

CHARLI'S LAW

Reform of Victims Bill of Rights

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Provides that failure of state and county officers and employees to carry out or comply with chapter HRS 801D, may subject them to civil liability, with certain exceptions.

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A STATE IN TURMOIL

The State of Hawaii has had a rough year in the public eye. We have the Kealoha case, involving a Deputy Prosecutor and Chief of Police manipulating the criminal justice system for personal gain.¹ The Head Prosecutor of Oahu, Keith Kanishiro admitting that 15-20 felony rape cases were lost, overlooked and are now nonchargeable.² A mental health patient who presents a terrifying danger to the public escaped and was not reported missing for 12 hours, by which time he had gone from taxi to charter plane to commercial flight to California.³ A mother went to do a housecleaning, and was brutally murdered while her 8 year old daughter was in the house- the community helped capture the suspects without violence.⁴ A missile alert was sent out to thousands of people by accident.⁵ These are only a few of the victim related issues Hawaii as a Community is concerned with. The level of violence and incompetency of criminal protocol while administration refuses to answer for their failings is appalling. FaceBook has become home to several citizen crime alert pages in a community effort to help victims of crime. "One of the pages, "Stolen Stuff Hawaii" has a membership of 105,223 and has become a place where victims of crime help solve the crimes committed against the community and themselves.⁶ While it is good that the community is responding to this need, it is dreadful that they are without support from their own state.

The concern of the people is Real- We are respectfully asking you to allow victims to work with you to establish a version of 801D, victims rights that will balance the scales of justice.

VICTIMS BILL OF RIGHTS

Last year thousands of dollars were spent in an effort to add Victims Rights to Hawaii's State Constitution via Marsy's Law.⁷ It was unsuccessful. This year, as part of a Maui County Council 2018 Legislative Package (introduced by County Council Member Elle Cochran), Victims Rights are being advanced by Charli's Law, SB 2189.⁸ The point of the purposed Bill SB 2189, is to

¹ (http://www.civilbeat.org/topics/honolulu-police-corruption/?gclid=CjwKCAiA8P_TBRA9EiwAJrpHMyyuJQEQuw_nQJZmGYyCHmNi4MueCXWq3CPmdGqXbu-IAQJ3rMFmzBoCOWwQAvD_BwE)

² (<http://khon2.com/2014/11/18/prosecutor-admits-office-lost-track-of-at-least-15-sex-assault-cases/>)

³ (<https://www.nytimes.com/2017/11/16/us/hawaii-patient-captured-randall-saito.html>)

⁴ (<https://nypost.com/2017/12/08/two-arrested-after-woman-found-murdered-in-hawaii-rental-home/>)

⁵ (http://www.civilbeat.org/topics/north-korean-missile-threat/?gclid=CjwKCAiA8P_TBRA9EiwAJrpHM20yf4EA8sHINnrKSGwNRT50OprVYKrR-U308aKrkY_NHCSlyOO_7hoCIEQQAvD_BwE)

⁶ (<https://www.facebook.com/groups/stolenstuffhawaii/>)

⁷ (https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=1144&year=2016)

⁸ (https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=2189&year=2018)

enable victims to enforce their rights, as specified in Hawaii Statute 801D.⁹ This statute has been in the books for over 30 years yet has never been enforced in a court of law. This is because there is no mechanism to enforce 801D, and there is no remedy when a State, County officer or employee violates a victim/witnesses 801D rights.

Hawaii's Victims Rights Statute reads, "Neither the failure of any State or county officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or county officer or employee to liability in any civil action."¹⁰ Prosecutors have a say over every aspect of a conviction- whether to charge, what type of charge, when to file, any plea as well as a trial. All of these decisions directly impact the life of a victim and their family, yet victims have no legal voice in any of the decision making. This sad fact not only re-victimizes victims, it actually provides the very ingredients that allow crimes to be committed against victims and witnesses *by state employees without remedy*.

HRS 801D-1 – LEGISLATIVE INTENT

The Legislative Intent, as outlined in 801D-1 states:

"In recognition of the civic and moral duty of victims and witnesses of crimes to cooperate fully and voluntarily with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance 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 declares 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.*"¹¹

The "Intent" of the Victims Bill of Rights was to "honor and protect" victims and witnesses, recognizing that victims and witnesses are serving a *necessary* "civic and moral duty" by "cooperating" with "law enforcement and prosecutorial agencies." The cooperation of victims and witnesses is an acknowledged component of "the general effectiveness and well being of the criminal justices system of this State" in your own predecessors words.

