

SB2189

Measure Title: RELATING TO VICTIM RIGHTS.
Report Title: Maui County Package; Victim Rights; Public Officers and Employees; Liability
Description: Provides that failure of state and county officers and employees to carry out or comply with chapter 801D, HRS, may subject them to civil liability, with certain exceptions.
Companion: [HB1684](#)
Package: County of Maui
Current Referral: LBR, JDC
Introducer(s): KOUCHI (Introduced by request of another party)

<u>Sort by</u> <u>Date</u>	Status Text
1/19/2018	S Introduced.
1/22/2018	S Passed First Reading.
1/22/2018	S Referred to LBR, JDC.
2/9/2018	S The committee(s) on LBR has scheduled a public hearing on 02-13-18 3:00PM in conference room 229.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SB2189

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE
MK-KK

February 13, 2018

The Honorable Jill N. Tokuda, Chair
and Members
Committee on Labor
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

Dear Chair Tokuda and Members:

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

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Mikel Kunishima, Captain
Criminal Investigation Division



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
The Senate
Committee on Labor

Testimony by
Hawaii Government Employees Association

February 13, 2018

S.B. 2189 – RELATING TO VICTIM RIGHTS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 2189 which provides that the failure of state and county officers and employees to comply with Chapter 801D, Hawaii Revised Statutes may lead to civil liability.

The amendments proposed in S.B. 2189 seek to amend Ch. 801D-5, Hawaii Revised Statutes by subjecting state and county employees to be personally liable for monetary damages in a civil action for failing to comply with or carry out their duties, in addition to also being disciplined – inclusive of termination – by their employer. This measure would 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, take corrective action and be ultimately responsible, and therefore liable, for the employee's actions. No employee, public or private, should be held personally liable for the performance of their duties.

Thank you for the opportunity to raise strong opposition over S.B. 2189.

Respectfully submitted,


for Randy Perreira
Executive Director

SB-2189

Submitted on: 2/11/2018 10:54:11 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

SB-2189

Submitted on: 2/11/2018 11:10:48 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

We STRONGLY SUPPORT this bill. It is clear that Hawaii has NO ALOHA for victims & their families. As someone who has been both a victim of violence & a victimizer of innocent people for which I spent five (5) years in the juvenile system & twenty seven (27) years in the prison system, I know first hand what it feels like to be a victim & victimizer. However, it has always been appalling to me to witness first hand, how prosecutors treat victims & their families, from both behind the defense table in my trials & in my current capacity as advocate for native Hawaiians & the voiceless in general. Prosecutors treat victims & their families with contempt & utter disregard for the fragile condition that victims are in during the period of post victimization through trial & post conviction. & even after sentencing. A classic case is the recent situation where the individual was able to freely escape from the Kaneohe hospital & flee to another State. No victim of that individual was notified of his escape as was testified to by the State Hospital staff & public safety. Just think how you, legislators would feel if someone had terrorized you and/or your Ohana, yet, are subjected to no notifications regarding your perpetrators escape from confinement. How safe would you feel? Please, finally, give victims their right to hold public officials responsible for the way they utterly disregard the rights of victims, via 801(D), which currently has no teeth. Mahalo.

SB-2189

Submitted on: 2/10/2018 6:29:29 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

It is incredible that victims can't enforce their rights. Please fix that!

SB-2189

Submitted on: 2/10/2018 5:09:05 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry		Support	No

Comments:

SB-2189

Submitted on: 2/11/2018 1:32:12 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Mader	Hawai'i resident	Support	No

Comments:

Aloha Chair Tokuda and Committee on Labor,

We stongly **support SB2189 for victim rights**. I know too many cases (even one it too many) on Maui where victims become the ones that lose rights. At the time in their lives when they need community support the most, they are often failed by county and state agencies. It is a real problem and concern.

One doesn't realize just how painful it is to go through the loss of a loved one by violence...unless it happens to you.

It's hard enough to navigate the criminal and legal system as a family or friend of the person whose life was violently taken...the least we can do is ensure that victim's families (who become victims themselves to a system that does not fully support them) have the RIGHT to access good counsel, with good commuincation and lawful acts.

Currently, some people are not doing the job they are paid to do. They are not providing victims with the information they need, or worse, they are violating procedural rules (such as holding evidence too long, even after they are "done" with it). Imagine if that "evidence" was YOUR loved one?

