent, enforceable rights for crime victims guaranteed by the constitution. As a result, HRS § 801D-4 can and has been ignored.

HRS § 801D-4 requires the crime victim to make a written request to be informed of the disposition of the case and to be consulted about any plea bargain without requiring anyone to inform the victim that he or she has the right to make the request. Even if a crime victim makes a request, the rights set forth in HRS § 801D-4 are not enforceable by the victim. Without standing, enforceability, and the force of the constitution, the rights enumerated in HRS § 801D-4 have little meaning. Courts, prosecutors, and defense attorneys have continually disregarded the rights of crime victims.

The crime victim’s bill of rights seeks to create a balance in which the rights of a defendant are protected while at the same time allowing the crime victim meaningful participation in the criminal system. A crime victim’s bill of rights in no way diminishes a criminal defendant’s constitutional rights. Requiring a crime victim to be advised of proceedings, to be consulted on plea agreements, and to be heard at proceedings does not infringe on a defendant’s constitutional rights. Nor does requiring a defendant to pay restitution infringe on a defendant’s constitutional rights. To the contrary, being ordered to pay restitution has a positive effect on a defendant’s rehabilitation as the defendant is making a positive contribution to his or her victim’s recovery. The crime victim’s bill of rights seeks to ensure speedy trial just as the constitution guarantees a speedy trial to the defendant. In instances where a defendant seeks a long delay of trial, the court can and should balance the defendant’s need for the continuance against the desire of a crime victim for a speedy trial. A crime victim’s right to a speedy trial would not trump a defendant’s right to develop a case, but rather it allows the courts to consider the competing needs of the defendant and the victim.

The bill would not create a danger of a victim interfering in the prosecution of the case. The proposed bill provides victims with the opportunity to be heard, kept informed, to receive restitution, and the return of 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.

Thirty two states have constitutional amendments. While some states have clauses limiting civil liability, others do not. According to the national proponents of victim's rights, the states that do not limit civil liability have had very few suits filed. The Commission is unaware of any suit that resulted in substantial liability to the State.

The proposed amendment does not permit victims to sue for monetary damages. Victims may ask that their rights be enforced. The Commission is unaware of any state with a constitutional amendment that has had an onslaught of lawsuits filed as a result of their constitutional amendment. There is no reason to believe that this amendment would cause an avalanche of litigation.

The crime victims' right to restitution has not been adequately protected by HRS § 801D-4 or by the 2006 amendment to HRS § 706-646 which made restitution mandatory. In 2003, the Commission began a pilot project to distribute restitution payments collected from inmates and parolee to their crime victims. Since the inception of the project, the Commission has opened over 5,000 restitution files and collected over 2.5 million dollars in restitution. Through this project, the Commission has become familiar with the institutional barriers to the ordering and collection of restitution. Some of these barriers were brought to the public's attention in a series of articles in the Honolulu Star Advertiser which ran in June 2011.

Through the restitution project and for its own cases, the Commission has received judgments in which restitution was not ordered or not ordered to the extent permitted by the restitution statutes. Without the Constitutional amendment, victims have no means to ask the court to correct the judgments.

Another example of the failure of HRS § 801D-4 to protect victims' rights made the news on December 28, 2008. Rita Makekau was accused of assaulting her five nieces and nephews by, among other things, breaking their teeth with a hammer, forcing them to eat dog food, pushing them down stairs, and holding them underwater. Ms. Makekau made a conditional plea in which she pled no contest to the charges but was allowed to appeal whether a Hawai'i court had jurisdiction over a self-proclaimed member of the Hawaiian sovereignty. At her sentencing, her nieces and nephew were present and so was their court-appointed Guardian ad litem and social worker. At the sentencing, Ms. Makekau requested being allowed to remain on bail pending her appeal. The court set a hearing on the issue. The minor victims' Guardian ad litem and social worker intended to be present at the hearing to represent the minor victims' interests. When they arrived at court at the scheduled time, they found out that the attorneys and court held a status conference in chambers at least fifteen minutes prior to the scheduled hearing time. The parties then held and concluded the hearing prior to the Guardian ad litem's arrival. The Guardian ad litem had not been informed of the advanced hearing time. The court granted Ms. Makekau's request to remain free. When told, the Guardian ad litem said that the minor victims "yelled. They were angry and disappointed." Without standing, the Guardian ad litem and the minor victims could not protest being excluded from the hearing. It was fortunate for the minor victims that the case was high profile and the prosecutor's office sought reconsideration of the court's ruling.

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.

Thank you for allowing the Commission the opportunity to testify in strong support of House Bill 1144.

DAVID Y. IGE
GOVERNOR



BERT Y. MATSUOKA
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MICHAEL A. TOWN
ANNELLE C. AMARAL
FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

LATE

STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON HOUSE BILL 1144
PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE
STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME

By
Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 19, 2015; 2:00 p.m.
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Hawaii Paroling Authority (HPA) **supports the intent** of House Bill 1144, which proposes an amendment to Article 1 of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime and requests amendments to Section 2 on page 4 (Item #9 – Lines 3 through 7) and submits comments to Section 2 on page 4 (Item #11 – Lines 13 through 18).

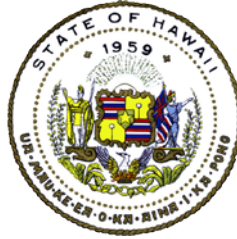
As written, this measure addresses several concerns of the community and the victim(s) of crime and the victim's surviving family members. At present, pursuant to Hawaii Revised Statutes (HRS) §706-669(7)(Procedure for determining minimum term of imprisonment), and Hawaii Administrative Rules (HAR) §23-700-21j the victim(s) of crime or their designee or surviving family members already have the right to participate and be heard during minimum sentencing hearings. Also, the victim(s) of crime or their designee or surviving family members can provide written comments to the parole board to consider when reviewing an offender's application for reduction of minimum (ROM) and for parole consideration hearings.

The HPA works closely with the County Prosecutor Offices, and Departments of the Attorney General and Public Safety to ensure the victim(s) of crime or their designee or surviving family members are notified and provided the opportunity to participate in the HPA hearings process. It should also be noted, the HPA will also

directly notify the victim(s) of crime or their designee or surviving family members of an offender's minimum sentencing hearing and any other event under the jurisdiction of the HPA, if this agency receives such a request directly from the victim(s) of crime or their designee or surviving family members. Therefore, the HPA requests the term "opportunity to participate and be heard" in Section 2 on page 4 (Item #9 – Lines 3 through 7) be clarified to mirror existing language found in HRS §706-669(7) and HAR §23-700-21j and that no additional notification requirements be included.

