



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 679, RELATING TO PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Tuesday, February 9, 2016                      **TIME:** 9:15 a.m.  
**LOCATION:** State Capitol, Room 016  
**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General appreciates the intent of S.B. No. 679, shares the following concerns regarding certain provisions, and recommends the provisions of H.B. No. 1144, Proposed H.D. 1, scheduled for hearing by the House Committee on Judiciary on February 9, 2016.

Right number 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 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, it may impact the processing of cases in district court and lead to case backlogs.

Right number 9 at page 4, lines 3-7, confers on victims the right to participate and be heard in any "process or deliberation" that may result in the offender's post-conviction release from confinement, including any type of release by the Department of Public Safety. The right to participation in "any process or deliberation" would appear to include internal administrative, management, or programming discussions or deliberations. That level of participation would be inappropriate and may create issues for corrections management.

Right number 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 language may be overbroad. The administration at the State Hospital may engage in regular reviews and assessments of a defendant's mental health condition, and work on developing or revising treatment plans. It might not be appropriate for a victim to participate in these processes.

The Department appreciates the intent of this bill and commits to working with the stakeholders to provide further input.

#### PROTECTION RIGHT IS TOO VAGUE

Right number 2 on page 3, at line 4, confers on victims and their surviving immediate family members 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 to be received. A victim could expect broad protection and file actions to enforce this right. Other states have adopted more specific and defined 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.

#### REMEDIES FOR VIOLATION OF RIGHTS

On page 5, at lines 10-13, the bill reads:

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.

It should be noted that this 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 Department appreciates the intent of this bill but recommends the provisions of H.B. No. 1144, Proposed H.D. 1, scheduled for hearing by the House Committee on Judiciary on February 9, 2016.

**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on  
Judiciary and Labor**

February 9, 2016

S.B. No. 679:           PROPOSING AN AMENDMENT TO ARTICLE I OF THE  
                                  CONSTITUTION OF THE STATE OF HAWAII RELATING  
                                  TO THE RIGHTS OF VICTIMS OF CRIME

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 679 which would amend the Hawaii Constitution to create provisions relating to the rights of victims of crime. Many of the provisions contained in this bill are already contained in the Hawaii Revised Statutes. H.R.S. Chapter 801D is entitled the Rights of Victims and Witnesses in Criminal Proceedings.

Elevating provisions to the constitutional level will cause irreconcilable conflicts with current constitutional provisions and could result in miscarriages of justice. Section 1 requires a victim to be treated with courtesy, fairness and respect. These terms are vague and all-inclusive. Meanwhile, the Sixth Amendment to the U.S. Constitution and Article I, Section 14 of the Hawaii Constitution afford all accused persons the right to confront witnesses against him/her. This right includes the ability to cross-examine witnesses including victims in trial proceedings. How will tough cross-examinations be reconciled with the right for victims to be treated with courtesy and respect? Often, victims who are subject to questioning in court before a judge or jury will feel that they are being “attacked” and not being treated with courtesy. Will this result in a constitutional violation? If it does, what would the possible legal remedy be?

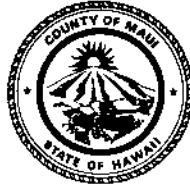
Section 2 provides for the right to a speedy trial. The Sixth Amendment to the U.S. Constitution and Article I, Section 14 of the Hawaii Constitution provides for an accused’s right to speedy trial. At first glance, the two provisions would appear to be parallel. However, it is inevitable that a victim and defendant will have vastly different interpretations of a speedy trial. Generally, a defendant’s right to speedy trial is interpreted as a right to trial within 6 months. In the eyes of a victim, 6 months may be an excessive amount of time for resolution of the case. Moreover, there are many exceptions to the six month rule. In serious cases, it is not unusual for a case to go to trial more than six months after its inception. However, the extra time is often necessary for the court to make pretrial rulings and for discovery to be completed. Due process and the right to fair trial demands that a case not be forced to trial prematurely.



Section 6 of the bill affords a victim the right to be present at all court proceedings. Establishment of this constitutional right could result in scheduling difficulties and delays in the progress of cases. If, for some reason, a victim could not be present at a certain hearing, the hearing would have to be continued. This would delay the progress of the case and could result in excessive pretrial detention for the defendant.

Thank you for the opportunity to provide testimony in this matter.

ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Acting Prosecuting Attorney

ROBERT D. RIVERA  
Acting First Deputy Prosecuting Attorney

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Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON

SB 679 - PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF  
THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME

February 9, 2016

The Honorable Gilbert S. C. Keith-Agaran  
Chair  
The Honorable Maile S. L. Shimabukuro  
Vice Chair  
and Members  
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES SB 679 -  
Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the  
Rights of Victims of Crime.

The rights of victims of crime are already protected by law pursuant to Hawaii Revised  
Statutes Chapter 801D. We believe that SB 679 is unnecessary, and may cause the additional  
problems of civil liability and potential conflict with the constitutional rights of those accused of  
crime (which are protected by both the state and federal constitutions).

Accordingly, the Department of the Prosecuting Attorney, County of Maui, OPPOSES  
the passage of this bill. We ask that the committee HOLD SB 679.

Thank you very much for the opportunity to provide testimony on this bill.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
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**

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Victim/Witness Program 808-241-1898 or 800-668-5734

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TESTIMONY IN SUPPORT OF  
SENATE BILL NO. 679/SENATE BILL NO. 3034  
PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE  
STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME

Diana Gausepohl-White, Victim/Witness Program Director  
County of Kaua'i

Senate Committee on Judiciary and Labor  
February 9, 2016, 9:15 a.m., Conference Room 016

Honorable Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the  
Committee:

Our American criminal justice system is second to none. That being said, it's naïve to think mistakes aren't made. We are afforded Constitutional rights to protect us when accused and there are well established processes to ensure corrective action is taken if there's an error. I've worked with victims of crime for the past 23 years. Although I've seen improvements, victims still have to rely on the discretion of others, a prosecutor or a judge, to right their wrongs when there's an oversight.

I know there are some who are concerned and fearful of this bill. I believe appropriate revisions have been made and it can be implemented without causing any undue ramifications. If everyone does their job diligently and stays true to our shared goal of "justice for all," guaranteeing the rights of victims of crime under our State Constitution can only be a good thing. Passing it doesn't require courage; just a recognition that without it there will continue to be daily consequences to victims.

I respectfully ask that you support SB679/SB3034.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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Telephone: 808 587-1143  
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MARI MCCAIG  
Chair

ABELINA SHAW  
Commissioner

MARTHA ROSS  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

TESTIMONY IN SUPPORT OF  
SENATE BILLS 679 AND 3034  
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

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 9, 2016, 9:15 am  
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in strong support of Senate Bills 679 and 3034 with amendment to Senate Bill 3034 to include a provision prohibit a cause of action for damages against the state or counties, or any of their agencies, officials or employees, 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](http://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. However, the Commission supports the inclusion in the bill of a provision stating that the amendment does not give rise to a cause of action for damages against the State or counties, or any of their agencies, officials or employees.

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 parolees to their crime victims. Since the inception of the project, the Commission has opened over 6,700 restitution files and collected approximately 3.4 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. 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 intended to be present at the hearing to represent the minor victims' interests. When she 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.

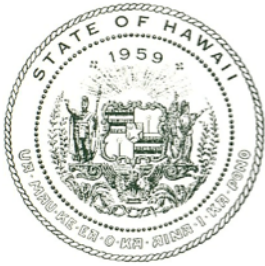
Every day, victims are thrust into the criminal justice system and asked to navigate its complexities in the midst of their trauma. Sadly, this means that victims' rights are often

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 Senate Bills 679 and 3034 with amendment to Senate Bill 3034 to include a provision prohibiting a cause of action for damages against the state or counties, or any of their agencies, officials or employees.



HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



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February 8, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

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

Re: Testimony in Support, SB 679, 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 SB 679, 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. In those states, defendants' rights and victims' rights co-exist and do not diminish one another. 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, fairness, and respect for their dignity, the right to privacy, 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. The Commission interfaces with victims on a daily basis—they have complex needs and often need advocacy on their behalf, as navigating a criminal justice system after victimization can be difficult, exhausting, and for some, trigger serious mental health issues.

Last year, we learned 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 ongoing media exposure of multiple cracks in our criminal justice system, now is the right time to pass a constitutional amendment and the fair thing to do.

The Commission respectfully urges this Committee to pass SB 679. Thank you for this opportunity.





Committee: Committee on Judiciary and Labor  
Hearing Date/Time: Tuesday, February 09, 2016, 9:15 a.m.  
Place: Conference Room 016  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 679, Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 679, which seeks to amend article I of the Hawaii Constitution to guarantee specific rights to victims of crimes.

A constitutional amendment is unnecessary

The Hawaii Constitution is the supreme and paramount law of the state subject only to the restrictions of the U.S. Constitution. Unlike regular statutes, which the legislature itself may repeal or revise, altering the Hawaii Constitution requires a more complex process, including, for example, an enhanced vote requirement of two-thirds majority of both houses if adopted in a single session and formal notice to the governor. *See* Article XVII, §3. Constitutional amendments should be reserved for those rare instances where there are no other alternatives available such as statutory legislation. Because each of the rights enumerated in S.B. 679 could be provided by statute, a constitutional amendment is unnecessary.

The rights granted by the proposed constitutional amendment are unenforceable

Section 2 of the bill provides “[n]othing 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.” The bill is ineffectual if crime victims have no recourse for the violation of their rights protected by the proposed amendment.

The ACLU of Hawaii respectfully requests that the Committee defer S.B. 679.

Thank you for this opportunity to testify.

Sincerely,

Daniel Gluck  
Legal Director  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.*



February 7, 2016

To: Hawaii State Senate Committee on Judiciary and Labor  
Hearing Date/Time: Tuesday, February 9, 2016 (9:15 a.m.)  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony of American Association of University Women –  
Hawaii in **support of S.B. 679**, relating to a constitutional  
amendment to establish rights for victims of crimes

Dear Senator Gilbert S.C. Keith-Agaran (Chair), and Senator Maile S.L. Shimabukuro (Vice Chair), and Members of the Committee,

I am grateful for this opportunity to testify in **strong support of S.B. 679**, relating to a constitutional amendment to establish rights for victims of crimes.

