

**SB 2189**

**SD-1**

**RELATING TO  
VICTIM RIGHTS**

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# A BILL FOR AN ACT

RELATING TO VICTIM RIGHTS.

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

1           SECTION 1. Section 801D-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           " ~~[§]~~ §801D-5 ~~[§]~~ Responsibility for rights and services.

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

9           (b) ~~[Neither the]~~ Except as provided in section 801D-4(e),  
10 failure of any state or county officer or employee to carry out  
11 the requirements of this ~~[section nor compliance]~~ chapter or  
12 failure to comply with ~~[it]~~ any of its provisions shall ~~[subject~~  
13 ~~the state or county officer or employee to liability in any~~  
14 ~~civil action. However, such failure may]~~ provide a basis for  
15 ~~[such]~~ disciplinary action as may be deemed appropriate by  
16 competent authority.



1        (c) Whenever disciplinary action is taken under subsection  
2        (b), the competent authority shall immediately submit a report,  
3        including an explanation of the basis for the disciplinary  
4        action, to the legislature."

5        SECTION 2. Statutory material to be repealed is bracketed  
6        and stricken. New statutory material is underscored.

7        SECTION 3. This Act shall take effect on January 1, 2045.

8



**Report Title:**

Maui County Package; Victim Rights; Public Officers and Employees; Disciplinary Action; Reporting

**Description:**

Provides that failure of state and county officers and employees to carry out or comply with chapter 801D, HRS, shall provide a basis for disciplinary action, with certain exceptions. Requires competent authority to immediately report such disciplinary action to the legislature. Takes effect 1/1/2045.  
(SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**SB 2189**

**SD-1**

**TESTIMONY**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE AARON LING JOHANSON, CHAIR**  
**HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai`i**

March 22, 2018

**RE: S.B. 2189, S.D. 1; RELATING TO VICTIM RIGHTS.**

Chair Johanson, Vice Chair Holt, and members of the House Committee on Labor & Public Employment, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to S.B. 2189, S.D. 1.

While the Department strongly believes in the rights outlined in Section 801D-4, Hawaii Revised Statutes (“HRS”)—and exhibits this dedication by maintaining a robust division of staff (Victim Witness Kokua Services) solely dedicated to providing advocacy and assistance to all crime victims and witnesses as needed—S.B. 2189, S.D. 1, would make sweeping changes (imposing mandatory disciplinary action and civil liability for “failure to comply” with any of these provisions) without fully considering the severity and magnitude of what it is proposing.

Indeed, the Department agrees that specific enforcement mechanisms are needed, to ensure that victims’ rights are upheld, but crafting such mechanisms would require in-depth, multi-disciplinary analysis and discussion of the existing bill of rights, and any proposed methods for enforcement. Yet **S.B. 2189, S.D. 1, does not provide for any procedures, infrastructure, resources, or even note the appropriate decision-making authority(ies) for enforcement.** In light of the extensive clarification needed regarding HRS §801D-4 and the proper enforcement thereof—as discussed further below—the Department strongly urges the Legislature to carefully consider what is really needed to uphold the rights of crime victims, and perhaps have the relevant stakeholders craft more effective enforcement mechanisms, rather than merely throwing open the floodgates to civil litigation and disciplinary action.

As currently written, nearly all of the rights outlined in HRS §801D-4 can be interpreted to hold all state and county officers and employees to a “strict liability” standard (with the exception of HRS §801D-4(5), stating “whenever possible”), for purposes of upholding these rights for

victims of crime.<sup>1</sup> Thus, even if certain provisions are impracticable in a given situation, or reasonable efforts are made without success, a violation could or would be found. It is also important to note that some of the rights contained in HRS §801D-4 are extremely broad and not clearly defined, such as subsection (3), which ensures that all victims have the right “[t]o receive protection from threats or harm.” Notably, this and **nearly all of the rights listed apply to victims of crime at every level**, including petty misdemeanors (with the exception of HRS §801D-4(1), stating “If the crime charged is a felony”).

While it is impossible to predict how many lawsuits or administrative actions would actually be prompted by the proposed changes, it is inevitable that countless individuals would be forced to defend against civil and administrative complaints—both frivolous and meritorious—which means less time for actual victim-assistance or other work duties, and could potentially create an exponential increase in litigation fees for the state and counties.