Further, it should be noted the requirements for notification of release on bail bond and release on appeal bond listed in Section 2 on page 4 (Item #11 – Lines 13 through 18) should be directed to the Judiciary which has sole jurisdiction regarding bail release matters. The remaining release requirements listed are very broad and require clarification. Review of the twenty-one (21) electronic notification "trigger" events of the Statewide Automated Victim Information and Notification System (SAVIN) should be considered, as this measure appears to duplicate the notification process already in place.

Thank you for the opportunity to provide testimony on HB 1144.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

Cathy Ross
Deputy Director of
Administration

Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

LATE

No. _____

TESTIMONY ON HOUSE BILL 1144
A BILL PROPOSING AN AMENDMENT TO ARTICLE I OF THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE
RIGHTS OF VICTIMS OF CRIME

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 19, 2015, 2:00 PM
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

Department of Public Safety (PSD) **opposes** House Bill (HB) 1144 in its current form, which proposes an amendment to the Constitution of the State of Hawaii guaranteeing that crime victims and their immediate surviving family members have specific rights. Some of the proposed provisions would severely hamper PSD's ability to process inmates through our system, based on their level of dangerousness and their readiness to re-assume a place in our community as law-abiding citizens. As such, our ability to fulfill the promise of the Justice Reinvestment Initiative (JRI), enacted in 2012, would be greatly compromised. Our population concerns would only get worse if we are unable to release inmates, or even transfer them to lesser security facilities.

Moreover, four of the provisions that would directly impact us are very ambiguous. We fear that such provisions would entangle us in litigation which would distract us from carrying out our operations in an orderly manner.

PSD is particularly concerned with four provisions of Section Two of this bill, which specify the rights crime victims would have under this proposed constitutional amendment. These are the following:

Number 8 would give victims the right “to be notified in a timely manner, be heard and participate in any process or deliberation which may result in a post-arrest release decision, a negotiated plea or sentencing of the offender.” This provision would have a profound impact on our ability to process recommendations to the courts for the release of pre-trial detainees. The Council on State Governments found in 2011 that Hawaii takes an inordinate length of time to release those detainees who are considered to be low-risk. This contributes to population growth in our community correctional centers. As a result, Act 139, SLH 2012 requires that we conduct an objective assessment “within the first three working days of a person’s commitment to the community correctional center to allow the courts to more quickly exercise discretion in determining whether to release a pre-trial defendant.” If we have to gather input from victims and allow them to be heard and participate in the process, it would be very difficult to provide the courts with the required risk assessments within the three-day period, and one of the primary components of the JRI would be undermined. We don’t know how we would be able to identify the victims and allow for them to be heard and participate within three days.

Moreover, for decades, we have conducted other reviews and assessments at police cellblocks in Hilo and Honolulu which lead to post-arrest release at the defendants’ first court appearance. This process allows the courts to grant release to low-risk offenders, who are presumed innocent under our system of justice, at the earliest possible time – even before commitment to a correctional facility. At this point in the process, it would be impossible for our Intake Service Center staff to identify the alleged victims, and to allow them to be heard and participate in the process. Under this provision, we may have to terminate the program, as we would not be able to identify victims, contact them and arrange for their input and participation prior to the first court appearance.

As a result, we would see more defendants admitted to Oahu Community Correctional Center, further exacerbating population concerns.

We are also concerned because we are not sure what kinds of input we would be required to obtain from victims. We also do not know what the “process” entails or what “deliberations” means. For example, if a worker conducts an assessment and confers with a supervisor as to the recommendation prior to submitting the assessment to the court, is he or she “deliberating?”

Number 9 would give victims the right “to be notified in a timely manner, provide input, be heard and participate in any process or deliberation which may result in the offender’s post-conviction release from confinement, including any kind of release by the department of public safety.” This provision likewise would create a myriad of problems for us. Under the JRI, we are required to provide evidence-based risk assessments for consideration by the Hawaii Paroling Authority. The process of conducting risk and needs assessments, identifying suitable programs and monitoring successful participation eventually leads to a decision to release offenders on work furlough or parole. Under the JRI, this is a decision made by professionals, guided by evidence-based risk assessments, who monitor participation in evidence-based programs. Based on these observations and deliberations, inmates who are considered low-risk and who have completed their recommended programs are gradually reintegrated into their communities. This process is designed to protect the safety of the community while providing offenders the opportunity to become productive, law-abiding citizens. If victims have a constitutional right to participate in these processes and deliberations, the rate of release will decline, as more likely than not, victims would oppose release on furlough or parole. The census at our facilities would be even higher than they are today.

Number 11 would require PSD to notify victims of inmate custody changes, facility transfers, escapes, furlough, work release, placement on supervised release, release on parole, bail bond, or appeal bond and any type of release by PSD and full discharge at the end of the prison term. The addition of

another official notification process, beyond what is already legally required would slow to a halt, all of these processes and runs directly counter to the professionalized and efficiency enactments that were previously authorized and specified by the JRI. Having this provision inserted into the Hawaii Constitution would have the unintended consequence of essentially creating jail and prison overcrowding and making the jail and prison programming and security operations unreasonably restricted by subjective instead of objective criteria.

Number 13 would give victims the right “to receive prompt restitution from the person or persons convicted.” The JRI Act required PSD to deduct 25% of an inmate’s deposits for restitution payments. The HRS allows courts to set restitution payment schedules. We wonder if this proposed provision could be interpreted to require that offenders fulfill the entire restitution promptly. This needs to be clarified.

Thank you for the opportunity to testify on this measure.



LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
NINETY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 1144, PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 19, 2015 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this bill.

The Department is sympathetic to crime victims and supportive of them. It is very concerned, however about this proposed constitutional amendment to establish constitutional rights for crime victims. Unlike the constitutional amendments adopted by other states, this amendment confers very broad rights upon crime victims that may adversely impact the criminal justice process.

The constitutional rights created for victims may allow victims in this bill to participate in a criminal case at times or in ways, and may allow victims, whether intentionally or not, to disrupt or interfere with the criminal justice process. The Department also has concerns about proposed rights (2) and (7), on page 3, and the provisions addressing remedies for the victims. The Victims' Bill of Rights, in chapter 801D, Hawaii Revised Statutes (HRS), addresses most of the rights being proposed and should be adequate to properly address victims' rights.