My testimony is on behalf of the approximately 400 members of the American Association of University Women (AAUW) in Hawaii, who list gender-based violence as an important current concern. My testimony is informed by many years of work in the field of domestic violence, and research conducted with survivors of intimate partner violence. In addition, when I lived in New Zealand, I managed a 24-hour, 7-days/week domestic violence hotline, and I also trained hotline Advocates to respond skillfully and empathetically to survivors of violence. I provided extensive education to Advocates for Women, and also worked with police, courts, and other service agencies on behalf of survivors.

Based on these experiences, I argue that passage of S.B. 679 is important, with potential to improve assistance offered to survivors of violence, and other victims of crime in Hawaii. Many of the components of this bill are already fixed in New Zealand law, where I lived for many years, and observed first-hand the importance of these clauses in providing a criminal justice system attentive to the needs and rights of victims. Similar bills to the Hawaii one have also been passed in other American states, and it is time for Hawaii to join the majority of states in moving this bill toward enactment.

It is shocking to me that victims of crimes in Hawaii may not be notified of court proceedings, major case developments, or final case disposition. I personally know people in Hawaii who have been denied this type of information, which may place victims at personal risk, and certainly disturbs them emotionally. The rights mentioned in this bill are all similarly reasonable rights that victims assume would be provided to them, but so often are not in Hawaii.

In conclusion, passage of S.B. 679 is an important step in improving justice for crime victims.

Thank you for the opportunity to testify.

Sincerely  
Susan J. Wurtzburg, Ph.D.  
Policy Chair



CATHOLIC CHARITIES HAWAII

**TESTIMONY IN SUPPORT OF SB 679 and SB 3034: PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME**

TO: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair  
Members, Committee on Judiciary and Labor

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaii

HEARING: **Tuesday, 2/9/16, 9:15 AM; CR 016**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members, Committee on Judiciary and Labor:

Thank you for the opportunity to provide written **testimony in support of SB 679 and SB 3034**, which propose a constitutional amendment for victim's rights/Marsy's law for Hawaii. Catholic Charities Hawaii supports these bills since they would benefit not only victims of domestic violence but also all victims of crime.

Catholic Charities Hawaii (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawaii for over 60 years. CCH has programs serving individuals, elders, children, developmentally disabled, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawaii.

As part of program services, CCH provides individual and group counseling services for domestic violence victims. These victims often must try to navigate the complex judicial system at the same time as they try to deal with their trauma. Many may feel re-victimized, forgotten, or ignored, since they lack enforceable rights. Crime victims deserve to be recognized as being as important as the defendant. Providing statutory right for victims does not infringe on the rights of the defendant. Instead, it will ensure that victims are treated with dignity, respect, and courtesy. This proposed constitutional amendment would put crime victims on the same level as defendants.

In 32 other states, the rights of victims are protected. Hawaii is only one of 18 states that lack a constitutional provision that protect victims' rights. It is time to recognize and protect the rights of victims.

Thank you for your consideration of this important issue. Please consider supporting these bills and helping to strengthen laws that protect victims of domestic violence.

Please contact me at (808) 373-0356 or [bettylou.larson@catholiccharitieshawaii.org](mailto:bettylou.larson@catholiccharitieshawaii.org) if you have any questions.



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February 9, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

From: Howard S. Garval, President & Chief Executive Officer

Date: Tuesday, February 9, 2016 (9:15 a.m., State Capitol Conference Room  
016)

**RE: In Support of SB679 and SB3034**

Child & Family Service (CFS) has a long history of providing services to survivors and perpetrators of domestic violence and their families. We operate four domestic abuse shelters, three transitional housing programs for survivors of domestic abuse, court-ordered counseling for perpetrators, and Domestic Violence Advocacy, a program that serves women who receive a waiver from First to Work due to domestic violence. We also provide domestic violence services to families in the child welfare system as well as serving sexual abuse victims and kupuna who are at risk of abuse. We serve large numbers of victims each year who suffer from significant trauma. Unfortunately, the justice system sometimes exacerbates this trauma rather than protecting victims.

I am writing in **support of SB679 and SB3034** that propose a constitutional amendment for victims' rights in what has become known as Marsy's Law for Hawaii. While victims have certain statutory rights under Hawaii law, defendants and perpetrators of crime have certain constitutional rights that victims currently do not have in Hawaii. Hawaii is one of only 18 states that do not have a constitutional provision that protects victims' rights. These bills do not deprive defendants of their rights. The current statutory rights for victims are not enforceable so a constitutional amendment is necessary to ensure that all crime victims in Hawaii have permanent and enforceable rights.

CFS asks for your support for these bills to move a step closer to protecting the rights of victims of crime in this state.

Mahalo for the opportunity to submit testimony.



“We’re all about FAMILY”

Mission: Strengthening Families and Fostering the Healthy Development of Children

DATE: February 9, 2016, 9:15 a.m.

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice-Chair  
And Members of the Senate Committee on Judiciary and Labor

FROM: Lisa Dunn, Executive Vice President & Director of Programs  
The Children's Alliance of Hawaii

RE: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution  
of the State of Hawaii Relating to Rights of Crime Victims

POSITION: Strong Support

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on  
Judiciary and Labor:

Thank you for providing this opportunity to testify in strong support of SB 679/SB 3034.

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 left 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 SB 679/SB 3034 out of your Committee.



# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Tuesday, February 9, 2015

9:15 a.m.

Room 016

### **OPPOSITION to SB 679 & SB 3034 - Constitutional Amendment Rights Of Victims**

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,500 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 679 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.

SB 3034 proposes a constitutional amendment to guarantee rights to victims of crimes and their surviving family members.

Community Alliance on Prisons opposes both these bills because we don't see how they will actually help victims of crime. Amending the Constitution is not something that should be taken lightly.

And to what crimes do these bills refer? These measures are overly broad in our humble opinion, which makes these bills open to many unintended consequences.

An example of another Constitutional Amendment that was enacted in 2004 was information charging. Our concerns at that time were that the statute would be used as a Christmas tree from which prosecutors would hang many statutes. This is exactly what happened with more than 20 different statutes hung from it over the years. Now, there is a move to exempt some of these statutes from information charging, which diminished due process for everyone. This is an example of unintended consequences.

The rights outlined in these bills are:

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:
3. To be informed of a victim's constitutional rights, available financial assistance and other services available for crime victims and witnesses;
4. To a speedy trial or disposition of the case;
5. To be notified in a timely manner of all public court proceedings related to the offense, major developments in the case and the final disposition of the case;
6. 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:
7. To be given reasonable notice of any plea agreement and given a reasonable opportunity to provide input to the prosecuting attorney prior to the finalization of the plea agreement;
8. To be given reasonable notice of and be offered the opportunity to participate and be heard in any plea or sentencing of the offender or any court proceeding in which a right of the victim is at issue or that may result in a post-arrest release decision;
9. To be notified and be offered the opportunity to participate and be heard in any process or deliberation that may result in the offender's post-conviction release from confinement, including any type of release by the department of public safety;
10. To be notified in a timely manner and be heard regarding any developments relating to the release, discharge, commitment or unauthorized absence of the offender who was committed or involuntarily hospitalized under chapter 704 or 706, Hawaii Revised Statutes;
11. To be notified in a timely manner of changes in the offender's custodial status, including transfer between facilities, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, any type of release by the department of public safety and final discharge at the end of the prison term;
12. To have property expeditiously returned by law-enforcement agencies when the property is no longer needed as evidence; and
13. To full and timely restitution from the person or persons convicted.

These rights are already in statute. If the law is not working, the legislature has the power to make agencies follow the law.

**After hearing the stories of many victims, it seems to us that the problem is that victims feel left out of the process. Isn't this why the prosecutor's offices have Victim Advocates? Isn't their job to help victims through the process after a traumatic event?**

Community Alliance on Prisons suggests that instead of amending the Constitution, the proper way to address the needs of victims is to mandate those agencies with responsibility for victims to do their job and provide the support and services that victims deserve.

Another question the legislature should ask is about the notification victims receive about the release or transfer of the person who caused them harm.

BEFORE the SAVIN system was in place:

- How did victims receive notification?
- How much in advance was that notification received?
- How did the government victim advocates interact with the victims to create a safety plan?

AFTER the SAVIN system:

- How did victims receive notification?
- How much in advance was that notification received?
- How did the government victim advocates interact with the victims to create a safety plan?

We understand that these bills are emotionally-charged and we support the rights of victims, however, we implore the committee and the legislature to develop sound public policy through thoughtful deliberation with all the facts in front of you.

Mahalo for this opportunity to testify.





TO: Chair Gil Keith-Agaran  
Vice Chair Maile Shimabukuro  
Members of the Committee

FR: Nanci Kreidman, M.A

RE: S B 3 0 3 4 ( SB 679)

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.



## HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

February 8, 2016

To: Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile Shimabakuru, Vice-Chair

Hearing Date/ Time: Tuesday February 9, 2016/ 9:15am

Re: **SB 3034/ SB679: PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME**

**Position: Strong Support**

Dear Senators Agaran, Shimabakuru, and Committee Members,

The Hawaii State Coalition Against Domestic Violence is a statewide Coalition made of 25 member programs that provide domestic violence services in Hawaii. We would like to thank you for your ongoing efforts to work towards ensuring victims of crime in Hawaii are safe.

The passage of this bill is a giant step in the right direction for all victims of violent crimes. You have the opportunity to ensuring that the rights of victims are elevated to the constitutional level of the convicted and accused who have caused victims, and their family members tremendous pain and anguish.

This bill is the top priority bill that has been brought forth by our HSCADV Survivor Action Committees that have been established on Oahu, Maui and Molokai.

The passage of Marsy's Law is critical. This past year working on Marsy's Law I have heard many stories from victims and surviving family members about how the criminal justice system has failed them. I have attended several court hearing over this past year and have seen first hand how victims are revictimized by the criminal justice system that was created to help them receive the justice they deserve.