Maybe some will be better motivated to do their jobs more lawfully if they know they will be held to the same legal standards as the rest of us.

Mahalo nui for scheduling this very important bill to be heard and I hope and pule that you will pass it.

I am submitting this testimony in honor of a woman and her unborm baby that I'll never have the joy or honor to meet because their lives were so violently stolen. And for my love and respect for her mother who has the courage to stand for all victims, so that they will be spared the added pain that she endured.

Please PASS SB2189

Mahalo

Deborah Mader

Kiehi, HI
I vote!

SB-2189

Submitted on: 2/11/2018 1:54:46 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Vickery		Support	No

Comments:

SB-2189

Submitted on: 2/11/2018 6:08:40 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

This is one of the most important issues that we face, together, this legislative year.

I am writing in COMPLETE SUPPORT of this bill.

It is, without doubt, without question, OUR JOB, mine and yours to protect and support each other.

Today, you will hear and meet people who have experienced the most incredible pain ever imagined.

please, please listen carefully...and pray that you or someone that you love never has the need to face this.

Victims need a voice. Families need a voice.

WE, you and I, are that voice!

please see this bill through...

I am in FULL SUPPORT of SB 2189

thank you,

Ann Evans

SB-2189

Submitted on: 2/11/2018 7:24:32 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
tom creagh		Support	No

Comments:

Aloha Chair Tokuda and distinguished committee,

I urge you to pass SB2189 for enforcement of victim rights. We shouldn't cause more pain to those who need us the most during their darkest days. We should ALL uphold the law. No one gets excused.

Thank you for your consideration for fair and legal treatment of victims and the right to hold those accountable who are not lawful.

Mahalo

Tom Creagh

Maui

SB-2189

Submitted on: 2/11/2018 7:55:10 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Mattson		Support	No

Comments:

SB-2189

Submitted on: 2/11/2018 10:00:53 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kai nishiki		Support	No

Comments:

I support this.

SB-2189

Submitted on: 2/11/2018 10:08:58 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erika Lechuga Disalvo		Support	No

Comments:

SB-2189

Submitted on: 2/11/2018 11:18:39 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deren Ash		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.

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, the law they violate is 801D, the Basic bill of rights for victims and witnesses.

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, because 801D is wholly unenforceable, the justice system and in particular the Prosecutor's Office treats it as optional at best. I have seen the justice system 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 ago *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 her 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 only 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 to improve the justice system. You have an opportunity to make victims of crimes MATTER, and I sincerely hope that you seize that opportunity.

SB-2189

Submitted on: 2/12/2018 4:29:51 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carlton York		Support	No

Comments:

Strong support Rights are not negotiable , !

SB-2189

Submitted on: 2/12/2018 4:50:00 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meghan van Bergeijk		Support	No

Comments:

Aloha, I am writing to voice my support of SB 2189. I believe victims of crimes should be able to protect their constitutional rights. Please vote in favor of SB 2189 and giving victims a right to be heard and have their constitutional rights protected. Thank you very much.

Meghan van Bergeijk

meghan.e.huber@gmail.com

SB-2189

Submitted on: 2/12/2018 4:54:20 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Paltin		Support	No

Comments:

Aloha senators

support victims rights and hope you will too.

Mahalo

Tamara Paltin 808-870_0052

SB-2189

Submitted on: 2/12/2018 7:26:21 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Snowden		Support	No

Comments:

DATE: February 12, 2018

TO: Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

FROM: Jennifer Snowden, Victim and Survivor

RE: Testimony in support of S.B. 2189

I am a victim and survivor of sexual abuse. I, along with the 5 other women and the 10 year old girl who testified against our abuser, was deeply impacted by the court and justice system process, in addition to the abuse I endured.

One way that impacted me greatly with the process was that HPD did not identify the victims before handing the case over to a military court, as our abuser was in the military. I was never given the consideration to say where I wanted my abuser to be tried, and only later, after the military court system failed me and the other victims, did I find out that it was an option for him to be tried in a state court. By that time, even with the support of some of the other victims, when we pushed to have him tried by the state, the prosecutor declined the case, leaving us feeling that we were not treated with proper respect or consideration.