Victims are not honored or protected in a system that denies them a remedy for violations of their Constitutional Rights. They are not protected in a "manner no less vigorous than the protections afforded criminal defendants."

Example- recently during a search for information pertaining to the HPA hearing upcoming in the murder case of my daughter, I requested rules and regulations of the victims advocate so that my family and I could comply with any and all rules. I was told by the Victims Advocate to "look it up on HPA website" which I did but found nothing, was redirected to Department of Public Safety and still found nothing regarding rules for victims during HPA hearings. I called the HPA and was told to call the AG's office. The AG's office asked me why I was calling *them*

⁹ (<https://law.justia.com/codes/hawaii/2013/title-38/chapter-801d>)

¹⁰ (<https://law.justia.com/codes/hawaii/2013/title-38/chapter-801d/section-801d-5/>)

¹¹ (<https://law.justia.com/codes/hawaii/2013/title-38/chapter-801d/section-801d-1/>)

but took my information. I got a call from HPA the next day and was asked why my victim advocate wasn't giving me the information we needed.

I can tell you why in six words- NO way to ENFORCE VICTIMS RIGHTS. So, whether an advocate does their job or not is arbitrary, completely up to their discretion.

To add insult to injury, the websites of both the HPA and the Department of Public Safety offered extensive information to the inmates or convicts. Not only was the information comprehensive it was comprehensible- broken down into simple language *for the convicted. Nothing for victims.*

There is an obvious discrepancy between victims rights and the rights of criminal defendants and it is because we are without the legal armor of defensible rights.

Can a victim/witnesses constitutional rights be violated during the criminal justice process?

Yes.

Where a constitutional violation is possible, protections, or remedies, must be available to **Every Citizen.**

The intention of SB 2189 is to provide that remedy.

HAWAII STATE CONSTITUTION

The Hawaii Constitution states- "RIGHTS OF CITIZENS-**Section 8.** No citizen shall be disfranchised, *or deprived of any of the rights or privileges secured to other citizens*, unless by the law of the land. [Ren Const Con 1978 and election Nov 7, 1978]"¹²

Section 4. No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and *to petition the government for a redress of grievances.* [Ren and am Const Con 1978 and election Nov 7, 1978] ¹³

Under Due Process and Equal Protection Section 5. *No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights...* [Ren and am Const Con 1978 and election Nov 7, 1978]¹⁴

In 1797 King Kamehameha protected his people by creating "Kanawai Mamalahoe" translation- the "Law of the Splintered Paddle". This was enacted to "show Hawaii's concern for the safety and welfare of all its people."¹⁵ "It was King Kamehameha's way of saying, 'You have every right to defend yourself against Ali'i and others who may abuse their power.'" The Law of the Splintered Paddle was meant to protect the people from the Ali'i abusing their status. "An Ali'i who did not look after his people and his land would lose his power."

¹² (<http://lrbhawaii.org/con/conart1.html>)

¹³ <http://lrbhawaii.org/con/conart1.html>

¹⁴ <http://lrbhawaii.org/con/conart1.html>

¹⁵ (<https://www.hawaii.edu/uhelp/files/LawOfTheSplinteredPaddle.pdf>)

The Original Law of this Land protected the people from abuse by those with power.

The Law of the Splintered Paddle was included in our State Constitution in 1978 and has been applied to Hawaiian Rights, Elder Law, Children's Rights and homeless advocacy.¹⁶

In the name of Victims past, present and future, we are hereby invoking the Law of the Splintered Paddle and sections 4, 5 and 8 under Rights of Citizens and Due Process for Hawaii's Victims of Crime.

Legislation Impact

Article [XIV](#) of the state constitution called for the formation of the Ethics Commission and adopted a code of ethics meant to achieve a standard of integrity in order to assure Hawaii citizens that the standards for public officers and employees are fair and uniform.

The article was added during the 1978 [Constitutional Convention](#).
Article XIV says:

“The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

It is the responsibility of the Legislature to create the Laws that hold accountable those who do not respect the victims rights as provided by the statutes of this state.”