**In the course of an average year, the Department’s Victim Witness Kokua Services advocates assist approximately 8,000 victims and witnesses** in criminal cases prosecuted by the Department, and many more victims and witnesses (generally for the lowest-level offenses) are not assigned an advocate. While the Department strives to maintain the strictest compliance with the rights of everyone involved—and our data indicates that the vast majority are satisfied with the assistance that they receive—there are inevitably some victims and witnesses who are not satisfied with the outcome of “their case,” or with certain interactions they may have had with our staff or deputies. Looking in hindsight, those individuals may (strongly) believe that something could have or should have been done differently, and the personal nature of criminal prosecution—for many victims and witnesses—can lead to extremely emotional and/or heated reactions.

While the Department acknowledges that there must be instances in which officers, deputies or other state and county personnel could—or should—have handled various matters differently,

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<sup>1</sup> In relevant part, HRS §801D-4 states:

**§801D-4 Basic bill of rights for victims and witnesses.** (a) Upon written request, victims and surviving immediate family members of crime shall have the following rights:

- (1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney;
- (2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled;
- (3) To receive protection from threats or harm;
- (4) To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness to or a victim of crime, including information on how to apply for the assistance and services;
- (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
- (6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when the property is no longer needed as evidence. If feasible, all the property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken; 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.

imposing mandatory disciplinary action and civil liability across the board would severely oversimplify matters, without providing any useful structure or forethought to the actual implementation of such a mandate. And while the Department acknowledges that administrative disciplinary action can be an important enforcement mechanism to ensure system-wide compliance, putting such a system in place will require considerably more changes than are currently contemplated in S.B. 2189, S.D. 1, in terms of what is being enforced, against whom, and under what procedures (with appropriate deference to due process and collective bargaining).

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 2189, S.D. 1. Thank you for the opportunity to testify on this matter.



**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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THE HONORABLE AARON LING JOHANSON, CHAIR  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai'i

March 22, 2018

RE: S.B. 2189, S.D. 1; RELATING TO VICTIM RIGHTS.

Chair Johanson, Vice Chair Holt, and members of the House Committee on Labor & Public Employment, the Office of the Prosecuting Attorney of the County of Kaua'i ("Office") submits the following testimony in opposition to S.B. 2189, S.D. 1.

While the Office strongly believes in the rights outlined in Section 801D-4, Hawaii Revised Statutes ("HRS")—and exhibits this dedication by maintaining a robust division of staff (Victim Witness Program) solely dedicated to providing advocacy and assistance to all crime victims and witnesses as needed—S.B. 2189, S.D. 1, would make sweeping changes (imposing mandatory disciplinary action and civil liability for "failure to comply" with any of these provisions) without fully considering the severity and magnitude of what it is proposing.

Indeed, the Office agrees that specific enforcement mechanisms are needed, to ensure that victims' rights are upheld, but crafting such mechanisms would require in-depth, multi-disciplinary analysis and discussion of the existing bill of rights, and any proposed methods for enforcement. As currently written, S.B. 2189, S.D. 1, does not provide for any procedures, infrastructure or even note the appropriate decision-making authority(ies) for enforcement. In light of the extensive clarification needed regarding HRS §801D-4 and the proper enforcement thereof—as discussed further below—the Office strongly urges the Legislature to carefully consider what is really needed to uphold the rights of crime victims, and perhaps have the relevant stakeholders craft more effective enforcement mechanisms, rather than merely throwing open the floodgates to civil litigation and disciplinary action.

As currently written, nearly all of the rights outlined in HRS §801D-4 can be interpreted to hold all state and county officers and employees to a “strict liability” standard (with the exception of HRS §801D-4(5), stating “whenever possible”), for purposes of upholding these rights for victims of crime.<sup>1</sup> Thus, even if certain provisions are impracticable, or reasonable efforts are made without success, a violation could or would be found. While it is impossible to predict how many lawsuits or human resources complaints would actually be prompted by these changes, it is inevitable that countless individuals would be forced to defend against civil and administrative complaints—both frivolous and meritorious—and litigation fees could potentially increase exponentially for the state and counties.

It is also important to note that some of the rights contained in HRS §801D-4 are not clearly defined, such as subsection (3), which ensures that all victims have the right “[t]o receive protection from threats or harm.” Notably, this and **nearly all of the rights listed apply to victims of crime at every level**, including petty misdemeanors (with the exception of HRS §801D-4(1), stating “If the crime charged is a felony”).