Victims deserve to have the opportunity to be heard, be kept informed, and to receive timely notification about their case, to receive restitution, to be able to provide input to the prosecutor before a plea agreement is finalized. Many victims do not know they currently have statutory rights. For victims to be able to have these rights the current process is that they have to put in a written request. No one knows where this written request goes. Sadly many of the rights in the statute are not enforceable. Without the enforcement these rights have no meaning. When someone is arrested they are immediately read their rights. This same consideration is not offered to a victim of crime. Thirty-two states already have constitutional

rights provisions, and Hawaii is one of 18 states that do not have a victim's' rights constitutional amendment. I also learned in that meeting that victims' advocates in Hawaii have been trying

for over 10 years to make the voices of victims be heard and valued. HSCADV, our membership, advocates, and survivors in our communities strongly support SB79. This is an opportunity to make meaningful change that all victims and survivors deserve.

Respectfully,  
Marci Lopes, Executive Director

Please also accept the attached testimony of a member of the HSCADV Survivor Action Committee who can not release her name out of fear.

To: Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice-Chair

Hearing Date/ Time: Tuesday February 9, 2016/ 2:00pm

Place: Hawaii State Capitol, Conference Room 325

Re: SB 3034 & SB 679: PROPOSING AN AMENDMENT TO ARTICLE I OF  
THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS  
OF VICTIMS OF CRIME

Position: Support

Dear Representatives Rhodes, San Buenaventura, and Committee Members,

I sustained a life changing assault by my husband three years ago which put me into the shameful category of a “victim of domestic violence.” After years of putting up with verbal, emotional, and ultimately physical abuse that put me in a hospital, I finally filed a police report.

The report had momentum due to the severity of my complaints and injuries. Unfortunately, the prosecutor’s office did not have the same sentiment. I called multiple times over the course of a year and a half to find out the status of my case. The last time I called, the person on the other end threatened me saying “if you call here one more time I’ll just hang up on you and I’ll tell the others to do the same.” I decided to go to the top, (it was at that time when Keith Kaneshiro was getting a lot of bad press about the rape victims so I figured, was his chance to do something right). It took two letters to Mr. Kaneshiro, but I finally got a prosecutor assigned to my case.

Things moved along quickly for which I was very thankful, he was indicted, but on a much lesser charge than I expected. What kind of bargaining or decision making process occurred that I was NOT ALLOWED to be part of ? Why is this possible? Why is the victim not allowed to be part of the preliminary hearings? It is now my understanding that it is HIGHLY UNLIKELY that the charge will INCREASE despite evidence to prove otherwise.

He was allowed to post bail for a ridiculously low amount.

In the interim, while awaiting trial, he has threatened to kill me. I filed a Terroristic Threat suit. I also filed another TRO which has been granted, I am uncertain how truly worthwhile these are when the perpetrator is a sociopath. His attorney has waived his rights to speedy trials for both cases. Both trials have been continued three times. I am not allowed to be present at Trial calls to defend myself against his perjurious statements because my presence “may upset the defendant.” Nor will I be allowed to be present during his part of the trial when we finally get there. Remember this is the man who put me in the hospital for several days and threatened to kill me. Where is the justice here?

This brings me to what the Attorney General ‘s office has to say in DEFENSE OF THE DEFENDANT

{The court may need to make accommodations for the victim. If 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. }

I’m Sorry but it is the DEFENDANT who is on trial, not the victim.

I have lost my job due to the severity of injuries sustained by the assault from my husband. I was found to be ineligible for compensation through the Victims Compensation Program due to “late filing” despite the fact I explained to the very sympathetic yet powerless clerk that I was never given these papers until two years after the assault because the initial paperwork sat on someone’s desk for eighteen months. I am certain there are hundreds, possibly thousands of victims who have also been discouraged by or felt “victimized” by the bureaucratic legal system in Hawaii. There is NO SOUND REASON why we should not join the other 32 states in the nation that have adopted an Amendment to their Constitutions to provide rights to victims of crime that is more balanced to the rights of offenders.

I appreciate the opportunity to express my thoughts, although anonymous because I continue to live in fear. Until justice is served and he is behind bars, I will never feel safe. I am I STRONG SUPPORT of SB 3034 & SB 679.

Sincerely,  
Anonymous



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

February 9, 2016

To: Senator Gilbert S.C. Keith-Agaran Karl Rhoads, Chair –Senate Committee on Judiciary and Labor; Senator Maile S.L. Shimabukuro, Vice Chair; and members of the committee

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

Re: Senate Bill 679/ Senate Bill 3034 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims

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I am Carol McNamee, representing MADD Hawaii and speaking in strong support of SB 679 which calls for a Constitutional Amendment for Victims Rights.

First, I want to thank this committee for agreeing to hold a hearing and receive testimony again on the compelling reasons why many of us here so passionately believe that Hawaii needs 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 in our state 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 feel revictimized by the criminal justice system which most believe was designed to support victims through the court process and deliver justice in the end. (*National Crime Victim Law Institute, Victim Law Bulletin – March 2013*) There is no doubt that gains have been made over the 32 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 very high percentage of the electorate voted to adopt the constitutional amendment.

Senate Bill 679 which proposes a constitutional amendment that we – and other states -are calling Marsy's Law in memory of a young college 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 list of rights that are proposed.

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 and serenity as they go through the difficult criminal justice process and beyond. As a National MADD past president 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?"

Usually, people who have been in crashes caused by a drunk or drugged driver became victims in a split second with no previous idea that life would be ended or tremendously changed because of serious injury. I realize that this could happen to me – or to any of you. We never know who is next. This knowledge makes me want to be assured **now**, that my loved ones will be supported not only by friends, but by the criminal justice system that they may have to experience – a justice system that will treat them with fairness and dignity and give them the right to be informed and to be heard.

Other members of the MADD organization will testify this morning and there are some who have sent their support but were unable to be here because of conflicts or because their court cases may not have been concluded. Our National MADD President, who lost her 14 year old son in an impaired driving crash, has also sent her remarks in support.

MADD strongly encourages this committee to pass SB 679. My testimony also applies to support of SB 3034. Thank you for the opportunity to testify in support of these important measures.



February 6<sup>th</sup> 2016

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Senator Will Espero  
Senator Sam Slom

Senator Mike Gabbard  
Senator Les Ihara Jr.  
Senator Laura H. Thielen

NOTICE OF HEARING

DATE: Tuesday, February 9<sup>th</sup> 2016  
TIME: 9:15 a.m.  
PLACE: Conference Room 016  
State Capitol  
415 South Beretania Street

**RE: TESTIMONY IN STRONG SUPPORT OF **SB679 and SB3034**  
Constitutional Amendment; Rights of Victims of Crime**

Dear Committee on Judiciary and Labor:

The Pacific Alliance to Stop Slavery (PASS) strongly supports SB679 and SB3034 aka "Marsy's Law." As a victim service provider who has assisted numerous survivors of human trafficking and sexual crimes through the justice system, I can attest that there is great need for improvement, on every level, in the way law enforcement treats victims of all types of crime.

All too often, *preventable* mistakes are made throughout our justice system that put victims either at risk or re-victimized. It is the responsibility of our elected officials to heed the testimony in support of these measures, from survivors and families of survivors of crime, and work diligently to ensure that victims' rights are established.

Without ensuring these rights, law enforcement's efforts to effectively curtail crime will be largely impotent, rife with victims' fatigue and/or drop-out from court cases, and at minimum a blatant insult to all persons affected by serious crime.

PASS respectfully urges this committee to support and pass SB279 and SB3034. It is long overdue.

Sincerely,

Kathryn Xian  
Executive Director  
Pacific Alliance to Stop Slavery





**TO:** Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor  
**FROM:** Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)  
**DATE/LOCATION:** February 9, 2016; 9:15 a.m., Conference Room 016

**RE: TESTIMONY IN SUPPORT OF SB 679 – PROPOSING AN AMMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME.**

My name is Ryan Kusumoto. I am the President & CEO of Parents And Children Together.

**I strongly urge you to support SB 679.** We support this bill that is designed to provide recognition of and protection of the constitutional rights for victims of crimes and their family members. The proposed constitutional amendment will support the following basic victim's rights:

- Respectful treatment
- Safety from harm or threats of harm
- Information about rights and available resources
- Timely resolution or right to speedy trial
- Notice of significant events relating to the case
- Right to be present at all court proceedings
- Reasonable notice to provide input on plea agreements
- Notice and participation related to pleas, sentencing and court proceedings that may result in post-arrest release decision
- Notice and opportunity to be heard for any process related to post-conviction release of the perpetrator
- Notice and opportunity to heard in developments relating to status of an offender committed or involuntarily hospitalized
- Right to timely notification of changes in custodial status
- Prompt return of property
- Right to full and timely restitution from person(s) convicted

The bill would create a balance between those rights already afforded to the convicted and the accused, with the rights for crime victims. Victims are should be afforded the opportunity to be heard, receive timely notification, and be kept informed. This is a very traumatic and confusing time for victims and this bill will help enforce the necessary rights and protections so needed in this process. This is an opportunity to make meaningful change that all victims and survivors deserve.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii's not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 18,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 16 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, child and adolescent behavioral health programs, and community building programs. PACT provides the most comprehensive services in domestic violence ranging in services for survivors, children, and batterers.

Thank you for the opportunity to testify in **support of SB 679**, please contact me at (808) 847-3285 or [rkusumoto@pacthawaii.org](mailto:rkusumoto@pacthawaii.org) if you have any questions.



# THE SEX ABUSE TREATMENT CENTER

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

*Executive Director*  
Adriana Ramelli

*Advisory Board*

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

*Senator*  
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

*Councilmember*  
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

DATE: February 9, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

FROM: The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of S.B. 679  
Proposing an Amendment to Article I of the Constitution of the State of  
Hawaii Relating to the Rights of Victims of Crime

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the  
Senate Committee on Judiciary and Labor.

The Sex Abuse Treatment Center (SATC) strongly supports S.B. 679, 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.

All states and the federal government have passed laws to establish a set of victims'  
rights, requiring that survivors of crime have access to certain information, protections  
and a limited role in the criminal justice process. However, Hawaii's statute (Haw.  
Rev. Stat. § 801D-4) has been little known and unevenly implemented.

This underscores the need for an amendment to the Hawaii State Constitution to  
ensure that survivors of crime are aware of their rights, and state and local  
governments are cognizant of what is needed to protect and heal people whose lives  
have been touched by crime and violence as their cases progress through the criminal  
justice system.