[Hawaii State Ethics Commission](#) tracked more than 16 bills related to ethics and lobbying the legislative session of 2016. Each and every one died, many without so much as a public hearing.

In an article by Civil Beat on the 16 Bills related to ethics and lobbying it is noted that “...it sends a bad message to the people about the Legislature's commitment to open and responsible government when nearly all bills related to ethics and transparency just die a non-transparent death at the end.... That's not the way.... our government should work.”¹⁷

It is low standards of ethical behavior you are insuring by not holding employees of the state of Hawaii responsible when they do not uphold statutes and the constitutional rights of victims and witnesses.

¹⁶ (https://en.wikipedia.org/wiki/K%C4%81n%C4%81wai_M%C4%81malahoe)

¹⁷ <http://www.civilbeat.org/2016/05/hawaii-lawmakers-again-balk-at-ethics-lobbying-reform/>

Tourism and Victims-

Jack Richards, president and CEO of Pleasant Holidays LLC, Hawaii's largest travel seller..... acknowledged that the company has received a few inquiries about crime from travelers and agents. "The visitor industry needs to stay on top of it. If this gets worse, people won't book," Richards said. "People want to come to Hawaii because they perceive it as a safe destination."¹⁸ Hawaii Lodging & Tourism Association President and CEO Mufi Hannemann said "If we don't ramp up our game with respect to tourism security and getting everyone collaborating, we know it could hurt tourism."¹⁹

Visitors to Hawaii are NOT blanketed by their own states victims/witness rights. When they come here they should know that they will be dealing with a state that has the OPTION to ignore them. I have repeatedly heard this very issue from out of state victims, and in our own case, Charli's father relies upon me to relay information to him, or he is out of the loop in his own daughters murder case. He is considered in legal terms a victim in this state, but he is also a victim OF this state when his rights are not enforced.

I personally am spearheading an effort to inform visitors to the state of Hawaii via a website as yet unlaunched, that they are UNPROTECTED while here by any victims rights. If Charli's Law, SB 2189 does not become law this year, the website goes up. I will also be using other social media, tourism magazines etc to inform tourists of the dangers of visiting a state with no enforceable victims rights.

PROSECUTOR MISCONDUCT AND REPORTING

No one knows the exact extent of prosecutor misconduct. That's because many prosecutorial activities take place behind closed doors, rendering any misconduct difficult to detect.²⁰

For years, Americans assumed prosecutors were acting in a fair and honest manner. But in the late 1990's, that presumption came under challenge when the Pittsburgh Post- Gazette²¹ and Chicago Tribune²² ran separate exposes revealing widespread prosecutorial impropriety, which is defined by the Center of Prosecutor Integrity, White Paper²³ as "misconduct by the relevant Rules of Ethical Conduct,"²⁴ violation of any laws, or other conduct that prejudices the administration of justice, whether intentional or inadvertent.²⁵

For example, on September 17, 2016 the Hawaii Intermediate Court of Appeals (ICA)

¹⁸ (<https://taskandpurpose.com/service-members-attacked-waikiki-hawaii/>)

¹⁹ <https://taskandpurpose.com/service-members-attacked-waikiki-hawaii/>

²⁰ Center for Prosecutor Integrity: White Paper, "An Epidemic of Prosecutor **Misconduct**

²¹ Bill Moushey, Win at All Cost, Pittsburgh-Gazette (Nov.22-Dec13,1998),<http://old.post-gazette.com/win/default.asp>

²² Ken Armstrong & Maurice Possley, Trial & Error: How Prosecutors Sacrifice Justice to Win, Chicago Tribune (Jan.10-14, 1999)

²³ Center for Prosecutor Integrity: White Paper, "An Epidemic of Prosecutor **Misconduct**

²⁴ Definition comes from the National District Attorneys Association, National Prosecutors Standards, Third Edition, <http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.