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<sup>1</sup> In relevant part, HRS §801D-4 states:

- §801D-4 Basic bill of rights for victims and witnesses.** (a) Upon written request, victims and surviving immediate family members of crime shall have the following rights:
- (1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney;
  - (2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled;
  - (3) To receive protection from threats or harm;
  - (4) To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness to or a victim of crime, including information on how to apply for the assistance and services;
  - (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
  - (6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when the property is no longer needed as evidence. If feasible, all the property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken; 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.

**In the course of an average year, our Office’s Victim Witness Program advocates assist approximately 1,300 victims and witnesses** in criminal cases prosecuted by the Office, and many more victims and witnesses (typically in the lowest-level cases) are not assigned an advocate. While the Office strives to maintain the strictest compliance with the rights of everyone involved—and our data indicates that the vast majority are satisfied with the assistance that they receive—there are inevitably some victims and witnesses who are not satisfied with the outcome of “their case,” or with certain interactions they may have had with our staff or deputies. Looking in hindsight, those individuals may (strongly) believe that something could have or should have been done differently, and the personal nature of criminal prosecution—for many victims and witnesses—can lead to extremely emotional and/or heated reactions.

While the Office acknowledges that there must be instances in which officers, deputies or other state and county staff could—or should—have handled various matters differently, imposing mandatory disciplinary action and civil liability across the board would severely oversimplify matters, without providing any useful structure or forethought to the actual implementation of such a mandate. And while the Department acknowledges that administrative disciplinary action can be an important enforcement mechanism to ensure system-wide compliance, putting such a system in place will require considerably more changes than are currently contemplated in S.B. 2189, S.D. 1, in terms of what is being enforced, against whom, and under what procedures (with appropriate deference to due process and collective bargaining).

For the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kaua’i opposes the passage of S.B. 2189, S.D. 1. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE

MK-KK

March 22, 2018

The Honorable Aaron Ling Johanson, Chair  
and Members  
Committee on Labor and Public Employment  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 309  
Honolulu, Hawaii 96813

Dear Chair Johanson 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 disciplinary action.

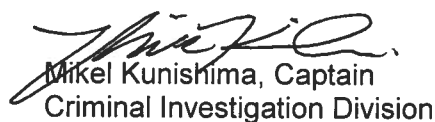
The HPD urges you to oppose Senate Bill No. 2189, S.D. 1, Relating to Victim Rights.

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: 3/21/2018 8:16:44 AM

Testimony for LAB on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

To the Honorable Aaron Ling Johanson, Chair; the Honorable Daniel Holt, Vice-Chair, and Members of the Committee on Labor & Public Employment:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") on Legislative Priorities of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on **SB2189 SD1** relating to Maui County Package; Victim Rights; Public Officers and Employees; Disciplinary Action; and Reporting.

The OCC Legislative Priorities Committee is in favor of **SB2189 SD1** and supports its passage.

**SB2189 SD1** is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it provides that failure of state and county officers and employees to carry out or comply with chapter 801D, HRS, shall provide a basis for disciplinary action, with certain exceptions; and requires competent authority to immediately report such disciplinary action to the legislature, effective 1/1/2045.

The DPH Platform states that "The inherent dignity and equal and inalienable rights of all human beings are the foundations of freedom, justice, and peace. We support affirmative action, the full implementation of the Civil Rights Acts of 1964 and 1990 and the Americans with Disabilities Act of 1990." (Platform of the DPH, P.3, Lines 159-161 (2016)).

We believe in women's equality and right to privacy, including but not limited to equal access to reproductive services and care, shelter and counseling for victims of domestic violence, and the right of rape victims to emergency contraception in the emergency room.(Platform of the DPH, P.4, Lines 170-172 (2016)).

We believe that all families should have an equal opportunity to build their assets and become self-sufficient; and we support a strong safety net of programs that will afford them the opportunity to do so. We must protect our children, our future, from violence and neglect and provide them with a safe and healthy environment in which to grow and thrive. (Platform of the DPH, P.4, Lines 184-187 (2016))

We believe that workers need to be safe and free from any form of discrimination, harassment or abuse in the workplace. We seek legislation that will achieve these goals. (Platform of the DPH, P.3, Lines 131-132 (2016)).