Victims are a very important part of the criminal justice process, but the Department is concerned that these broad constitutional rights for victims will adversely impact the criminal justice process. While the bill, on page 5, lines 3-4, specifies that "no right in this section shall be construed to supercede the constitutional rights of the offender," the creation of victim rights that could conflict with the constitutional rights of defendants means that the court and parties to a criminal case will have to determine whether or not there is a conflict, and if there is a perceived conflict, to determine how to address it without impacting the defendant's

constitutional rights. That evaluation process could create additional issues for the court proceeding that could turn into appellate issues that adversely impact the prosecution of the case.

CONSTITUTIONAL RIGHTS MAY ADVERSELY IMPACT THE CRIMINAL JUSTICE PROCESS

Right (6) at page 3, lines 12-14, to be present "at all public court proceedings related to the offense unless the court determines that the victim's presence would materially affect the victim's testimony," could conflict with the witness exclusion rule, pursuant to chapter 626, HRS. Although it purports to make an exception for that, the exception may not be broad enough. It could be difficult to determine whether or not a victim's presence would materially affect the victim's testimony. If a victim is able to hear the testimony of other witnesses, that testimony could unintentionally influence the victim's testimony and how the victim testifies. When testifying, a victim could anticipate issues raised by other witnesses or unintentionally tailor the testimony to fit the other evidence. Changes in testimony, or changes in how a victim testifies, can hurt a victim's credibility.

This constitutional right to be present at all public court proceedings could also lead to other issues. The court may need to make accommodations for the victim. It could affect the scheduling of court proceedings. If a victim cannot be present at a court hearing, but wants to be present, the court may have to reschedule the hearing. If a victim does not appear for a court proceeding, the court may have to determine if the victim received timely notification of the proceeding, and if so, whether or not the victim waived the victim's constitutional right to be present. If it cannot be established that the victim received timely notification of the proceeding, then the proceeding may have to be rescheduled.

Right (8), starting on page 3, line 19, confers on victims the right "to be given reasonable notice of and be offered the opportunity to participate and be heard in . . . any court proceeding in which a right of the victim is at issue" This right could also adversely impact the criminal justice process. Due to the great breadth of the proposed rights of victims, it would appear that their rights would be at issue in all court proceedings. Therefore, in accordance with this right, victims must be offered an opportunity to participate and be heard in all court proceedings. But in many court proceedings, victim participation is not necessary or appropriate. Court proceedings will likely be delayed or adversely impacted to address this right.

Right (10) at page 4, lines 8-12, confers on victims the right to be notified and heard regarding "**any developments** relating to the release, discharge, commitment, or unauthorized absence of the offender who was committed or involuntarily hospitalized." This right is extremely broad. The administration at the State Hospital may engage in regular reviews and assessments of a defendant's medical condition, and work on developing or revising treatment plans. It may not be appropriate for a victim to participate in these processes.

It is important to remember that while a victim is an important person in a criminal case, the victim is not a third party to the criminal case. It is also important to note that some victims are adverse to the criminal justice process and law enforcement, or are uncooperative for other reasons. Some victims are supportive of the defendant, or continue to have a relationship with a defendant. Other victims may be manipulated by defendants. This could be a problem in many different types of cases, but especially in household abuse cases and intrafamily sex assault cases. This bill, by the creation of specific constitutional rights for victims, could allow some of these victims to take advantage of these broad victim rights to help the defendant in the criminal justice process or just disrupt the process.

RIGHT NO. 2

Right (2), on page 3, at line 4, confers on victims the broad constitutional right "to receive protection from threats of harm." It does not specify a time period for this right, nor limit it to threats by the defendant or agents acting on behalf of the defendant. And it does not specify the type of protection. A victim could expect very broad protections and file actions to enforce this right. Other states have adopted more specific and clear rights of protection. For example, one state established a right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court. Another state established a right to be reasonably protected from the accused throughout the criminal justice process. The present proposal is too vague.

RIGHT NO. 7

Right (7), on page 3, lines 15-18, confers on victims the right "to be given reasonable notice of any plea agreement and given a reasonable opportunity to provide input to the prosecuting attorney prior to finalization of the plea agreement." This appears to be an

appropriate and reasonable right, but may be difficult to comply with in district court cases, where there is a great volume of cases involving misdemeanors and petty misdemeanors (theft, property damage, trespass, etc.), and where cases that are regularly disposed of by plea agreements entered into with little or no advanced notice. If cases are continued to give prosecutors the time to discuss plea negotiations and agreements with victims in all of the cases, this will likely significantly impact on the processing of cases in district court.

REMEDIES FOR VIOLATION OF RIGHTS

We believe that these proposed constitutional rights are **not** simply aspirational (conferring no enforceable rights until actually legislated into law). As currently drafted, the amendment granting these rights appears self-executing. The provision on page 5, lines 17-18, saying, "The legislature may enact laws to further define, implement, and preserve the rights established by this section," does not appear to change the self-executing nature of the amendment. The amendment is intended to create broad and enforceable rights for victims.

There appears to be some inconsistency in the provisions regarding relief to victims for violation of these constitutional rights. On page 5, at lines 19-20, the bill provides:

Nothing in this section shall be construed to create a cause of action against the State or counties, or any of their agencies, officials or employees.

But on the same page, at lines 6-13, the bill reads:

The crime victim, the crime victim's lawful representative and the attorney for the State may assert the rights established by this section. A person accused of the crime may not obtain any form of relief established by this section.

The rights established by this section may be asserted in any circuit or appellate court with jurisdiction over the case as a matter of right.
The court shall act promptly upon the assertion of rights under this section.

Despite suggesting that the provisions do not create a cause of action for the victim, the bill is clearly providing for some form of judicial relief based on the victims' constitutional rights.

It should be noted, however, that the provision to allow the victim rights to be asserted "in any circuit or appellate court with jurisdiction over the case" does not appear to allow for the assertion of those rights in district courts or in any post-conviction situations. But that is not clear.

THE VICTIMS' BILL OF RIGHTS

The Victims' Bill of Rights, in chapter 801D, HRS, should be adequate to properly address victims' rights. Chapter 801D provides for enforcement of its provisions. Section 801D-5(a) provides:

Each county is responsible for the enforcement of rights under section 801D-4. The courts shall fashion all decisions and orders to enhance the recognition of these rights and the provision of these services, to the extent that they will not conflict with the constitutional rights of the defendant.

The entities that participate in the criminal justice process, including law enforcement, prosecutors, the courts, and corrections, are supportive of victims and very cognizant of their rights under chapter 801D.