²⁵ Many cases of inadvertent errors are known to be avoidable. For example, many Brady violations may be inadvertent in nature, but these errors can be prevented by means of open-file discovery policies.

overturned a unanimous guilty verdict, by jury trial, in the case of *State vs. Makuola Collins*.²⁶

The ICA concluded that:

“... the State violated its discovery obligations by failing to disclose the medical examiners report... that under the circumstances of this case, the State’s violation of its discovery obligations were particularly harmful to Collins’ defense and resulted in substantial prejudice to Collins. We therefore vacate Collins’ convictions on Counts 2 through 6 and remand the case for a new trial on these counts.”²⁷

Victims, defendants and inmates all suffer under the largely unsupervised and unreported violations that are perpetuated by employees of the criminal justice system. The difference is that defendants and inmates have the iron sword of the Constitution to defend themselves from those violations while victims are given a straw sword of unenforceable statutes to defend themselves, very often against the same types of Civil Rights infractions.

The current Kealoha case is an example that has uncovered how dangerous the lack of outside regulation, supervision and responsibility can be and how deep it can run. We STILL don’t know the full scope of criminal activity perpetuated by the Kealoha’s. The victim in the Kealoha case had to go to extremes to find not only a method of redress, but a way to report a criminal case while skipping a link in the chain of command so the complaint would not be covered up. This is what victims face in ALL cases of Constitutional violations by state employees.

“Self regulation and professional sanctions are not enough” according to HuffPost Sr Writer & Investigative Reporter Radley Balko. His opinion as a non member of the legal industry who has done in depth research on this topic elevates his credibility.²⁸ The supervision and penalties need to come from those outside the reach of Prosecutors. Victims cannot file complaints about violations BY the Prosecutors TO the Prosecutors or anyone else in that realm. The Ombudsman does not have the discretion to deal with Prosecutorial Misconduct. The normal routes of complaint currently available to victims are not working to encourage the criminal justice system to adhere to the victims constitutional rights. There is another possibility that Nonohe Botelho will suggest and explain. I suggest that Judges be the recipient of complaints filed by victim witnesses after those complaint forms are filtered for Constitutional infractions by a qualified attorney. It is judges who should hear and determine whether the complaints are valid and require redress and what manner of redress is fair. The point in part is that it is a CRIME to abuse civil rights, so why is it not treated as such if it is perpetrated by a Prosecutor? The system used by Judges currently to determine the validity of charges brought by the Prosecutors office should be sufficient without being too time consuming, as well as being an informed unbiased decision as to whether there was or was not a Civil rights violation suggested by the complaint form.

The best way to deal with Prosecutorial Misconduct is to acknowledge the right to hold Prosecutors civilly liable. Prosecutors already have armament enough, and perhaps too much, via Absolute Immunity, which is a form of legal immunity for government officials that confers total immunity from criminal prosecution and lawsuits so long as they are acting within the scope of their duties. But absolute immunity contrasts with qualified immunity and only applies if specified conditions are met. Absolute Immunity only applies to Prosecutors while they are in the courtroom. While they are investigating a case, they have qualified immunity, which is the only

²⁶ [State of Hawaii vs. Makuola Collins](#)

²⁷ ICA of the State of Hawaii, No.CAAP-12-0000869

²⁸ (<https://www.youtube.com/watch?v=leO8Rbm-T30>)

chink in their armor.

The only way a victim/witness could sue a Prosecutor with such a wall of defense is IF that Prosecutor violated the victim/witnesses Constitutional Rights, and even Then, it is an uphill battle to prove allegations against Prosecutors as everyone here knows.

Why do they need the Legislature to intimate that Prosecutors are impenetrable via Hawaii 801D-5 when Prosecutors are ALREADY protected by absolute and qualified immunities?

Is the pursuit of justice predicated on the abuse of the victim witnesses constitutional rights?

REDRESS TO OPPOSITION

Some, like the Department of Public Safety, are against victims being heard because as they purposed in their written testimony against an Amendment to the State Constitution enshrining victims rights- “If we have to gather input from victims and allow them to be heard and participate in the process, it would be very difficult to provide the courts with the required risk assessments within the three-day period.....We don’t know how we would be able to identify the victims and allow for them to be heard and participate within three days.”²⁹ Respectfully, we submit that it is possible to alter the amount of time granted for risk assessments to accommodate victims so that the “risk assessment” is comprehensive, and that doing so would be fulfilling their duties to their community and state to keep the public safe. We can only guess how many victims would participate actively in their cases if given the option to do so because victims have not had the option to stand up for themselves in Hawaii since King Kamehameha’s time. What we do know is that if victims were allowed to participate, Prosecutors would likely not be able to forget or “lose” 15 to 20 felony rape cases “lost in the shuffle.”³⁰ In spite of updates to the system, cases are still lost due to human over-site regularly. A case getting “lost in the shuffle” would be less likely if victims were required to be informed and heard.