We support restorative justice that repairs the harm caused by criminal behaviors and reintegrates the offenders as contributing members of society. Likewise we support opportunities for those who have been incarcerated to effect a smooth transition back into the community and make available health, educational, and other assistance programs needed to allow them to become productive and respected members of the community. We want the practice of private for-profit detention centers and prisons prohibited. (Platform of the DPH, P.5, Lines 273-278 (2016)).

We need to ensure that our students are safe in our schools, free from bullying and discrimination, to include but not limited to, disability, gender bias, weight, ethnicity, sexual orientation, gender identity, gender expression, and/or religion. We support policies in all our schools that protect, honor and address the needs of transgender and gender nonconforming students. (Platform of the DPH, P.6, Lines 321-324 (2016)).

Given that **SB2189 SD1** provides that failure of state and county officers and employees to carry out or comply with chapter 801D, HRS, shall provide a basis for disciplinary action, with certain exceptions; and requires competent authority to immediately report such disciplinary action to the legislature, effective 1/1/2045, it is the position of the OCC Legislative Priorities Committee to support this measure as the DPH favors victim's rights.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Text/Tel.: (808) 258-8889

**SB-2189-SD-1**

Submitted on: 3/21/2018 9:26:40 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

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

Comments:

We continue to STRONGLY SUPPORT this bill. Mahalo.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment

Testimony by  
Hawaii Government Employees Association

March 22, 2018

S.B. 2189, S.D. 1 – RELATING TO VICTIM RIGHTS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO raises concerns over the intent of S.B. 2189, S.D. 1 which makes amendments to Chapter 801D, Hawaii Revised Statutes.

The amendments proposed in S.B. 2189, S.D. 1 seek to modify Ch. 801D-5, Hawaii Revised Statutes by mandating that a failure of state and county officers to comply with Chapter 801D, HRS, shall provide a basis for disciplinary action and requires a competent authority to immediately report the disciplinary action to the Legislature. This measure has the potential to adversely impact employees within the Department of Public Safety, Department of the Attorney General, the Paroling Authority, and the Judiciary. If an employee in any of the aforementioned departments is not functioning in the scope of his or her duties, the Employer should ensure adequate resources are available, has the authority to take appropriate corrective action, and will ultimately be responsible – and therefore liable – for the employee's actions. Additionally, we respectfully question what specific information regarding disciplinary action is required to be reported and recommend the appropriate grievance procedures be completed prior to reporting.

Thank you for the opportunity to raise concerns over S.B. 2189, S.D. 1.

Respectfully submitted,

Randy Perreira  
Executive Director



**SB-2189-SD-1**

Submitted on: 3/21/2018 9:27:37 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT.

**SB-2189-SD-1**

Submitted on: 3/20/2018 9:35:45 AM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

Comments:

Support

**SB-2189-SD-1**

Submitted on: 3/21/2018 1:48:17 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Rocca	Individual	Support	No

Comments:

I testify in strong support of this measure.

**SB-2189-SD-1**

Submitted on: 3/21/2018 12:55:47 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

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

Comments:

**SB-2189-SD-1**

Submitted on: 3/20/2018 11:34:17 AM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

**SB-2189-SD-1**

Submitted on: 3/20/2018 2:10:13 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mavis Oliveira-Medeiros	Individual	Support	No

Comments:

Aloha Senators,

Having watched the whole case re Charli here on Maui, I'm writing in full support of this bill. Please see it through.

Mahalo,

Mavis

**SB-2189-SD-1**

Submitted on: 3/20/2018 6:44:09 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deren Ash	Individual	Support	No

Comments:

Thank you for the opportunity to submit testimony in favor of SB 2189, which would allow the enforcement of victim's rights.

We *need* victim's rights to be enforceable. I would also like to ask that the committee amend the bill to add back civil liability for those who violate the law – to be held to the standard of all other employees and all other laws – so that victims can take matters into their own hands when necessary. Unfortunately, the Senate Labor Committee took out the removal of civil immunity. Based on what victims in Hawai'i have experienced over and over again, we cannot depend on any such "competent authority" to enforce victim's rights with discipline that even approaches adequacy. The senate Labor committee also added subsection (c), which I believe should remain, but certainly not as a replacement for removing civil immunity.