The SATC has encountered both the best and worst that Hawaii's system has to offer  
survivors of crime. Some are able to access community resources that assist them to  
experience a relatively smooth interaction with the criminal justice system, such as  
legal systems advocacy available through sexual assault centers on each island.  
There are also tireless and sympathetic advocates embedded in some government  
agencies, such as the Victim Witness Programs of the County Prosecutors' Offices,  
who work hard to keep survivors of crime involved in and informed about what is  
happening with their cases.

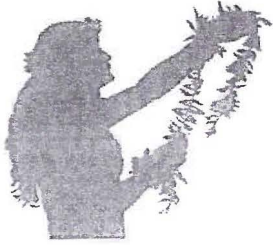
However, many survivors are not so fortunate. They may interact with agencies or portions of the system where victim advocates are not available or accessible, and consequently may find themselves shut out of the process or cut off from information they need. Moreover, they may not be treated with respect by all of the people they encounter in the system, or their concerns and needs may not be afforded appropriate priority when they conflict with those of others. This can lead to feelings of anger, resentment, and revictimization, or even place survivors at safety risk.

Survivors should be consistently informed about, and afforded the opportunity to participate in, the investigation, prosecution, and ongoing management of their cases. Survivors' voices in these matters are important, and engaging survivors fully in the process is empowering and healing.

S.B. 679 would allow 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 amendment would not take away any of the protections currently 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.

Moreover, strengthening state constitutional protections for survivors of crime acknowledges the existing good work of advocates in community organizations and government agencies, while making sure that survivors' experiences are consistent throughout the criminal justice system.

Therefore, we respectfully urge you to join SATC in strongly supporting S.B. 679.



## VISITOR ALOHA SOCIETY OF HAWAII

TO: Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair  
And Members of the Senate Committee on Judiciary and Labor

FROM: Jessica Lani Rich, Visitor Aloha Society of Hawaii

SUBJECT: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution  
of the State of Hawaii Relating to the Rights of Victims of Crime

Hearing February 9, 2016, 9:15 a.m.

POSITION: SUPPORT

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor. Thank you for the opportunity to provide testimony in support of SB 679/SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their surviving family members have enforceable rights.

My name is Jessica Lani Rich and I'm the President and CEO of the Visitor Aloha Society of Hawaii, a non-profit agency that assists visitors who are victims of a crime or other adversity. Our agency assists approximately 1,800 to 2,000 visitors every year. We request your support for an Amendment to the Hawaii Constitution that guarantees basic rights to crime victims. These basic rights include the right to be treated with courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice proceedings, the right to receive information about their rights and services available to crime victims, and the right to restitution.

Crime has a negative impact not only on the people of Hawaii but also on our visitor industry. Hawaii is one of just 18 states that does not have a constitutional provision protecting victims' rights. The proposed amendment does not diminish the rights of offenders – their rights remain intact. This bill offers a better balance between the rights of crime victims and the rights of offenders.

I urge your Committee to pass this measure. Thank you for considering my testimony in support of SB 679/SB 3034.

**TO: Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair  
And Members of the Senate Committee on Judiciary and Labor**

FROM: Alexis Felicilda

**TESTIMONY IN SUPPORT: SB 679/SB 3034** Proposing an Amendment to Article I of the  
Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

HEARING DATE: February 9, 2016, 8:30 a.m

Aloha, and thank you for the opportunity to provide testimony in support of SB 679/ SB 3034. At some point in our lives we or someone we know will be a victim to crime. It can be something as simple as a hit and run car accident or something as horrendous as murder. Both making you a victim but both being dramatic ends of emotional impact. If that day has come for you already then you know the hardships and battles you have to endure but if that day hasn't come, wouldn't you want those basic human rights?

"The right to be treated with courtesy, fairness and respect" I don't need to finish the rest of the sentence for people to see that those words are how we are taught to treat people every day. The rights for victims to be treated this way should be common sense, but it is not.

On Sunday January 12, 2014 my mother Moreira Monsalve dropped me off at the airport. On Tuesday January 14, 2014 my brother Tyson Felicilda (who was in high school at the time) texted me in the morning letting me know he hadn't seen or heard from our mother since Sunday. I called her, facebook messaged her and then called her job and found out she hadn't shown up to work for the past 2 days. She was a responsible Mother with a great job. Her company told me that if I didn't file a missing person report that they would. I filed a missing person's report immediately and that was it.

I filed the police report and got no information on whom to call for help in searching for her. No information on what the process is when you file a missing person's report. Through our own investigation we had known that the last person she was with that day was her ex-boyfriend. When the police searched both my mother's cars I asked the Detective **"Why haven't you brought her ex-boyfriend in for questioning"** the Detective replied **"He Has Rights!"** and I asked him **"What about the rights of my mother? She is the one who is missing He was the last one to see her alive!"** I got no response from the detective he just handed me the key to her car they had finished searching. The ex-boyfriend would later be named a "person of interest" in the case, but still never questioned. He left to the Mainland 3 weeks later.

Everything that happened for the first several weeks was accomplished by her family, friends and the community. None of us has a background in criminal justice or law for that matter. None of us has a background in search and rescue. We were running into a room with no light and trying to find our way; trying to find answers. One of the things that could have possibly helped us I found out a little too late; that the coast guard will look for a person in the water but only 48 hours after a person has been reported missing. I was not notified that by the police only when a family contacted the coast guard to see if they would help us look for her.

For the past 2 years since she went missing, I have been fighting for answers and for justice. If these victims right laws had been in place when she went missing I feel we would have had a better chance at finding her and bringing the person who did this to her to justice. We would have received

information about our rights and our mother's in the beginning instead of us wasting valuable time researching the information ourselves. We'd have been treated with respect, dignity and fairness instead of the detective leaving on vacation the first week of her disappearance and none of case information being handled or taken care of. I could make a list of a million ways a lot of things could be different.

What would you want the victims' rights law to be when you or a loved one becomes a victim?

These rights seem to reflect common sense and common decency as humans. It is what separates us from animals we know what is right and what is wrong. The women and men of Hawaii deserve these rights. Please don't let the past repeat itself. Give victims the chance to be protected just as much as offenders and the media. **I urge you to pass SB 679/SB 3034 also known as Marsy's Law.**

Mahalo! For giving me the opportunity to testify

Alexis Felicilda

Legislators,

It is my belief that victims of crime, such as intoxication manslaughter, should have constitutional rights that guarantee they will be treated with dignity, and informed of the criminal justice process. Ethan Couch killed my brother, Brian Jennings, by driving under the influence of alcohol and other substances. My family has been completely devastated by his careless behaviors ever since, and is further insulted by having to hear the details of this case in the media (which may or may not be completely factual information). It is important for the victims to be involved for their own healing and grieving process. I also believe that excluding victims from the criminal justice process also allows the criminal to avoid seeing the faces of those he or she has so deeply affected, thereby increasing the odds of them repeating their behaviors once released. Please consider amending the constitution to help the victims to heal from their traumatic experience.

Very respectfully,  
Amy Peets

TO: Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Maile S.L. Shimabukuro, Vice Chair

And Members of the Senate Committee on Judiciary and Labor

FROM: Amy Yamada

SUBJECT: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution  
of the State of Hawaii Relating to the Rights of Victims of Crime

HEARING DATE: February 9, 2016, 8:30 a.m

Aloha,

My name is Amy Yamada and I would like to start my testimony by thanking you all for taking the time to read/hear my story. I sincerely wish I could be there in person to express to you how desperately SB 679, HB 1144 - Marsy's Law - needs to be passed.

I am a cousin of Billy Oliveira. My cousin Billy has been missing since July 13, 2015. From the very limited information our family has received it seems that Billy vanished without a trace from

his home in Nahiku, Maui. I know this is not the case, but I have no one to help me disprove that.

He is a 39 year old man. That statement alone has resulted in the lack of support from our law enforcement. The story I have been trying to get across is Billy's story, but not one that can help us has taken the time to listen. At no point has anyone taken into consideration who he was other than an adult male.

Billy Oliveira is a son, grandson, brother, cousin, uncle, and friend. He was a gentle person. Billy was never a person who would harm anyone or anything. He was a jokester. Billy never drove. He never got the license. He never went anywhere alone. He loved sports, his hometown and above all he loves his family. Yes he was a man, but the bottom line is he is a person who deserves to be found!

Billy was adopted by our grandparents when he was a teenager. After our grandfather passed away he lived with our grandmother in Nahiku and they took care of each other. While this may be meaningless to many, I cannot reiterate how loyal he was to our Mama. Billy never, ever went anywhere without telling her where he was going to be. If she wasn't home and spent the



night out somewhere he would call several times to check on her. She takes a bus to town once a week to do her shopping and during the few hours she was away he would call her to check in and she would call him to let him know when she got to town and when she was on her way home.

When he didn't return home the morning of July 14, 2015 with no phone call I immediately knew

something was wrong. I told her that she should call the police, but she wanted to give it a little more time - just in case he was somewhere with no phone. When the next day came with no contact more family members became alarmed and urged her to call the police. One of Billy's brother's called the police and was told that he had to wait another day to file a report. We waited and hoped for a phone call or for him to walk through the door, but neither came. Billy's brother called on that day and was told he had to wait until the exact time (10:30pm) to file the report and being that no one would be at the station, they would have to wait until the next morning. Billy went missing on Monday night, the official report was not filed until Thursday. By

that point we took things into our own hands and began searching and contacted Maui Search and Rescue to assist our family in the search.

The police came to Billy's home once after the report was made. They questioned my grandmother and cousin, walked through Billy's room and took a list of phone numbers he had in his room. We were never officially told, but the family was lead to believe that they were only looking for a suicide note. We informed the police that we sought the help of Maui Search and Rescue with the thought that they would come to help, but at no time did Maui Police assist with a search.

Our family was assigned a detective. I am the only person in our family to have spoken to the detective. When he initially called my grandmother, she asked that I speak to him because she was overwhelmed by everything going on. While he has been responsive, after a certain point he stopped communication. I believe that is due to the fact that there is no physical evidence, however I cannot be sure. There is no contact unless I initiate it. It would be great to hear from someone at some point to reassure us that his case has not been closed.

I have given names of people that we are suspicious of to the police and from what i know they

have been questioned once. Never investigated. Perhaps they have been, but there is nothing that says I have a right to know that.