Currently, victims requests of Prosecutors and victim advocates for answers in their cases routinely go unanswered. The prosecutors office is responsible for the filtering of information to Victims Advocates who finally filter the information to the victim/witness. Whether questions are encouraged or discouraged, answered or unanswered is completely at the whim of the Prosecutors and Advocates. Victim witnesses cannot enforce their right to be informed in this state. Period. It happens ALL THE TIME WITHOUT REMEDY. This lack of information can have a direct and severe impact on victims and witnesses safety and Due Process as you will hear in other testimonies.

This year a mental patient with a violent history escaped. No one was notified for Twelve hours. What is the penalty for this administrative “oversight”? KHON recently did a story regarding the perceived conflict of interest btween mental health patients and public safety- “We’ve learned many others, including those accused of violent crimes, are treated and released, but the public doesn’t have a way to easily find out when they’re let out. Health department spokeswoman, Janice Okubo, told us: “DOH is unable to provide the names of patients or confirm the names of individuals receiving treatment.” She went on to say it’s “due to strict federal and state laws that protect confidentiality.”

So is there anything Hawaii lawmakers can do to change that?

²⁹ (https://www.capitol.hawaii.gov/Session2015/Testimony/HB1144_TESTIMONY_JUD_02-19-15_PDF)

³⁰ (<http://khon2.com/2014/11/18/prosecutor-admits-office-lost-track-of-at-least-15-sex-assault-cases/>)

The response of State Rep. John Mizuno, Health and Human Services Committee Chair amounted to a figurative shrug- “That’s a good question, and spot on no, and the reason why is because, again, HIPAA (Health Insurance Portability and Accountability Act of 1996) protects them and that’s the hard nut that we just can’t crack. The federal law supremacy clause will go over the state law.”

The only time the health departments tell us who’s at the state hospital is when someone escapes, *but only sometimes.*

Since 2001, *more than a hundred people have escaped from the state hospital, but the public is rarely told about them, again because of privacy laws.*

“To me, that’s an all-points bulletin. Let everyone know we need to capture this person. He or she is an escapee. That’s normal thinking. With HIPAA and state law going up against federal law, it’s not as clear. It’s up to the doctor and depends on if that person has a violent tendency or not,” Mizuno said.

That’s the only exception to the law: when the public is at risk of harm or danger because of a patient, *and that’s based on a doctor’s opinion. Only then do we find out from the health department who lives at the state hospital.*”³¹

The answer to this conundrum is made simple via victims rights. The HIPAA oath binds only those in certain fields of practice. It does not apply to victims.

Victims have the right according to 801D “(3) To receive protection from threats or harm;” and “(7) To be informed by the department of public safety of changes planned by the department in the custodial status of the offender that allows or results in the release of the offender into the community, *including escape, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term.*”³²

If victims were able to both know and participate in the criminal justice system in a manner that does not infringe upon the rights of the defendant, then on what Constitutional premise are their rights ignored?

Victims can save their own lives. Debbie Akana, whose mentally ill son assaulted her twice-once causing a concussion, and the second time stabbing her repeatedly, tried to alert the state and criminal justice system repeatedly to her sons mental health issues as well as the fact that he was a danger to her life, and was IGNORED because there is no place in our current system that gave her a legally upheld voice. Debbie has left her home state of Hawaii out of fear of her son and the inability to enforce victims rights and protect herself and her ten-year-old daughter. She is unsafe in her own home state.

When I speak with Debbie Akana, I think often of what happened in another Maui case, similar to hers, and I know she has made the right decision. Sadly, in Kimberly Vinuya's case, she did *not* survive her sons' attack. She had no place to voice her fears even after her son had murdered her sister *a mere two months before he did the same to her. No legal voice in the system that determined her safety, her future, her life.* No way to protect herself.³³ The ineffective and unenforceable Hawaii Statute 801D undoubtedly cost a life in this case, which is criminal

³¹ <http://khon2.com/2018/02/14/dozens-of-hospital-patients-acquitted-of-violent-crimes-with-no-way-to-track-them/>

³² <https://law.lclark.edu/live/files/4940-hawaii>

³³(<https://www.pressreader.com/.../the-.../20170812/281487866451668>)

negligence when a person does it. What is it when a state does it and does not immediately move to acknowledge and fix the problem?