I realize that you may be hesitant to put government employees at risk for civil liability. But this is not an issue of making them liable for simply not doing a good job, or even for gross negligence. Rather, it is allowing for them to be held accountable for specifically violating the law. Currently, if a government employee violates a traffic law, or corruption laws, or any number of other laws, they can be held accountable. Unless, of course, that law is 801D, the Basic bill of rights for victims and witnesses.

This is not like the lifeguard liability immunity bills. Even with those bills, a lifeguard could still be sued by their victim if they specifically violate a law. Why should an employee who is supposed to be an expert in enforcing the law be held to a lower legal standard? If a lifeguard performs an appendectomy and somebody is harmed, they will be liable. If a truck driver is texting while driving and causes an accident, they will held liable. Yet if a prosecuting attorney, somebody who by definition is an *expert in the law* re-victimizes a victim in violation of 801D, they immune from liability? That immunity makes no sense.

Currently, HRS §801D-4, the Basic bill of rights for victims and witnesses, has language specifying that it is unenforceable, which SB 2189 aims to strike. Meanwhile, HRS §801D-1, Legislative intent, specifies:

*...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.*

I submit that by including language making it unenforceable, the Basic bill of rights for victims and witnesses utterly fails in this intent. With SB 2189, you now have the opportunity to remedy this situation.

I cannot speak to the situation in other counties, but here on Maui, since 801D is wholly unenforceable, the justice system, in particular the Prosecutor's Office, treats it as optional at best. I have seen the Department of the Prosecuting Attorney for the County of Maui fail several victims by violating 801D. I would like to share a couple specific examples.

In violation of 801D-4(6), which states that property must be returned "expeditiously" when is no longer needed as evidence: The mother of a woman murdered four years *still* has not had her daughter's remains returned to her. Because her daughter's remains are "not a whole body," they are considered as property evidence rather than as a body, thus 801D-4(6) applies. The Deputy Prosecutor told this mother that his forensic expert stated that her daughter's remains could no longer be used as evidence because they were stored improperly, so in compliance with 801D-4(6), her remains should have been returned expeditiously. They were not, and still have not been, and so a grieving mother cannot lay her daughter to rest.

In violation of 801D-4(3), which states "To receive protection from others": A friend of mine was the victim of a violent home invasion and assault by an ex-boyfriend. Shortly after the crime, in blatant violation of an order of protection, her assailant ran into her (*literally*) at a restaurant and verbally threatened her in front of witnesses. The prosecutor accepted his excuse that running into her was an accident, and ignoring the verbal threat, refused to hear the victim or witnesses, and did not pursue this blatant violation of an order of protection. While 801-D(3) is the most subjective part of the chapter, I believe any reasonable person would see this as an utter failure.

These are but two examples. How many more examples are there? I know that you heard many examples a couple sessions ago when Marsy's Law was being heard. I expect that you'll hear several more today. The problem isn't just the rare high profile cases. 801D is being violated in the types of cases that occur every day. It could be your friend, your neighbor, or even a family member, who gets victimized not once, but twice. Once by the crime, and again by the justice system.

You have an opportunity here to improve the justice system. You have an opportunity to make victims of crimes MATTER, and sincerely hope that you seize that opportunity.



**SB 2189**

**SD-1**

**LATE  
TESTIMONY**

**LATE**

**SB-2189-SD-1**

Submitted on: 3/22/2018 3:34:34 AM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kimberlyn scott	Victims Rights	Support	Yes

Comments:

Aloha Chair Johanson and Committee Members. Thank you for granting this hearing.

I came here to testify in support of Charlis' Law SB 2189. I am the mother of Charli Scott, who was brutally murdered 4 years ago.

The Legislative Intent of HRS 801D is to "recognize the continuing importance of such citizen cooperation to ... the general effectiveness and well being of the criminal justice system of this state".

Legislative Intent has fallen far short of its intended mark.

Since 1789 there have been constitutional protections for the accused. About 30 years have elapsed since HRS 801D for victims was created. It says in the legislative intent that it was meant to see victims and witnesses of crimes are "honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants." Yet, HPD states in its testimony to this committee that "While HPD supports the Basic Bill of Rights for victims and witnesses," HPD opposes Charlis' Law because "failure to carry out any of the victims' and witnesses' rights and services... opens up the county and its employees to civil liability and or disciplinary action."

I've been wondering how the POLICE department can say such a thing with a straight face.