For the foregoing reasons, the Department opposes this bill and respectfully asks that it be held.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

LATE



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai`i**

February 6, 2014

**RE: H.B. 1140; PROPOSING AN AMENDMENT TO ARTICLE I OF THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF
VICTIMS OF CRIME.**

Chair Rhoads, Vice Chair Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of House Bill 1144 with reservations.

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 proceeding 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.

However the reservations that we have regarding this measure stem for concerns about implementation of certain aspects of the proposed Constitutional Amendment as currently written. The first two provisions, as outlined below, while important statements of principle regarding the treatment of victims raise question as the practical aspects of how these provisions would be enforced through the Circuit Court as provided in the bill. **1. To be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice process;**

2. To receive protection from threats of harm;

In addition we have somewhat similar but more specific concerns regarding the victim's right to be present at all court hearing s and the procedures and implications of litigating that issue during a trial or other proceeding. Of particular concern would be the treatment by the court of delays that result from such litigation and their impact on Rule 48 and speedy trials rights of defendants. We certainly wouldn't want these delays charged to the State or result in the dismissal of a case. While some aspects of these issues, as well as those cited above involve implementation through legislation or Court Rules, they are concerns worthy of consideration in formulating the language of the proposed amendment.

Notwithstanding the above stated reservations regard implementation we remain in general support of HB 1144 and ask that you give it favorable consideration. Thank you for the opportunity to testify on this matter.

LATE

Testimony of Margaret Garvin, MA, JD
Executive Director, the National Crime Victim Law Institute
and

Clinical Professor of Law, Lewis & Clark Law School, Portland, Oregon

In Support of HB 1144 Proposing an Amendment to Article I of the Constitution of the State of
Hawaii Relating to the Rights of Victims of Crime

Before the House Committee on the Judiciary
February 19, 2015 at 2:00 p.m.
Conference Room 325

Mr. Chairman and Distinguished Members:

I am pleased and honored to be here today to testify in support of HB 1144 which proposes amending the constitution of the state of Hawaii to afford rights to victims of crime. This work you are embarking upon is critical; experience across this country has made clear that only by enshrining victims' rights in the highest law of a state will every victim, in every case, be treated with dignity and respect throughout the criminal justice process.

By way of background, I am the Executive Director of the National Crime Victim Law Institute (NCVLI), which I joined in 2003, and shortly after I joined I became a Clinical Professor of Law at Lewis & Clark Law School. NCVLI is a nonprofit educational and advocacy organization located at Lewis and Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. Our work touches victims' rights in state, federal, and military courts across this country. I have testified before the Oregon Legislature and the United States Congress on the state of victims' rights, and I consulted with Congress on the drafting of the 2004 Federal Crime Victims' Rights Act. Prior to joining NCVLI, I went to law school in Minnesota where I worked for a public defender's office, then clerked for the Honorable Donald P. Lay of the Eighth Circuit Court of Appeals, and practiced in a private law firm in Minneapolis, Minnesota.

The foundation of my testimony is very simple - the criminal justice system functions best when victims are integrated into the administration of justice, and such integration is only truly achieved if victims are afforded enforceable, constitutional rights. My testimony will proceed in five parts. Part I is a brief history of victim role in this country's criminal justice system to help us understand the crossroads at which we find ourselves. In Part II, I discuss the negative impacts that result when victims do not have enforceable rights. Part III provides an overview of the national landscape of victims' rights. Part IV is a discussion of why rights must be included in constitution and not merely statute. Finally, Part V discusses the harmonious co-existence of victims' rights and defendants' rights.

I. History of Victims' Role in Criminal Justice

Knowing our history helps explain why we are where we are today. The American criminal justice system began as one in which crime victims controlled the investigation and prosecution of the crimes against them.¹ The United States Supreme Court has acknowledged this foundation.² The rationale for this victim-inclusive approach to criminal justice was recognition that the harm that crime inflicts is a harm inflicted primarily against individuals.³ Gradually, crime came to be recognized as harming *both* the individual *and* the state.⁴ Eventually, although well after the ratification of the constitution, this balanced approach of recognizing harm to the individual *and* to the state shifted once again, and led to what was in essence a victim-exclusion model of criminal justice. In this model of justice crime victims have no rights and no formal legal status beyond that of witness to a crime or piece of evidence in a case against an accused.⁵

President Ronald Reagan's Task Force on Victims of Crime analyzed this situation in the early 1980s and concluded that somewhere along the way, the American criminal justice system became "appallingly out of balance," "serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest."⁶

II. The Impact of a System without Victims' Rights

Research makes clear that while participation in the current criminal justice system can be beneficial for some victims⁷, for other victims it can result in harm beyond the original crime. This additional harm is often referred to as "secondary victimization" and it is recognized to have significant negative impacts on victims.⁸ Critically, these negative impacts of secondary

¹ See Juan Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 Harv. J. L. & Pub. Pol'y 357, 359, 366-68 (1986); Angela J. Davis, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* 9 (2007); Douglas E. Beloof and Paul G. Cassell, *The Crime Victim's Right to Attend the Trial: The Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 484-87 (2005).

² See, e.g., *Steele Co. v. Citizens for a Better Environment*, 523 U.S. 83, 127-28 (1998) (Stevens, J., concurring) ("[I]n England, in the American Colonies, and in the United States, private persons regularly prosecuted criminal cases."); *United States v. Marion*, 404 U.S. 307, 329 n.2 (1971) (Douglas, J., concurring) (noting private prosecution history and quoting 1 J. Stephen, *History of the Criminal Law of England* 493 (1883)).

³ See Cardenas, *supra* note 1, at 359-60.

⁴ See, e.g., 4 William Blackstone, *Commentaries* *5 ("In all cases the crime includes an injury: every public offense is also a private wrong, and somewhat more; it affects the individual, and it likewise affects the community."); Cesare Beccaria, *ON CRIMES AND PUNISHMENTS* (Richard Bellamy ed., Richard Davies trans., 1995) ("Here then, is the foundation of the sovereign's right to punish crimes: the necessity of defending the repository of the public well-being from the usurpations of individuals").

⁵ For a more thorough discussion of the history of victim role in the American criminal justice system see *Fundamentals Of Victims' Rights: A Brief History of Crime Victims' Rights in the United States*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <http://law.lclark.edu/live/files/11822-fundamentals-of-victims-rights-a-brief-history-of>.

⁶ 1982 President's Task Force on Victims of Crime, *Final Report* vi (1982).

⁷ See, e.g., Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. of Traumatic Stress 159, 160-61 (2003) (discussing potential benefits of participation); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. of Traumatic Stress 182, 182 (2010) (same); Margaret E. Bell, et al., *Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcomes and Processes*, 17 Violence Against Women 71, 72 (2011) (same).