There are many such examples.

I have enclosed copies of testimonies from Marsy's Law testifiers. Most of them are from victims. The victims sound confused, broken, desperate, disappointed, injured, and angry. I not only cannot afford to bring most of them here to testify on behalf of Charli's Law, but I won't ask it of them. I refuse to subject them yet again to the stresses of testifying about horrible intimate details of crimes committed against them by the accused and then about the crimes committed against them by their own state- in front of camera's and a room full of people. It is an extremely taxing experience. So I have highlighted the pertinent parts of their testimonies and I hope you will do them the honor of reading those testimonies. Listen to the Victims. Those victims who have come to testify today have done so because they, like myself, represent their communities here in this room.

Helping Victims to Regain Their Emotional/Mental Health

The definition of "Victim" according to Oxford Dictionaries is "A person who has come to feel helpless and passive in the face of misfortune or ill-treatment."³⁴ The synonyms for "victim" are just as disheartening- sufferer, injured party, casualty, injured person, wounded person, dead person, fatality, loss, and loser. The National Center for Victims of Crime states "Perhaps the most agonizing experience for victims involves dealing with the criminal justice system..... At this level, the crime is considered to have been committed against the state, and victims become witnesses to the crimes..... At this stage of the process, a victim can sometimes feel that he or she is losing complete control because he or she is not directly involved in the prosecution or sentencing of the offender...."

How can the Law refine the definition of justice with regard to victim participation?

"..... participation in the criminal justice system can aid victims in rebuilding their lives. If victims are kept well-informed about the criminal proceedings and feel that they have a voice in the process, they will feel that they are a part of a team effort. This added effort enables victims to understand the judicial process and helps to return to them a sense of control to their lives and circumstances."³⁵ Currently, the State of Hawaii is one of 15 states that still does not acknowledge Victims Rights while it acknowledges the rights of the accused ³⁶ in the fourth, fifth, sixth and fourteenth Amendments.

The reasons given to avoid addressing this issue are not hard to foresee. Many Prosecutors, The Department of Public Safety, the ACLU and others are opposed to victims having a voice in a legal process that is almost completely contingent upon their cooperation because giving victims a voice in the system will require time, attention and likely, funding. Our response to their concerns is simple-Yes listening to victims will require time and attention and more funds. Yes,

³⁴ (<https://en.oxforddictionaries.com/definition/victim>)

³⁵(<http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/trauma-of-victimization>)

³⁶ (<http://lrbhawaii.org/con/constitution/CONST%200001-0014.html>)

victims may tell the Department of Public Safety that a defendant poses a threat to the community based on facts A and B. And Yes, Now the Department of Public Safety will have to make a decision based on facts A and B. Will the public be safer when the Department of Public Safety makes decisions based on all the information available as opposed to part of the information available? Certainly.

Do you want the public to be safe?

The Myth About 801D-5

§801D-5 Responsibility for rights and services. (a) Each county is responsible for the enforcement of rights under section 801D-4. The courts shall fashion all decisions and orders to enhance the recognition of these rights and the provision of these services, to the extent that they will not conflict with the constitutional rights of the defendant.

(b) Neither the failure of any state or county officer or employee to carry out the requirements of this section nor compliance with it shall subject the state or county officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority. [L 1988, c 261, pt of §1]³⁷

The myth about 801D-5 stems from a Federal remedy to Constitutional violations. 42 USC 1983 allows for - *“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory..... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...”*³⁸

That means that Hawaii Statute 801D-5 is in conflict with a Federal code.

That means that Hawaii's victims and witnesses are being misled by the Statute meant to protect them.

How The State Can Adapt To The Law To Enforce Victims Rights

There are a couple of problems with using 1983 for the state and the victim:

*By the time a victim is able to get a hearing for the Constitutional violation, the violation has already taken place.

*Federal hearings can be costly and time consuming for both plaintiff and defendant.