I understand that there is no law against an adult choosing to leave home with no contact. I also understand that the police have certain protocols to follow and that there is information that has to be protected to not compromise anything that has been done so far. I am also very aware that ours is not the only case that the detective is responsible for. I do, however, believe that Billy

should be treated as a person...a person with a family who loves him and want to find him.

What I would like you to take from this above all is that a human being has gone missing and his family has been left to figure out how. I know Marsy's Law would have helped me to get answers our family needs. I am not sure if Billy's case can be considered a criminal case, but if Marsy's Law was in effect I would at least have been able to get information from MPD as they received it. To know what direction they would be going in.

Should this case become a "criminal case" I would hope I could have some kind of rights to help me through a process I have no idea how to navigate through. Marsy's Law can do that for me, or for anyone who will face a situation like this one.

No one ever thinks about tragedy happening to their family. No one plans for a family member to be kidnapped, or raped, or murdered. No one should ever have to go through that. The sad reality is that it happens everyday and may even happen to your family. I know that I was not prepared for this.

Why is it that the people who inflict the pain and heartache by committing these awful crimes have more rights than the victims! PLEASE CHANGE THAT!!

I thank you for your time and hope that you will be able to make the decision to support this bill being passed - if not for Billy, then for the next person.

If you would like to contact me for more information, please feel free to contact me.

Mahalo,

Amy Yamada

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**SB679**

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ana Sorote	Individual	Support	No

Comments:

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COMMITTEE ON JUDICIARY AND LABOR  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, February 09, 2016  
TIME: 9:15 a.m.  
PLACE: Conference Room 016

I am in **STRONG SUPPORT** of **SB679** that 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.

Aloha Chair Keith-Agaran and members,

We support this bill that would establish a long-overdue bill of rights for crime victims. It is a sad fact that convicted felons have more rights than victims of crime. Moreover there is an epidemic of violence against women in this state, in the country and in the world. This bill would afford the women who experience this outrage against common humanity, a measure of protection they do not now have.

Every day, women and men who are victims of violent crimes are drawn into the criminal justice system and forced to maneuver through the complex judicial system in the midst of their trauma.

Many crime victims feel re-victimized by the system because while they have some statutory rights, these rights are too often ignored and are not enforceable. Crime victims deserve to have permanent, constitutional, and enforceable rights.

We urgently request your support for an Amendment to the Hawai'i Constitution that guarantees basic rights to crime victims. The Constitutional Amendment for Victims' Rights guarantees the following basic rights to crime victims:

- **The right to be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice proceedings;**
- **The right to receive information about their rights and the services available to crime victims;**
- **The right to receive notification of proceedings and major developments in their criminal case;**
- **The right to receive timely notification of changes to the offender's custodial status;**
- **The right to be present at court proceedings;**

- **The right to provide input to the prosecutor before a plea agreement is finalized;**
- **The right to be heard at plea or sentencing proceedings or any process that may result in the offender's release;**
- **The right to restitution.**

The proposed amendment does not diminish the rights of offenders. In fact in none of the states where there is such a law, has there even been a violation of due process because of it.

These rights seem to us to reflect common sense and common decency. But without this constitutional amendment to codify these rights, victims will continue to be at the mercy of a capricious legal system. Since this bill was passed there have been too many horrific stories of women murdered or sent to the hospital as a result of an offender released from jail with no notification to the victim.

Court proceedings are too often about legal duels between prosecutors and defense attorneys with crime victims left out of the equation entirely. Please pass this victims' bill of rights. The women and men of Hawaii deserve this protection.

Mahalo for allowing me to testify

Ann S. Freed

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**SB679**

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anna Viggiano	Individual	Support	No

Comments:

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TO: Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair  
And Members of the Senate Committee on Judiciary and Labor

FROM: Anonymous sexual abuse survivor

HEARING: February 9, 2016, 9:15 a.m.

Testimony in support of SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

I am submitting this testimony anonymously because the criminal case is ongoing.

For many years I lived in the fear of actually doing something, and coming forward to the legal system. I imagined that my perpetrator would have been arrested immediately, and this would all be over, and I could finally move on with my life. In reality, he was arrested for less than a day. I am left to wonder what is happening with the case, whether there will be a trial or if he will ever pay for what he did. I came to the conclusion that the unknown made me feel safer than actually doing something because I am still in the same situation, nothing happened to him. The criminal justice system hasn't helped me in the way I thought they would. I ran into the arms of the law for help, understanding, and safety, but only to find out I felt safer in the room that the crime was committed. I expected the weight I carried around for years to be lifted as soon as I said something, but it felt heavier than before. My reasoning for supporting this bill is the belief that victims deserve to have basic rights, a speedy process, and feel like they are being taken care of.

As a victim of sexual abuse, I wasn't presented with the rights that I thought I had. I kept quiet for many years because I was scared of the law and what would happen, but what motivated me was to receive the rights that I thought I was entitled to, which I didn't even receive. I thought that having a voice and saying something would make a difference but this person is still in my life due to circumstances beyond my control and I was only offered a restraining order against him. I feel like for the crime he committed there was no justice and I am still waiting and I do not think that the law should be like this. I can't imagine what victims of more serious crimes, like those involving death, go through while waiting to see what will happen to their case. The process has taken much longer than I expected.

In Psychology, we learn that if a child does something wrong, immediate punishment needs to take place in order for them to learn that they did something that they were not supposed to do. The criminal justice system needs to work the same way; offenders need to be punished as soon as possible in order for them to even know that they committed a serious crime, and to understand the intensity of the crime. As time goes on, they think they got away with it. For example, I'm sure that my perpetrator thinks the one-day of arrest was his punishment and he is now free. If he feels that his punishment was over with, and it wasn't as bad as he thought it would be, he has the opportunity to do it to someone else.

What gave me the strength to say something was the fact that I could not move on, and better myself as a person until I did something. I was also motivated to use my voice in hopes of making a difference and helping others. I wanted to protect other potential girl's lives that could have been in jeopardy, but he is still in the same living circumstances and capable of hurting someone else. Victims need to be taken care

of. They should be able to turn to the law and receive justice. I reached out to the law for help and there was no consolation at all.

I have a lot of unanswered questions and I wish that there was somewhere I could turn to like an organization to help me understand my situation, my environment and rights. Victims experience a lot of psychological trauma that affects them mentally, physically, and emotionally. Victims need guidance during this difficult time. Victims are vulnerable and can be taken advantage of because of their vulnerability. I think it is important for victims to be informed of their rights and provided with resources so that they do not feel alone as they go through the criminal justice process.

Victims should be informed of their rights and should have their questions answered. Victims should be protected by the law and feel safe to use their voices. This is why I strongly support SB 679/SB 3034.



## **Testimony in Favor Senate Bill 679, Senate Bill 3034**

Proposing 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/s 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

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**SB679**

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charity Dudoit	Individual	Support	No

Comments: I strongly support this bill.

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**SB679**

Submitted on: 2/6/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine Davis	Individual	Support	No

Comments:

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**SB679**

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

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

Comments: Standing in STRONG SUPPORT - mahalo!

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**SB679**

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Individual	Support	Yes

Comments: I FULLY SUPPORT this bill for the following reasons: 1.) As an ex-con, I need to atone for my past misdeeds. The violence I had subjected my victims to, and the heinous intrusion into their person, property & lives has inevitably subjected my victims to a wide range of psychological & physical damage. While incarcerated for over 27 years, I had the opportunity to reflect upon my actions & realized that the damage & harm that I have caused, was not only limited to my victims, but to their families, friends and even society as a whole. Since my release, I have sought to give back to society & to make a difference wherever I can. Having first hand knowledge of how our criminal justice system works, I know that Hawai'i is tough on crime & criminals face a myriad of potential sentences, none of which we fully are aware of when we commit crimes. I also know how victims are treated, and how they are treated by the system that is designed to hold accountable those who have wronged them, whether it's intentional or not, is quite brutal & insensitive to victims & their families. Victims have virtually no say in the entire process, except at the very end when they are allowed to give a "victims impact statement" at sentencing & at the minimum setting for parole eligibility. It's just how the Prosecutors in particular treat victims & their families that is deplorable. Recently, through my paralegal work, I saw first hand how a victim & his family was treated by the Prosecutors office. A Writ of Mandamus was filed by the victim to try to force the Judge to instruct the Prosecutor to push for what the victim wanted in the case. The Hawaii Supreme Court denied the Writ & in so doing stated to the effect that the victim had no standing in the case & was merely a witness. This language from the Highest Court in this State greatly damaged the victims morale & left the family feeling like they were just pawns in the judicial process. Victims are not pawns, they are innocent people who were victimized by bad people with cruel intentions. Then victimized again by a cold & calloused system who has relegated victims to being treated as just "witnesses" whose only duty is to testify & give statements. Whether or not this problem can be fixed by an Amendment to the Hawaii Constitution or by simply amended existing laws or creating a new victims rights law, is for this August body to decide. For now, my Na'au prompts me to stand with victims & what they desire for relief. Mahalo.

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Oppose	No

Comments: unclear and too broad.