⁸ For a detailed discussion of secondary victimization and its impact on victims and their participation, see *Polyvictim: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice*

victimization extend beyond the individual, substantially impairing the proper functioning of justice system.⁹ What accounts for the difference is attributable, at least in part, to victim treatment within the system, perhaps most poignantly - whether victims have meaningful rights, and ability to choose whether, when, how, and to what extent to participate and exercise those rights.^{10 11}

III. The National Landscape of Constitutional Amendments

While every state in the Union has statutory provisions affording rights, experience reveals that statutory rights are often ignored or applied in an ad hoc fashion and afford no opportunity for appellate review. Notably, the studies on victim experience and engagement reveal that victims who are afforded rights on paper, only to be denied those, are perhaps those most likely to have a

System, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Mar. 2013, available at <http://law.lclark.edu/live/files/13797-ncvlipvvictims-rights-enforcement-as-a-tool-to>. See also Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. of Traumatic Stress 182, 183 (2010) (observing that some studies indicate that "contact with the justice system can lead to a 'secondary victimization,'" and that the experience may "exacerbate the initial trauma," "leave victims feeling embittered and disappointed," and cause anxiety); Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Social Justice Research 313, 314 (2002) (noting that "secondary victimization" by the system can negatively influence victims' "self-esteem, faith in the future, trust in the legal system, and faith in a just world"); Pamela Tontodonato & Edna Erez, et al., *Crime, Punishment, and Victim Distress*, 3 Int'l R. of Victimology 33, 34 (1994) (observing that secondary victimization can cause victims to feel frustrated with and alienated from the criminal justice system).

⁹ See, e.g., Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. Rev. 911, 953-55 (1996) (analyzing victim participation in the criminal justice system); Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review*, 2005 B.Y.U. L. Rev. 255, 331-42 (2005) (discussing systemic dysfunctions that results from illusory victims' rights). See also Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 J. of Gender, Soc. Pol. & the Law 465, 469 (2003) ("[E]xtensive data, obtained in a wide variety of contexts, demonstrates a strong link between a person's perceptions of fair treatment and her sense of the overall legitimacy of governmental authority. The more she feels heard, understood, and treated with fairness and respect, the more likely it is that she will seek government assistance in the future."); Margret E. Bell et al., *Battered Women's Perception of Civil and Criminal Court Helpfulness: The Role of Court Outcome and Process*, 17 Violence Against Women 71, 72 (2011) (noting that ignoring victims of interpersonal violence's concerns may make them less likely to seek help in the future, which is problematic given that a single court encounter rarely leads to the cessation of violence).

¹⁰ See, e.g., Orth, *supra* note 8; Bennett, Lauren, Goodman, Lisa & Dutton, Mary Ann, *Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective*, 14 Journal of Interpersonal Violence 761 (1999); Bibas, *supra* note 9; Dean J. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L. Rev. 7 (1987).

¹¹ See, e.g., Alan N. Young, *The Role of the Victim in the Criminal Process: A Literature Review—1989 to 1999*, at 11, Ottawa, Canada: Department of Justice, Research and Statistics Division, available at http://www.justice.gc.ca/eng/pi/rs/rep-ap/2000/rr00_vic20/rr00_vic20.pdf; Kilpatrick & Otto, *supra* note 10 (explaining why giving victims input into the criminal justice system proceedings and providing them with information about the justice process helps to increase victims' perceptions of control, decrease their feelings of helplessness, and reduce psychological distress). See also Meg Garvin, *Harmony or Discord between Victim Agency and the Criminal Justice System: A Comment on DePrince, Belknap, Labus, Buckingham, and Gover*, 18 Violence Against Women: An International and Interdisciplinary Journal (2012) (collecting and discussing variety of studies and arguing for studies of increased agency).

negative experience with the criminal justice system.¹² To afford a victim a “right” in one statement but in the very next breath limit that right based upon a single actor’s idiosyncratic assessment of it is the perfect recipe for re-victimization. Thus, from 1982 through as recently as fall 2014, more than 30 states have amended their constitutions to afford victims’ rights. Passage rates for these constitutional amendments have been in the range of 75 to 90 percent.¹³ Victims’ constitutional rights are far less likely to be ignored than statutory rights; in fact our system nearly universally respects defendants’ rights precisely because they are enshrined in constitution.¹⁴

Importantly, having worked directly with state constitutional rights nationally for more than a decade I can tell you that the sky will not fall if victims are afforded these rights here in Hawaii. Experience reveals that efficient and effective systems and processes are readily identified to weave victims’ rights into the daily practice of our justice system and appellate cases in which courts have been compelled to interpret the provisions will be few and far between.¹⁵

V. What is the Impact on Defendants’ Rights?

Practitioners, jurists, legislators, and even the public may fear victims’ rights and victim participation in criminal justice beyond the role of witness necessarily violates defendants’ constitutional rights. These fears stem, in part, from the mischaracterization of the criminal justice system as a “zero-sum” game, in which affording one participant rights necessarily diminishes the rights of other participants. In fact, while victims’ rights are often framed as being poised counter to defendants’ rights, the characterization is flawed; victims’ rights are substantive and procedural rights that are exercised as part of a fair criminal justice process.¹⁶ Courts are commonly tasked with weighing competing rights and interests in the just adjudication of a matter, and, as the practice of victim participation across the country has demonstrated, criminal courts are quite able to accommodate limited victim participation for the purpose of asserting and enforcing their rights without the feared negative repercussions. As Human Rights Watch, a well-respected NGO, noted in its recent report on crime victims’ rights in America: “While there can be tensions between the legitimate interests of victims and defendants, a criminal justice system based on human rights standards can safeguard the rights of both while advancing justice and the rule of law.”¹⁷

¹² See Kilpatrick & Otto, *supra* note 10 (predicting that “victim perceptions of helplessness and lack of control are maximized by raising the expectation that a right of participation exists, the victim electing to exercise that right, and then being denied that right”).

¹³ See Douglas E. Beloof, *The Third Wave of Victims’ Rights: Standing, Remedy and Review*, 2005 B.Y.U. L. Rev. 255, 341 n. 421 (collecting passage percentages in individual states).

¹⁴ For a detailed dissection and rebuttal of arguments opposing enshrining victims’ rights in constitution see Paul G. Cassell, *Barbarians at the Gates? A Reply to the Critics of the Victims’ Rights Amendment*, 1999 Utah L. Rev. 479.