Another aspect that I struggled with was the restraining order process. I was granted a temporary RO with little issue, but was then told that I would have to show for a hearing where he would also be summoned. The thought of having to sit in the same room with someone who had done so much damage to my life made me cringe. I was fortunate that he did not show up and the order was granted, but if I had chosen to extend the restraining order past the simple 3 years that it granted, I would have had to face the possibility of having to sit in the same room as him once again. I believe that there need

to be better ways to allow due process appearances while still protecting victims from their abusers.

When he was released early after serving only 10 months of his very disappointing 2 year sentence, I only received a letter, maybe a week in advance at most, stating that he was being released early. No notice of a hearing on parole or option to be heard and intervene, just a statement that that was how it was. I still tried to make calls and submit letters, even to our state representative, but to no avail. I was also promised court record documents. It's been over 4 years now, and despite my follow up calls, I have received no respect or consideration.

By the end of it all, I was so let down by the system, how I was treated and the fact that my voice was not heard, that I tried to find a lawyer to take my case to sue the military court system and advocate for change. If SB2189 had been a part of the law, as an enforceable right, I would have had the ability to assert my rights as a victim through the court process and be heard. Now, through my victim support efforts and advocacy for these changes, I hope that I may finally be heard.

SB-2189

Submitted on: 2/12/2018 10:21:23 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tulsi Greenlee	Individual	Support	No

Comments:

Please support this bill. Victims deserve to have rights. Thank you Tulsi

SB-2189

Submitted on: 2/12/2018 12:46:55 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Support	No

Comments:

SB-2189

Submitted on: 2/12/2018 1:37:48 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexis Felicilda	Individual	Support	Yes

Comments:

Aloha,

Please pass SB 2189. I support the enforcement of victim rights.

Mahalo!

Alexis Felicilda

SB-2189

Submitted on: 2/12/2018 2:19:14 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

I humbly ask for your support in creating this law to assist victims when they are most vulnerable.

I ask you to really think to yourself "What would I do if my child was raped? or murdered?" What would YOU expect to happen after something bad happened to you?

No one wakes up thinking something bad will happen to them.

It is not until after it does happen that you realize the lack of support those of us not directly connected to law makers or law enforcement have.

My personal story may not necessarily apply only because there has been no crime proven. My cousin has been missing since 2015 and because he was an adult male, nothing was done to help us in the beginning. At the beginning, when it mattered, no one took the time to care, to listen or talk to the people that knew him best. We were pushed on the side as if my cousin's disappearance was nothing more than a report to file. Certain questions still remain unanswered from his case. Now two years later, if this is a criminal case, we will never have a chance to find out unless we get really lucky.

As I said, there has been no crime proven to have taken place so for us, this law does not really apply. This happening to us, however, has opened my eyes to so many other criminal cases that would benefit from having rights that can be enforced. When something happens like this, you feel lost, anxious, unsure of what to do. Having these rights in place will at least give a victim or family of a victim some peace of mind.

While discussing this, I beg you to genuinely envision your life affected by a crime and how you would expect it to be handled.

Thank You.

SB-2189

Submitted on: 2/12/2018 2:55:09 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

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

Comments:

As a sexual assault and domestic advocate, I strongly support SB2189.

SB-2189

Submitted on: 2/12/2018 3:42:09 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Maynetto-Jackson	Individual	Support	No

Comments:

Please pass SB2189. I support the enforcement of victim's rights.

LBR Testimony

From: Brittney Baker <Brittneyb@live.com>
Sent: Monday, February 12, 2018 2:56 PM
To: LBR Testimony
Subject: Victims rights

My name is brittney Baker and I support the movement of victims rights.

I was dear friend of Charli Scott and her family and watched how unfairly they were all treated by not being protected by laws that victims should have in Hawaii. They were taunted and ridiculed and treated unfairly.

They were not made aware of their daughters murderer ,Steven Capobianco, when he was being released on bail and when certain things are happening to him that we're going to affect them personally. They were not told in a timely fashion numerous times over on timing of the trial changing, meetings and much more.

I personally witnessed them being harassed by the family of their daughters murderer, right in and outside of the courthouse where the trial was being held.

I am also a victim who is been treated unfairly on another issue.

Six months after my boyfriend dying from a drinking and driving accident his entire family robbed my house. When the police arrived to take my statement and make a report on what happened they initially ignored my issue and questioned me, as the mother of my dead boyfriend (the woman who had just robbed my house the night before) had gone into the police station the day before with claims that I had stolen my dead boyfriend's credit cards and money.