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**SB679**

Submitted on: 2/6/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Evelyn Cullen	Individual	Support	No

Comments: MY SONS WERE VERY RECENT VICTIMS OF M NIGHT CLUB. ON 1/30/16 THEY WERE PATRONS, IF THEY KNEW THAT BY WALKING IN THAT PLACE THAT THEY WOULD POSSIBLY DIE AT THE HANDS OF THE EMPLOYEES (BOUNCERS), DO YOU THINK THEY WOULD HAVE WALKED IN? I THINK NOT. THEIR BRUTAL BEATING WAS TOTALLY UNPROVOKED. AS WITNESSED BY MANY PATRONS THAT EVENING, WITH ONE PATRON TAKING SUFFICIENT FOOTAGE WITH HER CELLPHONE AND WALKED UP TO THEM AND SAID, SHE SAW THE WHOLE THING. THEY DIDN'T GET HER NAME, BUT SHE POSTED IT ON YOUTUBE. [https://youtu.be/lmN4Ho\\_-dAQ](https://youtu.be/lmN4Ho_-dAQ). WITH THAT BEING SAID, CRIME FILLED ESTABLISHMENTS LIKE THESE SHOULD NOT BE ALLOWED TO BE IN BUSINESS TO PROTECT THE PUBLIC I SUPPORT THIS BILL. IF YOU GOOGLE M NIGHT CLUB, YOU'LL FIND THIS ESTABLISHMENT IS NOTORIOUS FOR BEATINGS. HOW CAN THEY STILL BE IN BUSINESS? WHO ARE THEY PAYING OFF OR THREATENING? THIS BILL NOT ONLY HELP THE VICTIMS IN SUCH SITUATIONS, BUT IT WILL GIVE THEM A SENSE THAT THEY CAN STAND TALL, AND THEY DO HAVE A VOICE. MY SON'S HAVE A LONG ROAD TO RECOVERY AS THEIR DOCTOR AND LAWYER MICHAEL GREEN SAID, YOU GUYS ARE LUCKY TO BE WALKING OUT ALIVE. AND I CONCUR. AND THIS IS WHY I AM MAKING MY VOICE HEARD. I'VE NEVER FELT PASSIONATE AND A NEED TO HAVE MY VOICE HEARD LIKE I DO TO SUPPORT THIS BILL FOR VICTIMS IN HAWAII. MAHALO EVELYN.

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**SB679**

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Hairgrove	Individual	Support	No

Comments:

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joan Pan	Individual	Support	No

Comments:

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**Date:** Monday, February 08, 2016 10:24:27 AM

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**SB679**

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kari Benes	Individual	Support	No

Comments: Aloha Senators, Thank you for hearing this measure. Please block out email address.

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**Date:** Friday, February 05, 2016 3:51:20 PM

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**SB679**

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kathryn Weldon	Individual	Support	No

Comments:

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TO: Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Maile S.L. Shimabukuro, Vice Chair

And Members of the Senate Committee on Judiciary and Labor

FROM: Kimberlyn Scott

SUBJECT: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

HEARING DATE: February 9, 2016, 8:30 a.m.

Chair Keith-Agaran and Members of the Committee:

Thank you for your time today.

I am here to speak in support of SB 679.

That I am the mother of a murder victim is my qualification to speak. On this day two years ago, my daughter, Charli, left to give her ex boyfriend a ride.

She never returned.

Her 16 year old sister found her clothing. Charli's car was burned, her home ransacked. She was stabbed repeatedly, and her body dismembered. Charli was violently erased.

She was almost six months pregnant.

I do not say these words aloud often or with comfort so please, hear me!

My being here in this unenviable position to address this subject should stand as testimony to the need for Marsy's Law, but my daughter has underscored the need in blood for you to see.

If Marsy's Law was encoded in our Constitution we would have been notified of all the hearings in a "timely manner", afforded time to prepare to be near the person we believe murdered my child and hers. This was not our experience. We have been given as little as 40 minutes notice and at times none at all.

I've no guarantee that this will not be so again.

We were not notified of Victim Compensation forms until they were late and felt "lucky" to be excused for "our" oversight.

We have become a "pests" to gain access to knowledge that should be afforded us according to our "victims' statute". Shall I tell you how it feels to stand in a room full of people and explain the details of your child's demise to get her death certificate? Where is the "courtesy and privacy" assured us in the current statute during these events? Will the next victim be spared by an enforceable law?

The Department of the Attorney General opposes this Bill contending, "The Victims' Bill of Rights.... addresses most of the rights being proposed and should be adequate to properly address victims' rights."

I assure you this is NOT SO. I have limited the examples, but there are more.

There is enough poetic injustice born as victims- like putting money in a meter to sit in court with the person accused of my daughter's murder. Or that all participants in a trial but victims are asked about their schedules. Does it matter that the date of a hearing falls on my daughter's 17th birthday? To my daughter, to myself, assuredly.

Would it matter to you if you were standing where we stand now?

The objections raised in opposition of this Bill are inconveniences for

the most part. I ask you to weigh the inconvenience of justifiable change against the burden of victims. Do you see inequity in the scales?

We victims FEEL that imbalance.

Thomas Jefferson wrote that “If (law or constitution) be enforced longer than 19 years, it is an act of force, and not of right. The constitution and the laws ..... extinguish (ed) ...in their natural course with those who gave them being.”

Consider; Our government was built to enable appropriate change. We can ill afford to be afraid of the process that is the engine of thereof.

Please. For Mo Monsalve, Gail Otsuka, Kimberly Vinuya, Charli and her unborn son and the many others that have suffered violent crimes, enshrine victims rights in the constitution and assure victims of crime here in Hawaii that they matter.

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kristi Adachi MD	Individual	Support	Yes

Comments:

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**Attachments:** [Voice\\_003.m4a](#)

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leslie Knoles	Individual	Support	No

Comments:

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Ellen Smith	Individual	Support	No

Comments: Criminals have rights under the Hawaii Constitution, crime victims and their survivors currently have no constitutional protections. During what may be the most traumatic time in a victim's life, it is unconscionable that Hawaii does not have protections in place for them. Please consider ensuring that any victim of a crime is given rights.

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DATE: February 8, 2016

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

FROM: Lorna Kanehira

RE: Testimony in **Strong** Support of S.B. 679  
Proposing an Amendment to Article I of the Constitution of the  
State of Hawaii Relating to Rights of Victims of Crime

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee on Judiciary and Labor:

Thank you for the opportunity to testify in strong support of S.B. 679.

My husband was killed in the Xerox shooting in 1999. I was in a fog after his death. There were so many things to take care of. I was suddenly a single parent and had to be strong for my 5-year-old son. I worried about our financial situation. My strongest memory of those first months is going to so many 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 process was complicated and intimidating, and I found it hard to concentrate. My mind was elsewhere, on my son.

We depended on the victim advocates to explain what happened in court. They broke down the process and made it understandable. They told us what to expect and explained possible outcomes. They let us know if the testimony would be emotionally difficult, and we could choose to leave the courtroom.

At the end of the trial, I was given an opportunity to submit a victim impact statement to include with the pre-sentencing report. I was also allowed to address the court before the defendant was sentenced. Throughout the trial, I was able to stay strong and not display many of the emotions that I was feeling. Giving my victim impact statement to the court was one of the hardest things that I have had to do. I broke down many times as I spoke. It is impossible to express to anyone who hasn't lived through such a horrendous event how much it affected not only my life, but the lives of so many. My son lost his father. I lost my best friend and husband. He never lived to see the young man that his son became. Although it was difficult, I needed to be able to express in open court how the defendant's act destroyed our family.

I was relieved when the trial ended, but it didn't lessen the loss or bring "closure." We still had to face the overwhelming task of getting through each day without my husband. One truly does take it a day at a time until the days become routine and suddenly turn into years.

Given my experience, it's hard to imagine surviving family members going through the criminal justice process on their own while their shock and grief is still fresh. Without the advocates, I would have felt lost and anxious throughout the entire process. Instead, the advocates calmed our distress by making sure that we understood the proceedings and preparing us for whatever would happen. I will always remember the kindness and support given to all of our families.

I strongly believe that all victims and surviving relatives should have a constitutional right to be informed, be heard, and be treated with respect. I therefore ask this Committee to approve S.B. 679.

**TESTIMONY ON SENATE BILL 679**

**A BILL PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII  
RELATING TO THE RIGHTS OF VICTIMS OF CRIME.**

**Tuesday, March 3, 2015, 9:00 AM  
State Capitol, Conference Room 016**

To: Chair Keith-Agaran,  
Vice Chair Shimabukuro, and Members of the Committee

From: Luz Marina Monsalve-Zender

My name is Luz Marina Zender-Monsalve, alongside with my sister, Leslie Monsalve-Jones. We support The Bill that 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.

In honor of my sister, Moreira Monsalve (Mo) an alleged victim of domestic violence, we started a business. Our mission is to support victims and survivors of domestic violence, mental, physical abuse and sex trafficking. We engage with communities and organizations to end domestic violence through education and advocacy. It's Not Fiction: Domestic Violence Mental Physical Abuse and Sex Trafficking- A Survivors Story, supports Senate Bill (SB) 679.

The rights offered in the proposed bill are simple. Basic human rights to be treated with courtesy, fairness, and dignity. For victims and survivors to be protected; to be informed and consulted. Why are we even having this conversation about victim's right?

Your guidance in ensuring SB 679 affectingly known as Marsy's Law is passed is critical and long overdue. This Bill of Rights, Human Rights would create a balance of justice between those rights already afforded to the convicted and the accused, with the rights for crime victims. Victims deserve to have the opportunity to be heard and kept informed. Both denied to me and my sister Leslie by the Maui Police Department and a family member in the know of details in her missing person case. The police told us numerous times, when we contacted them, that we did not have the right to have this information. She was our sister. We love her dearly. Not a day goes by that we don't cry and mourn for this injustice. We are victimized by being denying basic information on her case and how the police dept. handled this case in the very beginning.

Please help to ensure that no other families, mothers, or sisters experience this type of nightmare. Please pass out SB 679 today and work with the House to bring about equal treatment of crime victims in Hawaii.

Thank you for the opportunity to testify,

Luz Marina Monsalve=Zender  
Leslie Monsalve-Jones

To: Chair Keith-Agaran,  
Vice Chair Shimabukuro, and Members of the Committee

From: Luz Marina Monsalve-Zender

My name is Luz Marina Zender-Monsalve, alongside with my sister, Leslie Monsalve-Jones. We support The Bill that 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.

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Please help to ensure that no other families, mothers, or sisters experience this type of trauma and injustice. Please pass out SB 679 today and work with the House to bring about equal treatment of crime victims in Hawaii.

Thank you for the opportunity to testify,

Luz Marina Monsalve=Zender  
Leslie Monsalve-Jones

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 SB 679 and SB 3034 Proposing Amending the Constitution of the State of Hawaii  
Relating to the Rights of Victims of Crime

Before the Senate Judiciary and Labor Committee  
February 9, 2016

Chair Gilbert Keith Agaran and Members of the Senate Committee on Judiciary and Labor:

I am honored to be here today to testify in support of SB 679 and SB 3034, each of which propose amending the constitution of the state of Hawaii to afford meaningful and enforceable rights to victims of crime.