¹⁵ See *Validity, Construction, and Application of State Constitutional or Statutory Victims’ Bill of Rights*, 91 A.L.R.5th 343 (collecting state cases).

¹⁶ See, e.g., Paul G. Cassell, *The Victims’ Rights Amendment: A Sympathetic, Clause-By-Clause Analysis*, 5 Phoenix L. Rev. 301, 315-16 (2012) (“Crime victims’ rights do not stand in opposition to defendants’ rights but rather parallel to them.”); Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2005 B.Y.U. L. Rev. 255, 339 (2005) (observing that “victims’ rights are artificially framed as rights conflicting with defendants’ rights, even though victims’ rights are centrally rights against the government”).

¹⁷ Human Rights Watch, *U.S. Policy and International Standards on the Rights and Interests of Crime Victims*, 1 (2008).

Conclusion

Victims do not choose to be in the criminal justice system; they are forced into it by actions of others. We owe it to victims, to our communities, and to the proper functioning of our justice system to ensure that when they find themselves compelled into this reality they are treated with dignity and respect. To achieve this we need a constitutional amendment. I thank you for allowing me this opportunity to submit this testimony for your consideration as you embark on the critical task. I also thank you for your ongoing work to ensure the justice system works for all those involved – victims and defendants alike.

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LATE

February 18, 2015

TO: The Honorable Karl Rhodes, Chair
The Honorable Joy A. San Buenaventura, Vice-Chair
and Members of the House Committee on Judiciary

FROM: C. Kent Coarsey, President and Executive Director
The Children's Alliance of Hawaii

RE: HB 1144 Proposing an Amendment to Article I of the
Constitution of the State of Hawaii Relating to Rights of
Crime Victims

POSITION: Strong Support

A. JAMES WRISTON, JR., Esq.
Chair

MARY WORRALL
Vice Chair & Secretary

CRAIG WARREN
Treasurer

DIRECTORS:

JACKIE COLLINS BUCK

TIMOTHY CHANG

JENIFER EVANS

PAMELA FERGUSON-BREY, Esq.

ASAD GHIASUDDIN, M.D.

ROBERT HALE

ALLEN KUBOTA

MEREDITH LOW

BRIDGET PALMER HOLTHUS, Esq.

LORI PHILLIPS, PhD

PENELOPE ROGERS

PATTI PETRI ROSE

C. KENT COARSEY
PRESIDENT/EXECUTIVE DIRECTOR

Chair Rhodes, Vice-Chair San Buenaventura, and Members of the
Committee on Judiciary:

Thank you for providing this opportunity to testify in strong support of HB
1144.

The Children's Alliance of Hawaii believes that each child is resilient,
creative, courageous and strong and deserves every opportunity to thrive
to their fullest potential. Children who have been traumatized by sexual
abuse need special ongoing support to help them become healthy and
successful adults. The Children's Alliance of Hawaii is dedicated to
providing caring support for children who have been sexually abused,
offering hope for the future.

It is heartbreaking to see innocent children who are violently harmed and
defenseless against perpetrators. It is just as disturbing when the rights
of child victims are not enforced as the case winds its way through the
court system.

The proposed constitutional amendment for a victims' bill of rights would
guarantee basic rights of crime victims. They will have permanent,
constitutional, and enforceable rights.

There will be no fair treatment of victims until their rights are guaranteed
by our state constitution, which is the final authority assuring the rights of
the accused. Victims, especially children deserve no less.

Please pass HB 1144 out of your Committee.



LATE

To: Representative Karl Rhodes, Chair- House Committee on Judiciary;
Representative Joy San Buenaventura, Vice Chair; and members of the Committee

From: Nonohe Botelho, National Organization of Parents of Murdered Children

Date: Thursday, February 19, 2015

Re: **House Bill 1144:** Proposing An Amendment To Article I Of The Constitution Of The State Of Hawaii Relating To The Rights Of Victims Of Crime

Aloha, my name is Nonohe Botelho. Today I am representing the National Organization of Parents of Murdered Children (POMC). I became affiliated with Parents of Murdered Children in 2011 after my son, Joel Kealiinoa Botelho, was gunned down and murdered in front of our home in Kaneohe. I am writing to say that I support the passing of House Bill 1144, relating to the Rights of Victims of Crime.

In 2011, I reached out to Parents of Murdered Children out of utter frustration. I was frustrated by the fact that I was being disregarded by the criminal justice system. From the moment my son's body was taken away by ambulance I was told that my son, my baby, was "evidence". I was told that I could not hold him because his body had to be "processed." To this day, I am haunted by the fact that I could not hold my son and kiss his warm face just one more time.

During the months that followed I HAD to become my own advocate. In the midst of planning a funeral, grieving and trying to keep my family safe I HAD to pursue information because information was not forthcoming. It was a hit or miss situation. Sometimes I got information, sometimes not. Important evidence was withheld from us for months. When I inquired about the medical examiner's report I got blank stares and got NO answers. As the trial neared we were "reminded" how to act. We were told not to show emotion in the courtroom or out of the courtroom, we were told not to talk in the hallways, we were told not to talk to one another about the trial in public and we were told not to talk to the media. We were constantly being regulated. To make matters worse, after only three hours into the trial, the prosecutor told my husband and I that we lost the case. Fortunately, he was wrong! We got a conviction!

Sadly, my story is not unique. I have heard many stories of mistreatment of victims and their families. In one case a family was told that they were not allowed to attend court for the reading of the verdict. They were actually told to stay away from the courthouse! Another family, expecting a lesser manslaughter charge to be included in the final jury instructions, was not informed that the manslaughter was not going to be considered. Later, the decision to remove the lesser manslaughter became a major point of contention for the case. Most disturbing was the case of a young man who was murdered and dismembered. The media choose to air a small clip of the defense attorney calling the victim a homegrown terrorist. The victim's last name happened to be, KHAN.

Currently, in the State of Hawaii, victims and their families are often sidelined and relegated to the back of the room. We are not seen as a meaningful part of the process. Instead we are often re-victimized by well-meaning people. We are not asking to get “special” treatment; we are asking to be treated fairly and with dignity. We are asking for the same rights as the defendant.

In some States, the victim’s family has the right to attend all hearings the defendant attends. In some States families of crime victims have input into the plea agreement process. In our case, we wanted a plea agreement, but we were told that it was “all or nothing.” As victims we deserve to be notified of the whereabouts of the defendant before, during and after trial. As I got involved with POMC I learned about the VINE notification program. The VINE program notifies me of any changes in the defendants’ physical status. Most families, here in Hawaii do not know about this program.