Before my issue was even addressed they were questioning me about another accusation. They did nothing at all to help my case or solve the issue and get me my over \$5000 worth of stolen items back.

Victims not only everywhere but in Hawaii need rights and need protection please please please help us and pass these laws

Mahalo for your time
Brittney Baker

Sent from my iPhone

LBR Testimony

From: Leslie Monsalve-Jones, Librarian <Library@swc.edu>
Sent: Monday, February 12, 2018 1:17 PM
To: LBR Testimony
Subject: SB 2189

Please pass this important bill.

In peace,

Leslie Monsalve Jones
Library@swc.edu
Sister of missing person on Maui - Moreira Monsalve

Michael J. Kitchens
Creator & Administrator
Stolen Stuff Hawaii
91-1013 Kaiheenu Street
Ewa Beach, HI 96706
(808) 782-7432
mikek@stolenstuffhawaii.com



stolen stuff
hawaii
FIGHT CRIME. FIND YOUR STUFF.

LATE

February 10th, 2018

Regarding SB2189

Dear Mr. Chairman & Respected Committee Members,

My name is Michael Kitchens, Creator and Administrator of Stolen Stuff Hawaii (SSH). SSH is Hawaii's largest anti-crime Facebook group with over 105,000 plus vetted members and growing. The majority of our members reside on Oahu, meaning we have just under 10% of the population in our group. However, our reach and influence are substantial, with members located throughout the State of Hawaii in all counties and districts. We have thousands of victims in our group who have had their peace of mind and sense of security stolen by criminals.

We strongly support this bill.

In a state known for protecting criminal's rights, almost to the point of detriment for victim's, it is imperative that we take steps to protect those who have been violated by crime. This bill would take steps to rectifying this imbalance and therefore we strongly support this bill.

Mahalo,

A handwritten signature in black ink, appearing to be 'MK' with a flourish.

Michael J. Kitchens
Creator/Administrator
Stolen Stuff Hawaii
<https://www.facebook.com/groups/stolenstuffhawaii/>
Michael J. Kitchens

LATE

SB-2189

Submitted on: 2/12/2018 7:04:35 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lauren Ampolos	Individual	Support	No

Comments:

LATE

SB-2189

Submitted on: 2/12/2018 7:42:01 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Parker	Individual	Support	No

Comments:

I strongly support SB 2189. I saw what can happen to victims in Hawaii, they don't have rights and they get walked on. There's no good reason for that.

LATE

SB-2189

Submitted on: 2/12/2018 7:59:23 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
deanna davis	Individual	Support	No

Comments:

I personally know what it's like to not feel like you're being fairly represented by our prosecutors on Maui and would like to see more rights for victims and their families. Mahalo for your support on this bill.

Mahalo,

Deanna Davis

LATE

SB-2189

Submitted on: 2/12/2018 8:15:39 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Scott	Individual	Support	No

Comments:

As the father of murder victim Carli "Charli" Scott, I and my family have suffered mental anguish and financial loss as a result of the Maui Second Circuit court and Office of the Prosecutor's failings in adhering to the tenants of HRS 801d. I strongly support SB2189 to provide remedies for when such failures occur, of which today there is none. It is long overdue to provide victims of crime basic considerations in criminal proceedings and without a remedy, HRS 801d is simply lip service, subject to the whims and discretion of judicial officers.

Sincerely,

Robert Scott

LATE

SB-2189

Submitted on: 2/12/2018 8:17:12 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary drayer	Individual	Support	No

Comments:

LATE

SB-2189

Submitted on: 2/12/2018 9:38:58 PM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brooke Scott	Individual	Support	No

Comments:

Aloha Chair Tokuda, Committee Members,

I am writing in strong support of SB2189 relating to victim-witness rights. As I understand it this bill seeks to make prosecutors liable for failure to enforce HRS 801D. The problem is 801D is such a lame statute that NOTHING will ever make anyone care to enforce it. I'm sort of joking but not really. 801D doesn't translate regular constitutional rights (the kind you have right now) into victim rights (the kind you'd suddenly have if you became a victim or witness of crime), but that's what it SHOULD do. Example: the public has a right to attend "public" trials. Hence a victim-witness should retain the same presumptive right to attend a public trial as though they were still a member of the public (because they are!) and due process should precede the granting of any exclusionary order which would abrogate that right.