By way of background, I am the Executive Director of the National Crime Victim Law Institute (NCVLI) and a Clinical Professor of Law at Lewis & Clark Law School in Portland, Oregon. NCVLI is a nonprofit educational and advocacy organization with the mission 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 numerous state legislatures and the United States Congress on the state of victims' rights, and have consulted on drafting numerous victims' rights provisions including 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.

My support for constitutional victims' rights is grounded in values of procedural justice. These are that the criminal justice system functions best when those directly impacted – both victims and defendants – have their voices meaningfully integrated such that they can perceive the process as fair and transparent. With regard to victims, research makes clear that when the system operates otherwise victims may endure harm beyond the original crime; harm which is referred to as “secondary victimization” and which is recognized to have significant negative impacts on victims as well as on the proper functioning of justice system.

Minimizing this secondary victimization and its impacts is recognized to be achievable with meaningful, participatory rights. After decades of experience it is clear that the most effective of these rights are constitutional rights.

Why constitutional rights rather than mere statutes? There is no dispute that amending a constitution should not be done lightly; it should not be done to achieve merely short-term, partisan or purely policy objectives. In fact, constitutional law scholars agree that constitutional amendments are appropriate only when the goal involves a basic human right that by consensus deserves permanent respect and cannot adequately be protected through statute. Victims' rights meet this test.

I do not believe anyone in this room disputes that the system should treat crime victims with dignity and respect and afford them rights. But the statutory rights afforded to date have proven inadequate here and across the country. When discussing victims' statutory rights, Law Professor Lawrence Tribe, one of the preeminent constitutional scholars of our day, noted that "[t]here is a tendency to ignore or underenforce such rights whenever they appear to rub up against either the rights of the criminally accused or the needs or wishes of the prosecution." In short, victims' statutory rights operate against the background of a legal culture in which the very notion of victims having enforceable "rights" has been minimized. This statutory reality stands in contrast to constitutional rights. As James Madison and others recognized when advancing the Bill of Rights, constitutional rights impress a different degree of respect and they acquire the status of fundamental maxims of a community.

Concerns that constitutional victims' rights undermine defendants' constitutional rights are misplaced. Rights in the criminal justice system are not a "zero-sum" game. As Human Rights Watch, a well-respected NGO, noted in a 2008 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." Courts harmonize competing rights and interests on a daily basis, and across the country they have proven quite capable of doing so in the context of victims' rights and defendants' rights.

The constitutional rights and their enforcement provisions that are before you in these proposals secure meaningful inclusion of victim voice throughout the justice system without the granting of a veto. Because victims' rights are about voice and participation and not about



money damages, including into the amendment a provision that precludes from among the permissible remedies a cause of action for damages is in keeping with the intent of victims' rights.

We owe it to victims, to our communities, and to the proper functioning of our justice system to ensure that when crime victims find themselves compelled into the criminal justice system that system is as responsive as possible. The constitutional amendments before you do this without diminishing defendants' rights.

I thank you for allowing me time to speak today and I urge you to heed the call of the victim community: treat victims like defendants by recognizing that their most basic rights of be notified, present and heard should be enshrined in this state's constitution.

Thank you.

###

February 9, 2016, 9:15 a.m.

TESTIMONY ON SB 679/SB 3034 PROPOSING AN AMENDMENT TO ARTICLE I OF  
THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF  
VICTIMS OF CRIME

To: Senator Gilbert S.C. Keith-Agaran, Chair Committee on Judiciary and Labor  
From: Marilyn B. Lee  
Re: SB 679/SB 3034

Dear Chair Keith-Agaran and Members of the Committee,

I am Marilyn Lee, a Commissioner of the Hawaii State Commission on The Status of Women, Member of Neighborhood Board 25, Board Member of Friends of Hawaii State Center for Missing Children, and President Elect of Soroptimists of Central Oahu.

I speak today as a private citizen in support of SB 679/SB 3034 Proposing an amendment to the Constitution of the State of Hawaii relating to the Victims of Crime.

I believe our Hawaii Constitution should include a Bill of Rights for crime victims, along the lines of the victim's rights amendment, which has previously been introduced in Congress.

This amendment is rooted in the belief that victims of crime deserve a role in the criminal justice process that matches constitutional protections for criminal defendants.

There is a growing National consensus that victims belong inside the criminal justice process, illustrated by the fact that Hawaii is one of only 18 states that do not recognize victim's rights in their Constitution.

Crime victims deserve fairness, respect and dignity, and until this is enshrined in the Constitution, enforcement of Victim's Rights will be lax.

Please pass SB 679/SB 3034 today and work with the House to bring about equal treatment of crime victims in Hawaii.

Thank you for the opportunity to testify.

Aloha,  
Marilyn B. Lee

**From:** [Martha E. Martin](#)  
**To:** [JDLTestimony](#)  
**Subject:** SB679  
**Date:** Sunday, February 07, 2016 5:16:15 PM

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I support SB579.  
It will improve the lives of victims of crimes in Hawaii. Their rights need support.

Mahalo,  
Martha E. Martin  
P.O.Box 790300  
Paia, HI 96779

DATE: February 9, 2016

TO: Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice-Chair  
And Members of the Senate Committee on Judiciary and Labor

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

RE: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims

POSITION: Strong Support

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Judiciary and Labor:

Thank you for providing this opportunity to testify in strong support of SB 679/SB 3034. 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 a Commissioner for the Crime Victim 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.

SB 679/SB 3034 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 SB 679/SB 3034.

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Jo Morrow	AAUW	Comments Only	No

Comments: We need to do more to support the victim's especially in domestic violence cases.

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary McEldowney	Individual	Support	No

Comments:

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**SB679**

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Kitchens	Stolen Stuff Hawaii	Support	No

Comments:

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Support for Constitutional Amendment for Victim Rights: SB 679/ SB 3034

Hearing Date: February 9, 2016 9:15 a.m.

I would like to strongly support SB 679/ SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their surviving family members have enforceable rights.

I urge your Committee to pass this measure.

Thank you.

Molly Strode  
2093 Laukahi Street  
Honolulu, HI 96821

373-  
4015

## **State Constitutional Amendment for Victim Rights Marsy's Law for Hawaii**

The proposed amendment will provide victims with the right to:

- Be treated with courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice process;
- Be informed of rights and services available;
- Be told when the defendant is charged and advised of the charges;
- Be informed when court hearings will be held and given a chance to speak at the hearing if appropriate;
- The opportunity to provide input to the prosecutor about plea deals and sentencing;
- Be given a chance to tell the judge how the crime impacted them and their opinion about the appropriate sentence;
- A speedy trial;
- Have property taken as evidence returned expeditiously;
- Be provided restitution for losses arising from the crime;
- Notification of the offender's release from custody; and
- The ability to enforce their rights if necessary.

To: Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair  
And Members of the Senate Committee on Judiciary and Labor

From: Nicholas Iwamoto

Subject: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

Hearing Date: February 9, 2016, 9:15 a.m.

On Super Bowl Sunday, 2009, I hiked Koko Head to train for my upcoming enlistment in the Hawaii Army National Guard. I did not finish the hike. When I got to the summit, a man randomly attacked me with a knife. When I begged for mercy, he stabbed me in the head 6 times. When I fought back, he cut my throat and dumped me off a cliff. I broke my neck. I fractured my skull. My lungs were destroyed. In the hospital, I coughed up pieces of lung and small rocks for two weeks.

I lived. My survival has been accompanied by agony and anguish, but the support from the good people of Hawaii has been overwhelming. It has gotten me through my darkest days.

The silence from the State has been heartbreaking. For the last 7 years, I have been left out of the loop. I was barred from testifying. Those who were supposed to fight for me would not even let me fight for myself. My attacker was released after spending just 6 years in the state hospital. He had the privilege of taking online classes during that time. He will probably graduate before me.

The deference shown to my assailant and other violent criminals is absolutely despicable. The days of personal accountability have vanished. It seems that the constitutional rights of violent felons are more important than public safety. Doing what is right has given way to the quest for political expediency. This country has the greatest legal system in the world; how can this happen in our state? What happened to "liberty and justice for all"? These criminals have liberty, but justice is just a myth for many of us.

Marsy's Law is the best chance to give victims justice and compassion in a seemingly hopeless situation. It will give us a voice in the courts. It will keep us in the loop. All we ask for is the same rights afforded to violent offenders who have done such deplorable things to us and our families.

I survived for a reason. I will be silent no more. I will fight with every drop of blood left in my body to give the people of Hawaii what has been taken from us: a voice. Please, pass Marsy's Law. Thank you for your service.

Mahalo,  
Nicholas Iwamoto

To: Senator Gilbert Keith-Agaran, Chair- Senate Committee on Judiciary and Labor;  
Senator Maile Shimabukuro, Vice Chair; and members of the Committee

From: Nonohe Botelho, Parents of Murdered Children (POMC)

Date: Tuesday, Feb 9, 2016

Re: **Senate Bill 679:** Proposing An Amendment To Article I Of The Constitution Of The State Of Hawaii Relating To The Rights Of Victims Of Crime

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Aloha, my name is Nonohe Botelho. I am the Hawaii Contact Person for 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 brutally killed in front of our home in Kaneohe.

I am writing to say that I support the passing of SB 679, pertaining to the Amendment to Article I of the Constitution of the State of Hawaii Relating to the Basic Rights of Victims of Crime.

Today I want to bring to your attention to two specific amendments under the proposed Article 1:

**1) “The basic right to be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice proceeding.”**

In the case involving a murder victim, who was bludgeoned, had his throat cut and his body dismembered, the media choose to air a small clip of the defense attorney calling the victim a “homegrown terrorist”. The victim’s name was Jamil Khan, a “local boy” raised in Hawaii, his parents of Middle Eastern descent. Calling the victim a homegrown terrorist was not only an example of victim blaming it also created a hostile environment for the family. In another murder case, after a gross misunderstanding, the family of victim Albert Myers, 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 completely. They received emails and phone calls over the weekend telling them to stay away. The family wrote a letter expressing their frustration and feelings of being harassed. To this day they have had no response. The case is with the Supreme Court awaiting a decision for dismissal.