In closing, I am asking the committee to support HB 1144. Amending the Hawaii State Constitution will help victims of crime and their surviving family members to have specific rights related to information pertaining to and participation in the criminal justice process.

Thank you for your time and consideration.

LATE

d By	Organization	Testifier Position	Present at Hearing
Kari Benes	Individual	Support	No

Comments:

LATE

July 18, 2015

Honorable Karl Rhodes, Chair

The Honorable Joy A. San Buenaventura, Vice-Chair
And Members of the House Committee on Judiciary

FROM: Martha Ross, LSW
Mailing: P.O. Box 390, Waimanalo, HI 96795 **E:** mrosshawaii@gmail.com

RE: HB 1144 Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to Rights of Crime Victims

POSITION: Strong Support

Chair Rhodes, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary:

Thank you for providing this opportunity to testify in strong support of HB 1144. As a licensed social worker with over 20 years of experience working with victims of crime, I have seen first-hand that a victims' bill of rights in the Hawaii State Constitution is necessary for survivors and their families who have suffered from devastating loss, grief and pain.

As a victim witness advocate with the Honolulu Prosecutor's Office from 1982 - 1991, I was able to establish and coordinate their Victim Witness Assistance Volunteer Program and served as an advocate and counselor for victims and witnesses of violent crimes with the Victim/Witness Kokua Services. I have also worked at the Sex Abuse Treatment Center, and co-founded the first counseling-education/support empowerment group for battered women on Oahu. Currently, I serve as an interim appointed Commissioner on the Crime Victims Compensation Commission.

I have seen and am familiar with many cases in which victims and their families were re-traumatized and felt powerless because they were not given their basic rights as victims. These cases that range from the family not being informed of the convicted murderer being granted an early release from the Hawaii State Hospital only to commit another heinous violent act to survivors diligently wanting to attend sentencing and parole hearings but are either not informed at all or after the hearings have taken place.

Too often, victims and their families learn after-the-fact that a plea bargain was entered or that the defendant was sentenced. Some discover what happened in the case when the offender shows up at their doorstep. In the courthouse, they find themselves sitting across the hallway from the offender. Later they are confronted with the reality that restitution ordered will not come close to covering their out-of-pocket costs resulting from the crime.

In 1988, the legislature enacted a Basic Bill of Rights for Victims and Witnesses (HRS § 801D-4). It covered victims of crimes against the person and surviving immediate family members of a homicide victim. The legislative intent set out in § 801D-1 recognizes the importance of victims to the health of

the criminal justice system and declares its intent that victims be treated with respect and agencies and individuals in the criminal justice system honor and protect the rights of victims and witness:

In recognition of the civic and moral duty of victims and witnesses to cooperate fully with law enforcement and prosecutorial agencies and in further recognition of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declared its intent, in this chapter 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.

Responsibility for enforcement of the Basic Bill of Rights was assigned to the individual counties in HRS § 801D-5. However, state and county officers and employees could not be held liable in a civil action if it failed to carry out its responsibility, and the statute imposed no other penalty for non-compliance.

Twenty-seven years later, some progress has been made, most notably the Statewide Automated Victim Information and Notification or SAVIN electronic system that alerts victims to changes in an offender's custody status. However, the Bill of Rights has not been institutionalized, and compliance is inconsistent. My understanding is that victims are falling through the cracks of the criminal justice system. Often, they receive some rights but not all of their rights. Some victims still enter the criminal justice system not knowing how to get information or even whether there are services available.

The experiences of victims/surviving families and victim service providers make it clear that, despite strong efforts by criminal justice agencies, the system is failing to consistently enforce and protect the rights of victims. Whether or not victims receive their rights should not depend on the variation of victims' rights offered by each police officer, prosecutor, victim witness advocate, or judge. Our justice system depends on the participation of victims, for the system to change and acknowledge this truth, victims must have constitutional rights.

HB 1144 recognizes the critical role victims perform in the criminal justice system and ensures that their rights are institutionalized and internalized. The justice system must be able to assure victims and families of murdered victims that their rights are safely embedded in the state's constitution and will be honored and protected.

I urge your committee to pass HB 1144.

LATE

18, 2015

TO: The Honorable Karl Rhodes, Chair
The Honorable Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

FROM: Mari McCaig

RE: Testimony in Strong Support of H.B. 1144
Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to Rights of Crime Victims

Chair Rhodes, Vice-Chair San Buenaventura, and Members of the Judiciary Committee:

Thank you for the opportunity to testify in strong support of H.B. 1144.

The purpose of this Bill is to propose an amendment to the Constitution of the State of Hawaii. It is designed to provide recognition of and protection of the constitutional rights for victims of crime and their surviving immediate family members.

This Bill in no way takes away any rights of those accused of crimes as specified in Article I, Section 14 of the Constitution of the State of Hawaii. Rather, it is to create an equal playing field for the victims of crime and to establish within the State Constitution clearly defined rights that offer constitutional protection. Those specific rights are clearly listed in HB 1144. All of these rights are fair, reasonable and necessary.

My name is Mari McCaig. For 22 years, I worked as a Victim Witness Advocate for the Department of the Prosecuting Attorney in Honolulu. During those years, I guided crime victims, witnesses and surviving family members through the criminal justice process. This included preliminary hearings/grand jury, court hearings, trial, sentencing, parole board hearings and final disposition of the case.

I've seen firsthand the arduous and difficult journey that victims and their families must experience as they navigate through the criminal justice system. Most people know little about the criminal justice system except for what they might see on a television program or in a movie. The reality is that many victims and their families are traumatized by crime and often fearful of the offender. They may have suffered physical, emotional and psychological harm. Sometimes these effects are permanent and their lives are changed forever. They often can't talk about the crime and isolate themselves from family and close friends. In cases where the victim dies, there is an overwhelming sense of loss and grief that surviving family members' experience.

Then, to compound matters, they are thrown into a system that places difficult expectations on them when they are in a most fragile condition. Here's what they have to look forward to. They are required to cooperate with law enforcement and the prosecutors

and to testify in court when subpoenaed. The prospect of testifying in court and confronting the offender is anxiety provoking. The innocent victims have to retell and re-live the crime and endure having their credibility challenged by the offender's attorney. They suffer financially, often taking time off from work, losing pay and/or vacation time every time they meet with the prosecutor or go to court. The financial and emotional toll worsens with every delay or continuance.

Innocent victims make these sacrifices and participate in the hope they will see some measure of justice for the ordeal they are forced to undergo. They endure all this on their own, without any of the legal recourses available to offenders.