The basis for this measure is simple: all persons have Constitutional rights, even when they are a victim or witness in a criminal proceeding. If those rights are violated or at risk of being violated, there should be a way for a person to defend those rights, or to ask that a violation be corrected. That's due process. But there is no such thing for Hawaii victims of crime, even though there are many ways that a victim's (Federal and State) Constitutional rights and fundamental liberties can be violated by state actors during the course of a criminal case. The Fourteenth Amendment's right to due process applies to all people, regardless of their status within the judicial system, so it must apply to victim-witnesses.?

Federal law provides for redress via USC 42 Section 1983, which seems extraordinary for what could and should be a short, simple, and immediate due process hearing. Hawaii's own Constitution (Article 9 Section 10) states "the State shall have the power to provide for the safety of the people from crimes against persons and property." So it would make sense for Hawaii to design and enforce its own procedural due process for victim-witnesses, as an alternative to a 1983 complaint.

The majority of criminal cases never go to trial and even then, not all victims/witnesses exercise all of their rights, nor can it be expected that every case will involve the violation of a victim/witness' rights. This means only a small minority of people will ever need a formal method to address actual or potential violations. Plus if there is a way for

people to address problems quickly then small issues won't progress to the point of incurring damages.

I want to end my testimony with a personal story. When I was a witness in a Hawaii murder case, the prosecutors repeatedly lied to me about my subpoenas. First they tricked me into flying to Maui (from my home state of Washington) when they had not yet obtained a proper "out-of-state witness" subpoena. Then they told me that I had to stay on Maui even after I had finished testifying, because the defense supposedly had a subpoena for me. I say supposedly because the prosecutor "LOST" my subpoena after the defense for some reason gave it to her instead of me.

I was kept on Maui against my will and without seeing any lawful order. I was not paid a per diem for the months I spent on Maui. I slept on the floor of my friend's tiny ohana for months, waiting to go home. My husband sent money but Washington dollars don't go very far in an expensive state like Hawaii. The worst part? My two year old son was with me the whole time. Did he have any rights? He didn't see his own father for months at a time. The prosecutors knew they were keeping me *and* my son on Maui. I repeatedly requested my subpoena and it made things worse. So not only do victim-witnesses endure violations of their constitutional rights, but they also risk retaliation when making informal complaints *about* those violations in the absence of established methods of redress.

In summary, I am in support of liability for state actors that violate the Constitutional rights of victim-witnesses, and I also support any subsequent efforts to make HRS 801D more comprehensive by reinforcing it with procedures for due process.

Thank you for your time,

Brooke Scott

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

LATE

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.

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.

LATE

SB-2189

Submitted on: 2/13/2018 6:26:29 AM

Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicholas Iwamoto	Individual	Support	No

Comments:

Aloha, my name is Nicholas Iwamoto. I survived a brutal, random attack at the summit of Koko Crater in 2009. I was stabbed 18 times and pushed off the top of the crater. I fell 100 feet and suffered a broken neck and fractured skull. My attacker was acquitted due to reason of insanity. He was released from the State Hospital in 2012 so he could attend Windward Community College. I was left out of the loop by the prosecutors at nearly every turn.

I support SB2189 because I don't want victims to experience what I went through with the legal system. I support those prosecutors who fight for justice, but I also support victims who have legitimate claims that they have been treated unfairly by the State. I believe this bill will hold prosecutors accountable for their actions in the same way that other employees are held accountable. Mahalo.

LATE

SB-2189

Submitted on: 2/13/2018 7:14:14 AM
Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
louise drayer	Individual	Support	No

Comments:

LATE

LBR Testimony

From: Adelle Lennox <adellelennox@gmail.com>
Sent: Monday, February 12, 2018 9:12 PM
To: LBR Testimony
Subject: SB 2189

Categories: Late

I support the enforcement of Victim Rights, please pass SB 2189.

Mahalo.

LATE

SB-2189

Submitted on: 2/13/2018 8:18:22 AM
Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keani Rawlins-Fernandez	Individual	Support	No

Comments:

LATE

SB-2189

Submitted on: 2/13/2018 9:30:05 AM
Testimony for LBR on 2/13/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Osborne	Individual	Support	No

Comments:

The rights of the victims and their families should be as important as that of the accused criminal. It is so wrong that this issue lags so far behind other rights.