I don't know one victim who feels "protected" in the criminal justice system. I know confused victims. Angry victims, broken victims, scared victims.

The Constitution of Hawaii reads under "Rights of Individuals"-

“All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness... “

How are victims and witnesses “equal in their inherent and inalienable rights” to the accused when they cannot enforce those rights?

The constitution says that “No citizen shall be..... deprived of any of the rights or privileges secured to other citizens..” and “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....” Yet a victims right “to petition the government for a redress of grievances” as promised by the Constitution is denied by HRS 801D-5 when it says that “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...” even though “... each county is responsible for the enforcement of rights under section 801D-4.” And “The courts shall fashion all decisions and orders to enhance the recognition of these rights and the provision of these services....”

That is just not happening.

Under “Limitations of Special Privileges” of the Constitution it reads, “The power of the state to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.” Yet HRS 801D has been rendered unenforceable by sovereign, absolute and qualified immunities granted the Judiciary.

As to the concern of funding for victims rights, according to the constitution, this legislature is to “... provide for cooperation on the part of this state..... in matters affecting the public health, safety, and general welfare. Funds may be appropriated to effect such cooperation.” Crime affects public health, safety and general welfare right? We have just spent over half a million dollars of taxpayer monies on the case the Kealoha's filed against state employees. Why shouldn't victims have the right to sue when their legal rights are violated?

Article 14 of the constitution is the “code of ethics” for Hawaii public officers and employees. It says that they must exhibit the highest standards of ethical conduct. Violating constitutional rights does not qualify as a “high standard” by anyone's standards. And that is what we are really talking about, state and county employees being held accountable for constitutional and statutory violations.

The Oath of Office all public officers swear to says that you will “solemnly swear to support and defend the constitution of the United States and the constitution of the state of Hawaii, and that you will faithfully discharge your duties to the best of your ability.”

You have protected Judiciary employees. They are even the only class of citizens in this state protected by first-degree murder laws. And the accused have multiple constitutional protections.

Victims have HRS 801D. We are obliged to cooperate with a system that ignores us.

That means that all the great Laws that you have worked so hard to make to protect victims of domestic violence, child abuse, and sexual abuse are arbitrarily enforced. Is that what you wanted when you wrote those laws?

I tell you quite honestly, and from a very sad and desperate place that Steven Capobianco victimized my daughter, and my state victimized my family.

I have come here to ask you to use Charlis' Law to enforce victims rights and to ask that you pass a Concurrent Resolution so that all the relevant parties can come together over this next year and resolve the other issues with HRS 801d. It is important to note that the only time civil litigation would apply is if a victim incurs damages from a violation of their rights.

Mahalo for your time and consideration-

**LATE**

To: Senator Jill Tokuda, Chair- Senate Committee on Labor;  
Senator Kalani English, Vice Chair; and members of the Committee

From: Nonohe Botelho

Date: Tuesday, Feb 13, 2018

Re: SB1684, Provides that failure of the State and County officers and employees to carry out or comply with Chapter 801D, HRS, may subject them to civil liability, with certain exceptions.

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My name is Nonohe Botelho. I am the mother of Joel Botelho, who was murdered in front my home in Kaneohe in 2011.

I am writing in support of SB2189.

In 2016 victims and their surviving families provided testimony in support of a Constitutional Amendment, under Marcy's Law. After passing all committees Marcy's Law ultimately did not pass. Although victims, their surviving families and other community advocates supported a Constitutional Amendment, a decision was made (by other parties) that it would be better to revise HRS 801D, Victims Bill of Rights.

I am here to testify that HRS 801D does not work because it does not provide a mechanism to enforce 801D, under the law. I have personally referred to HRS 801D to resolve concerns with the Department of the Prosecuting Attorney. All my attempts were denied. The DPA's response to me is always the same, "We are under no obligation to grant requests under the law."

In this setting, time does not permit me to present research or case studies. But more importantly I cannot possibly convey (in 3 minutes) my experience nor the experiences of other families that I have worked with over the last seven years

My intention today is to request that this committee form a working group to discuss the issues victims and their surviving families experience as they subjected to the rigors of the judicial system.

It is time for all stakeholders to "come to the table" in a meaningful way to discuss the need for the enforcement of HRS801D.

I am willing and available to assist, in any way, to coordinate a working group.

1  
Disagree