This is simply wrong.

The Constitutional Amendment proposed in HB1144 addresses the fundamental needs of the victim that are often overlooked by the criminal justice system. Victims should be assured that they will be treated with "courtesy, fairness and respect for their dignity and privacy throughout the criminal justice process." They should have the right to be protected from further harm and notified immediately if the offender's custody status changes so they can take appropriate precautions.

Exclusion from the process and lack of information only heightens a victim's anxiety, distress and lack of control. Victims should be informed about every major development in their cases. They should have the right to be present at all court proceedings and receive reasonable notice of proceedings. Victims should also be entitled to have input into what happens to the offender – whether it's pre-trial release, a plea bargain, sentencing or post-conviction release.

It's essential that you keep in mind the fact that from the victim's perspective, a criminal act has turned their lives upside down, never to be the same, and hurled them down a path that they did not choose and have no control over. The consequences to the person who caused this harm is in the hands of the prosecutor, defense attorney and a judge in a system of complex rules and procedures that at best, are indifferent to victims, and at worst, treat them as a piece of evidence.

It's also critical to keep in mind that when the criminal case ends, crime victims should not feel that they were betrayed or re-victimized by the criminal justice system. The criminal justice system must recognize a victim's interest in the outcome of the case. By endowing victims with codified indispensable rights, this proposed Constitutional Amendment will give victims the respect, consideration and dignity they deserve.

I, therefore, strongly urge this Committee's support of H.B. 1144.

It's simply the right thing to do.

LATE

	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

LATE

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair
and Members of the House Committee on Judiciary

FROM: Kenneth Gordon

EMAIL: etccfitness@hotmail.com

SUBJECT: HB 1144 Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to the Rights of Victims of Crime

DATE: Thursday, February 19, 2015 @ 2:00pm, Conference Room 325

POSITION: Support; Individual Testimony; Not testifying in person

Please count me as an overwhelming supporter of HB 1144, which is long overdue. Any society which deems itself humane, moral, and ethical must ensure that the rights of crime victims and witnesses of crimes are, at the very least equal to those of criminal defendants.

I strongly urge you to create an environment where victims of crime are no longer minimized. Anything less would be a travesty. It's the right thing to do.

LATE

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
And Members of the House Committee on Judiciary

FROM: Ruby Mata-Viti

SUBJECT: HB 1144 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

DATE: Thursday, February 19, 2015 @ 2:00pm, Conference Room 325

POSITION: Strong Support

My name is Ruby Mata-Viti.

In November 1996 my husband was killed by a hit-and-run driver, which left me a widow at age 37, raising our 5-year old son alone.

The perpetrator turned himself in after a couple of weeks, and after two years of delays, he was brought to trial and sentenced to 10 years in prison. Part of his sentence was that he was to pay \$18,000 in restitution.

He was released 2 years early on parole, and I was never notified. I only found out by happenstance when I changed my place of residence and called to give the state my new mailing address for any restitution checks. While he was serving time, I had been receiving restitution checks sporadically, in varying amounts, totaling less than \$2000.

Imagine how shocked I was to discover that he been out for about a year or so, two years earlier than sentenced, and then the compounded grief realizing that since I had not been notified, I was not given a chance to speak at the parole hearing for myself and on behalf of my son and my late husband.

While he was out on parole, I had not gotten any restitution checks, and had I been properly informed of his release, I would have notified the state that he was in violation of his parole because he was not sending me checks on a regular basis. All I received was a \$50 check dated a few months after his release. While he was on parole, it seems he could have tried to get a personal loan from his family or a loan from a bank that his family member could have co-signed in order to pay in full and satisfy the restitution part of his sentence.

I would not wish what I have been going through on anyone, and it's uncomfortable opening myself up this way, but because I AM going through this I share my experience with you in hopes to foster change that might help others.

When this first happened in 1996, I was advised not to file a civil suit because the state is bringing this man to trial and the state would take care of it. I was advised that I should spend all my energy and resources to take care of our son.

But it was alarming to find that the courts would hand down a sentence and then release the man without letting me know and THEN in the matter of restitution, left me in a position where I basically felt abandoned — feeling what's the point of issuing a restitution sentence if it's not automatically enforced. The victims are left to try and navigate the system to have the restitution enforced.

I had to try to find a collections attorney to help me collect the money. And it is not about the money, it is part of trying to heal — to know that I am doing everything that I possibly can. No collections attorney would touch my case, they said it wasn't worth their time, to them it was so little money, and they said that the person I was trying to collect from probably didn't have money anyway.

In talking to the attorney who finally did help me, he said collections laws were written with big corporations in mind, corporations who have lots of money to spend to go after people and make them pay, and not written for regular people like me.

It would seem appropriate — if the person who committed the crime does not make a good faith effort to satisfy the restitution within a certain timeframe — that there be an automatic judgment placed on that person once that person is released, so that the victims would not have to find a collections attorney they can afford or go through the process of paperwork and have to suffer the pain of constantly reliving the past by having to go to court again in order to collect. Once the person is out of prison, there should be automatic judgment/garnishment placed on that person until the restitution is satisfied.

Doing so would help ease the burden on those who are already suffering.

I humbly ask that the committee take my testimony into consideration going forward.

LATE

Testimony in Favor House Bill 1144

an Amendment to Article I of the Constitution of the State of Hawai'i Relating to the Rights of Victims of Crime

This is my experience with a student at UHM:

Said student comes into my class having obviously either been in a terrible accident of some sort, or having fallen down a flight of stairs. Her face and body are bruised and she has bandages in various places on her body and face. She is an "A" student. I asked her to come to my office after class.

It turns out that her husband beat her....again. Previous restraining orders have never worked. I beg her to get a divorce and, get her to go see a psychologist at the Student Health Center several times. In the past, as it turns out, she has been afraid to try to divorce him since he has told her he would kill her. She is finally ready to leave the marriage and files for divorce.

The husband is sent to jail, eventually, and a few months later gets out.

The wife (and student) is not notified that the husband has been released and he, in fact, finds her, beats her and attempts to kill her. He is sent back to jail.

Bottom line:

1. The wife (now former student) was never notified that the husband was being released from jail/prison, and was nearly killed.
2. The wife never had a chance to tell of her experiences regarding the history of abuse to a prosecutor.

Criminals have many constitutional rights.

What about the rights of victims?

**Victims MUST have Constitutional Rights in
Hawai'i
as victims do in other states**

Thank you for listening to a voter. Carol A Dickson, PhD