*If there is a finding in favor of the victim, ie the plaintiff, if Hawaii has no mechanism for victims to enforce their Constitutional rights already in place, the Federal government will use Federal Laws as the remedy. Declaratory judgment sets a state precedent. This is a possible solution for victims of Constitutional abuse, but it is time consuming for both sides, and possibly not the best solution for our state as a whole.

It is also a little like having your mother come to your house, the house you're responsible for

³⁷ <https://law.justia.com/codes/hawaii/2013/title-38/chapter-801d/section-801d-5/>

³⁸ (http://www.conservapedia.com/42_U.S.C._%C2%A7_1983)

running, and telling you how to run it.

The alternative is to create *immediate intermediate remedies* that Hawaii will abide by when victims rights are violated.

The method thru which SB 2189 will achieve these remedies is right now in the hands of the Committees that vote on them. You put to legal language the law that will protect the people from the Prosecutors or “Ali’i”. I ask that you consider adding these particulars to the version of the remedy to Constitutional violations of victims rights you will be writing if you decide that victims are worthy of having protection against Constitutional infractions-

In the case of a Constitutional violation against a victim/witness there should be an immediate intermediate remedy so that the violation can be halted, perhaps reversed. A template form asking victim/witnesses what the infraction is will help filter Constitutional violations from policy, protocol, or discretion issues as discussed above under the heading”PROSECUTOR MISCONDUCT AND REPORTING”. If it is established that there is a possible Constitutional offense, then a hearing should be provided before a judge to establish a) the existence of a Constitutional transgression, b) what the countermeasure should be, and c) whether there should be a sanction if the victim has no other redress and suffered harm to their Constitutional rights. If there is a financial sanction involved, it should like the fines for other criminal offenses, go to a victims fund. Perhaps one to help with legal fees for victims.

If none of the above resolves the Constitutional encroachment, then the victim will have satisfied Hawaii's requirements and can then file a 1983 claim, thus protecting the state from the feared onslaught of constitutional complaints by giving victims *immediate intermediate remedies*.

I have broken down Hawaii Statute 801D into rights that if transgressed represent Constitutional violations. You likely have a better understanding than I so bear with me and if I am wrong, correct me please-

Each of the below “rights” stem from either the First Amendment- the right to free speech and redress, and the right to be present, or the Fourteenth Amendment and the right to Due Process-.

The right to be present at public hearings, the right to notification of arrest, release, deferral of case by police, referral by police to prosecutor, rejection of case by prosecutors, preliminary hearing date, grand jury date, trial and sentencing dates, and disposition of case. The right to protection, the right to have property returned, the right to be informed if the offender escapes, is on furlough, work release, supervised release, released on parole, bail, appeal, or final disposition changes. The right to be informed if the offender carries HIV. The right to be informed of any financial windfall the offender receives.

When the above victims rights are violated, *immediate intermediate remedies* will apply.

CLOSING ARGUMENTS

In closing, I do not believe we have offered *subjective proofs here*. The above represent Facts that have too long been ignored in the State of Hawaii.

I love this State. I love the people, the red earth, the plants, the sea, the sand, the mountains, the jungles, the waterfalls, the language, the food.... everything that makes Hawaii HAWAII... I love.

So did Charli. She paid with her life for loving three things- Steven Capobianco, Her unborn son, and Hawaii.

It is Her blood that soaks the land of Hawaii.

How much more blood must be spilt before you, the Legislature act to protect victims by removing the harness that controls their freedoms? How many more tears will you see shed before you protect your community and its visitors?

SB-2189-SD-1

Submitted on: 2/24/2018 11:23:56 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT of this badly needed bill. VICTIMS should have equal or GREATER RIGHTS than criminals. The system that purports to fight for victims, often times re-victimized the victims during the entire judicial process & beyond. To date, there is no remedy to victims other than the toothless dog call HRS 801D. We need to change this deplorable treatment of victims. Mahalo.

SB-2189-SD-1

Submitted on: 2/26/2018 7:39:33 AM

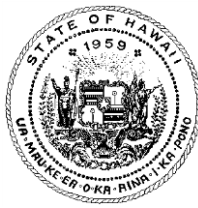
Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

In STRON SUPPORT.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2189, SENATE DRAFT 1
RELATING TO VICTIM RIGHTS

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Tuesday, February 27, 2018; 9:30 p.m.
State Capitol, Conference Room 016

Chair Taniguchi, Vice Chair Rhoads, and Members of the Committee:

The Department of Public Safety (PSD) offers comments of concern regarding Senate Bill (SB) 2189, Senate Draft (SD) 1. Employees singled out in this proposal are primarily those who are covered by collective bargaining agreements. Also affected would be excluded employees, generally covered by collective bargaining agreements associated with their included counterparts.