These are just two examples in which victims and their families were mistreated and humiliated. **The current system offers no constitutional provisions protecting victims’ rights to treated with dignity and fairness.**

**2) “The right to receive timely notification of proceedings and other major development in their cases.”**

In the case of murder victim Kollin Elderts, the family was not informed of a major development in the case. In previous discussions with the prosecutor’s office the family agreed to accept a lesser

manslaughter charge, if necessary. Unfortunately, as we all sat in the courtroom as the judge read the jury instructions it became painfully clear that the lesser manslaughter was NOT included. The family was never informed of the change and was devastated by the decision. Today, the Eldert's await a Supreme Court ruling, which will determine whether this case will go to a third trial.

In many cases, victims and families are NOT notified of proceedings or major development in their cases. For example, families of victims who are murdered in a "heinous, atrocious and cruel manner" are told that the defendant would be eligible for an Extended Sentence, beyond the minimum term. I personally know of a hand full of families, including myself, that went through this process. We poured our hearts out via our Victim Impact Statements, imploring the judge to grant the Extended Sentence. After waiting two years for the sentencing phase the judge simply stated that she "Could NOT impose the Extended Sentence." We were devastated and very confused.

Recently, I was referred to a Star Advertiser article written in 2007, stating that, "the Supreme Court ruled that the Extended Sentencing law violates the constitutional rights of the defendant," which basically voids the law. Everyone from the Supreme Court down, including prosecutors and judges know the extended sentencing law is unconstitutional and yet they mislead families and spend tax payer's dollars to go through a process designed to fail. **The current system offers no constitutional provisions protecting victims' rights to be informed of legal proceeding and major developments.**

Currently, in the State of Hawaii, victims and their families have no recourse or mechanism to ensure that our rights are not only protected, but enforceable. I want to tell you, our lawmakers, that the work you do here today is extremely important, not only to me, but for future generations. I want to be able to tell Joel's sons, my grandson, that their Daddy didn't die in vain. Today, we are not asking to get "special" treatment; we are asking for equal treatment. We are asking for the same rights as the defendant. Nothing more, nothing less.

Thank you for your time and consideration.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [REDACTED]  
**Subject:** \*Submitted testimony for SB679 on Feb 9, 2016 09:15AM\*  
**Date:** Monday, February 08, 2016 7:45:11 AM

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**SB679**

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Callahan	Individual	Support	No

Comments:

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Hearing Date: Tuesday, February 9, 2016 at 8:30 a.m.

Senate Committee on Judiciary and Labor, **SB 679/SB 3034** Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crimes

Testimonial from Sandra Lynn Hailiopua Storm-Conway *On behalf of the Families of Michelle Anne Ku'uipo Benevedes and Racquel Lynn Ilimelakuuleimomilani Aila Akau*

Today is the ninth anniversary of the brutal and horrific deaths of my baby sister, "Rocky" and my first cousin, Michelle. We have sought justice for Rocky, Michelle and their children, all minors with the exception of two at the time of their deaths to no avail. Once again, this year, as the family spokesperson, I was asked to provide testimony to both the State of Hawaii House committees and the State of Hawaii Senate committee regarding the Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime and the passing of Marsy's Law for Hawaii. For the first time in the nine years that we as a family have been fighting for justice for Rocky and Michelle, I found that I had nothing to say. I also found that in the place of nothing to say, all that was left was raw emotion, i.e. intense grief, frustration and anger.

Since our story has been on television and in the newspapers repeatedly since Rocky and Michelle were killed, most of you know everything there is to know. Last year, I outlined in vivid detail the grievous failure of the judicial system and the many formal grievances that were filed against many departments within that system utilizing the statutes enacted by the State of Hawaii to prove overwhelming negligence in our case. You, the elected voice of the people of the State of Hawaii did nothing. It was the final slap in the face of every surviving family member in the Benevedes family, the Aila family and the Akau family. At this point in time, Tyler Duarte, the offender, has quite literally "gotten away with murder" and we, the surviving family members are left with betrayal, disgust, frustration, and anger.

In speaking to one of the representatives of Marsy's Law National I said "Have you ever had one of those happy days when you feel a "rush" of pure joy?" **That was the day.** I was standing in my kitchen in Kaneohe and all of a sudden felt so very happy and blessed. I had a huge, wonderful family, a loving husband, good friends, a job I loved and the best boss in the world, a beautiful home, and now our first grandchild born on January 7, 2007 in Ogden, UT. I was beyond happy at that moment. And then the phone rang. It was my sister-in-law, Elsa, crying hysterically and repeating over and over "Rocky and Michelle are dead!" My world stopped right then and there and for the last nine years has never been the same. Before that moment, when I thought of my baby sister, whom I held in my arms when she was born, I saw her as light-hearted, always full of laughter; now all I see is her screaming for her life, crushed against that brick wall, with the steering column and her dead cousin on her lap. And, the tears start to flow over and over again; Rocky's laughter and sense of humor, Michelle's generous and kind nature – gone forever. Then Uncle Brian Benevedes, Auntie Yvonne Benevedes, Ronald Aila, Sr. – all dead; two fathers and a mother who loved their only daughters more than their own lives. Tyler Duarte killed them all.

At this time, we would like to thank those that did attempt to achieve justice for Rocky and Michelle. The Honorable Judge Frances Wong whom imposed a sentence with very strict probation provisions to include restitution to be paid in full for Rocky and Michelle's funerals (which did not happen). The Honorable Senator Brian Taniguchi for introducing SB 29 related to mandatory sentencing for offenders convicted of first degree negligent homicide. Probation Administrator, Ms. Janice Yamada, who took our formal grievance seriously and initiated an investigation into the policies/procedures of the probation department. Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission who has never given up the fight for the victims of crime in the State of Hawaii. And, our newest champion, Stacy Evensen, State Director of Marsy's Law for Hawaii.

It is clear that we will never achieve our goal of justice for our precious Rocky and Michelle. We support Marsy's Law for Hawaii and the Amendment to the Constitution so that other victims of violent crime do not have to suffer what we have had to endure. **This is your opportunity to finally do what is right and just for the victims of violent crime in the State of Hawaii.**



Racquel Lynn Ilimelakuuleimomilani Aila Akau  
Michelle Anne Ku'uipo Benevedes

Date of Death 01/20/2007 in Waimanalo, Hawaii

In memoriam, we love you; miss you and thank you for all the joy you have given us during your lives cut short.

**WE WILL NEVER FORGET**



Sandra Lynn Hailiopua Storm-Conway, sister, cousin and Family Spokesperson





Louis Pohl Gallery  
1142 Bethel St.  
Honolulu, Hawaii 96813  
(808) 521-1812  
[www.louispohlgallery.com](http://www.louispohlgallery.com)

Date: 1-28-2016

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
And Member of the Senate Committee on Judiciary and Labor

From: Sandra Pohl, Louis Pohl Gallery

RE: Support SB 679/SB 3034 State Constitutional Amendment for Victim Rights

Thank you for the opportunity to provide testimony in support of SB 679/SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their immediate surviving family members have enforceable rights.

I believe it is necessary to have a constitutional amendment securing permanent enforceable rights for victims, with equal protections under the Hawaii State Constitution as the right of their offenders. Victims have a right to be treated with fairness and with respect for their dignity and privacy. They have a right to receive reasonable protection from threats' and harm.

The proposed amendment does not diminish the rights of offenders their rights remain intact. This offers a better balance between the rights of crime victims and the rights of offenders.

I urge your committee to pass this measure. Thank you for considering my testimony in support of SB 679/SB 3034.

Sincerely

SANDRA POHL

February 8, 2016  
Testimony in Support of SB679

Aloha kākou,

Thank you for the opportunity to provide testimony **in support of SB 679** to amend the Hawaii State Constitution to guarantee that crime victims and their surviving family members have enforceable rights.

Tuesday, February 9th - the same day that SB 679 will be read before the Senate, - is the two-year anniversary of the murder of my friend Charli Scott and her unborn son Joshua. I loved Charli very much, and I know she really wanted to be a mom. She would have been a wonderful mom. My heart will never be the same.

I also know that Charli's parents, sisters, extended family, and friends went through a nightmare of a labyrinth following Charli's disappearance (a nightmare that still continues) and in the process realized that the laws in the State of Hawai'i don't adequately protect the rights of victims.

Charlie's family has found out the hard way: that **we need a SB 679 for Hawaii**. Hawai'i is one of just 18 states that does not have constitutional provisions protecting victim's rights.

Every day, hundreds of people in Hawai'i suffer tremendous damage at the hands of criminals. Then they suffer again - as victims, thrust into the complex judicial system and left to navigate an unfamiliar court process.

Current statutory laws provide basic rights to victims, but they are **not enforceable** and **often trumped by the constitutional rights of the accused**. This is an outrage and must change.

I am testifying in support of SB 679 because I believe that victims deserve to have equal rights under the law.

I urge your Committee to pass this measure. Thank you for considering my testimony in support of SB 679.

Mahalo piha,  
Sara

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [REDACTED]  
**Subject:** Submitted testimony for SB679 on Feb 9, 2016 09:15AM  
**Date:** Sunday, February 07, 2016 11:58:37 AM

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**SB679**

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tamara Paltin	Individual	Support	No

Comments: Aloha, This bill has been crafted in response to the real life tragic experience of victims, it represents the compassionate action that all victims deserve. Please support this bill. Mahalo Tamara

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February 9, 2016, 9:15 a.m.

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice-Chair  
Senate Committee on Judiciary and Labor

FROM: Theresa Paulette

RE: Testimony in Strong Support of SB 679/SB 3034  
Proposing an Amendment to Article I of the Constitution of the  
State of Hawaii Relating to the Rights of Victims of Crime

My name is Theresa Paulette, a MADD Board member and a victim, and I am writing in strong support of SB 679/SB 3034. I believe 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-three years ago, when my only son, Brian, 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 navigate it on my own. I trusted there would be justice, however I found it lacking in any 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 and annoying. I initiated calls to the Police because I didn't receive any information after the crash. 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. Even though the driver wasn't criminally charged, I have lived and felt the gamut of emotions that all victims of violent crime feel.

As a volunteer Victim Advocate I support victims of impaired driving crashes and I hear about the range of emotions and injustices that still prevail.

Victims' voices count. The victims of crime are entitled to equal rights guaranteed by the State Constitution. We should be acknowledged and informed every step of the way. I urge the committee to support SB 679/SB 3034.

Thank you for the opportunity to submit testimony.