Details of employee discipline are also governed by collective bargaining agreements. PSD would caution that a one-size-fits-all approach to all employees potentially impacted by this bill may run afoul of negotiated agreements.

The Department thanks the Committee for this opportunity to testify on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE

MK-KK

February 27, 2018

The Honorable Brain T. Taniguchi, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: Senate Bill No. 2189, S.D 1, Relating to Victim Rights

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes Senate Bill No. 2189, S.D. 1, Relating to Victim Rights.

While the HPD supports Section 801D-4, Basic bill of rights for victims and witnesses, Hawaii Revised Statutes (HRS), the HPD opposes the amendment to Section 801D-5, Responsibility for rights and services, HRS. Failure to carry out any of the victims' and witnesses' rights and services or any of its provisions opens up the county and its employees to civil liability and/or disciplinary action.


The HPD urges you to oppose Senate Bill No. 2189, S.D. 1, Relating to Victim Rights.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division

SB-2189-SD-1

Submitted on: 2/26/2018 11:10:30 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Testifying for Maui Department of the Prosecuting Attorney	Oppose	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, STONGLY OPPOSES SB 2189, SD 1, Relating to Victims Rights. This measure is unnecessary and the Department requests that it be HELD.

SB-2189-SD-1

Submitted on: 2/23/2018 8:05:53 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Culina	Individual	Support	No

Comments:

SB-2189-SD-1

Submitted on: 2/23/2018 9:47:34 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann Evans	Individual	Support	No

Comments:

aloha,

My name is Ann Evans.

I stand in STRONG SUPPORT of SB2189

aka Charli's Law.

Today, you will hear from people who will tell you stories regarding the NEED for us to see this bill become LAW

Stories told by people that have endured the worst kinds of pain and sorrow a human can face... only to have the nightmares continue, without a voice or the rights deserved.

Please listen carefully to their stories.

Know that it could be any one of us ..

we need to give "victims" a voice

Simple HUMAN RIGHTS

Regard

Respect

Support

I respectfully lend my voice to those in need... and hope and pray that you do the same

thank you for your time

Ann Evans

SB-2189-SD-1

Submitted on: 2/24/2018 1:24:45 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

Strongly Support

SB-2189-SD-1

Submitted on: 2/24/2018 8:19:57 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Terez Amato Lindsey	Individual	Support	No

Comments:

Please, this is a very important bill for victims right. Please pass sb2189 with strong support.

Thank you, Terez Amato Lindsey, Maui

SB-2189-SD-1

Submitted on: 2/25/2018 4:05:37 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

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

Comments:

I am a mother whose children were also victims. This bill speaks to the heart of what we as mothers fight for in the name of justice for our children. I am testifying to support this bill. As representatives of the state of Hawaii do what is right and move this forward with vigor. We need victim rights! Aloha!

SB-2189-SD-1

Submitted on: 2/25/2018 9:34:04 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette White	Individual	Support	No

Comments:

SB-2189-SD-1

Submitted on: 2/26/2018 10:16:07 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Esther Dudoit	Individual	Support	No

Comments:

SB-2189-SD-1

Submitted on: 2/26/2018 10:29:58 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mavis Oliveira-Medeiros	Individual	Support	No

Comments:

Aloha,

I strongly support this bill. As one of many Hana women who make the trips to the "other side" of the island for appointments, shopping, funerals, watch grandkids play sports, etc., I, along with many women from Hana, can tell you, it was very scary driving alone during that long period, waiting, not knowing if the killer was still out there, waiting for another victim. Please give victims all the support you can. They've suffered enough.

Mahalo,

Mavis Oliveira-Medeiros

SB-2189-SD-1

Submitted on: 2/26/2018 11:05:16 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Rocca	Individual	Support	No

Comments:

I strongly support this measure.

SB-2189-SD-1

Submitted on: 2/26/2018 10:35:01 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
natasha sky	Individual	Support	No

Comments: