

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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Executive Director

TESTIMONY ON HOUSE BILL 1293
RELATING TO LAW ENFORCEMENT

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

Tuesday, February 17, 2009; 2:00 PM
State Capitol, Conference Room 325

Good afternoon Representative Karamatsu, Representative Ito and Members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify before you today. The Commission supports the passage of House Bill 1293. House Bill 1293 appropriates funds for a grant-in-aid to the Prosecuting Attorney’s office of each county for the career prosecution units and the victim witness assistance programs.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay unreimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available.

The county victim witness assistance programs play an important role in mitigating the emotional and financial suffering experienced by victims through their referrals to the Commission and other social service agencies. The county victim witness assistance programs also support and guide victims through the criminal justice process, helping to

ensure that offenders can be successfully prosecuted. Many victims and surviving family members, particularly victims and survivors of violent crimes like murder and sexual assault, would not be able to make it through the criminal justice process without the support and guidance of a victim witness counselor. Victim witness counselors notify crime victims of hearing dates and major developments in their case, accompany victims and survivors to court where necessary, help victims and survivors with victim impact statements to enable them to exercise their right to be heard at sentencing, in addition to informing them about the social services and financial assistance available to them as crime victims.

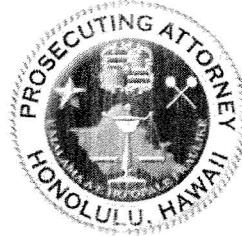
The county victim assistance programs need sufficient funding for staff in order to provide these important services. The Commission urges you to support the appropriation of a grant-in-aid to the Prosecuting Attorney's office of each county for the victim witness assistance programs. Thank your providing the Commission with the opportunity to testify in support of House Bill 1293.

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**THE HONORABLE JON RIKI KARAMATSU, CHAIR
THE HONORABLE KEN ITO, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009**

February 17, 2009

RE: HOUSE BILL 1293, RELATING TO LAW ENFORCEMENT

Good afternoon, Chair Karamatsu and Vice Chair Ito, and members of the House Committee on Judiciary. The Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in **support of H.B. 1293**, which proposes to provide grants-in-aid to the four respective counties to fund the Career Criminal Prosecution and Victim Witness Assistance Programs.

The Career Criminal Prosecution and Victim Witness Assistance Programs operate in a similar fashion to the way that anti-virus software functions in your computer. They quietly work in the background promoting public safety, only emerging into the public eye when a notorious case or criminal attracts media attention. The most important value of these programs is not the spectacular headlines garnered when a well-known criminal is prosecuted, nor the profile of a sympathetic crime victim who is featured on the six o'clock news. Their critical importance is their reliable role in prosecuting the typical chronic offender or helping the average person who falls prey to the daily crimes on our streets and in our homes. It is the consistent and effective efforts of these two programs in combating crime and promoting public safety that makes them the worthwhile investment that they represent.

Unfortunately, the funding invested by the state in these critical programs has dramatically declined (by 37% for VWAP and 57% for CCP) since 1995. H.B. 1293 is an attempt to restore the funding and the promising potential that they represent. The City and County of Honolulu is requesting restoration of appropriations for its Career Criminal Prosecution Program (\$719,979) and Victim Witness Assistance Program (\$435,553) to the FY 2008 levels. Currently the proposed appropriations for these programs in ATG 100 are \$376,450 (CCP) and \$227,786

(VW), which amounts to 69% and 55% reductions respectively from our 1995 funding levels. We believe that the FY 2008 figures represent the survival level of funding required to operate these programs. We consider this to be a modest request considering both the increasing costs and demands for each of these programs since 1995. In considering this request please examine the more detailed program descriptions provided below.

VICTIM WITNESS ASSISTANCE

Since 1983, the Legislature has provided support for the Victim Witness Assistance Program. In 1986, the Legislature enacted Statute Section 28-111 (a copy of which we have attached) thus establishing the Victim Witness Assistance Program on a statewide basis. This statute establishes the Program in the Department of Attorney General, with the purpose of providing information, assistance, and support services to the victims and witnesses of crimes committed in Hawaii. The Attorney General is mandated to allocate and award funds to the Counties whose Victim Witness Assistance programs are in substantial compliance with policies and criteria established by the Attorney General in cooperation with the County Prosecutors.

The Honolulu Victim Witness Kokua Services, with the support of the Legislature, and even greater funding from the City and County of Honolulu, has developed into one of the finest services of its kind in the country. We serve a broad spectrum of crime victims including victims of felonies, misdemeanors, and juvenile crime. In addition we have initiated significant outreach services to victims of domestic violence, including many victims in cases that are not prosecuted. In recent years we have also extended our services to survivors of victims who have been involved in homicide/suicide and negligent homicide cases, despite the fact these cases will not proceed through the criminal justice system. We have established extensive referral networks with sexual assault, domestic violence, and immigrant services programs as well as Mothers Against Drunk Driving (MADD) Victim Services Program.

Victims are usually the key witnesses in a case. Without their testimony, criminals cannot be held responsible for their actions and remain free to hurt others in the community. Victims need assistance to face testifying in court and they require help in recovering from the trauma criminal victimization. The Victim/Witness Kokua Services provides this support.

The mission of the Prosecuting Attorney is to seek justice. Justice must be equally available to both victims and defendants. Legislators had this in mind when they created Chapter 801D of the Hawaii Revised Statutes [H.R.S.], Rights of Victims and Witnesses in Criminal Proceedings. Those very rights established by law are significantly diminished when our funding base erodes as it has in recent years. Crime victims' right to information, which is the very cornerstone of H.R.S. Chapter 801D, has already been severely jeopardized by the current staffing vacancies (4) that have been the consequence of the continual budget cuts. Additional funding reductions, as proposed in the Governor's budget, will force staff reductions that will place at least two important projects at risk. The much anticipated Automated Victim Information System, scheduled to be activated by the end of this month, and the Crime Victim Restitution Initiative, a cooperative effort with the Crime Victim Compensation Commission, both requiring extensive participation by our staff, will be extremely difficult to implement with any further budget cuts.

We note that the City & County of Honolulu now pays far more proportionately (\$1,179,459) for its Victim/Witness Assistance program than state law requires. H.R.S. 28-111, which created the State Victim/Witness Assistance Program, requires counties to match 25 percent of the program funding. Honolulu now provides the program almost fourteen times the matching requirement. By paying for the largest percentage of the program costs, Honolulu has already clearly proved its commitment to helping victims. While the County has been able to fill the gaps created by State funding reductions in the past, it is no longer able to do so. For example, two County-funded Domestic Violence positions created after previous State budget cuts have remained frozen and unfilled for over six years.

We have also been able to relieve the state from underwriting other victim assistance costs. For example, we were successful in getting the City and County to fully cover the cost of medical-legal examinations provided by the Sex Abuse Treatment Center. Funding currently amounts to \$400,000. Our Office provides another \$336,000 annually in federal Victims of Crime Act funds to contract for additional services for victims who are immigrants or have limited English proficiency, victims of sexual assault, and survivors of victims of homicide and negligent homicide. Assuming administrative responsibility for these federal funds is both costly and time consuming. The federal VOCA program does not permit use of these funds for anything than direct services to crime victims. The City and County of Honolulu has had to assume virtually the entire administrative costs for administering these services in recent years, as State funding has precipitously fallen.

There is ample evidence to show that Honolulu already pays its fair share for victims' services. We ask that you restore the funding needed to demonstrate the Legislature's commitment to adequately providing the state's equitable share for this essential program.

CAREER CRIMINAL PROSECUTION UNIT

Pursuant to legislation passed in 1979, and codified as Hawaii Revised Statutes Sections 845-1 and 845-2 (see attachment to our testimony), a Career Criminal Prosecution Program was established to prosecute certain repeat felony offenders. Since the program's creation in 1979, the Legislature has recognized the importance of the work mandated under the Career Criminal Prosecution Program and has funded the program every year. Continued funding of our Career Criminal Prosecution Unit is especially important because it targets hardcore defendants, repeat offenders with felony convictions who continue a life of crime. These repeat offenders cause a disproportionate share of crime. Money spent on the Career Criminal Unit is an efficient use of resources, especially when citizens are demanding swift and effective justice from a system plagued by heavy caseloads and long court delays.

Our Career Criminal Unit prosecutes these types of defendants aggressively. The attorneys in this Unit specialize in using the sentencing laws to maximize sentences and handle the cases from the early stages of prosecution through trial and sentencing. While not all of the defendants prosecuted by this branch are household names, they are responsible for a significant amount of the crime committed in Honolulu. Most of them are prosecuted on multiple counts and typically have victimized many people during their criminal careers. The robberies, burglaries, assaults, and drug and firearms offenses that they commit keep our communities in fear behind locked

doors. Their criminal activities represent a relentless attack on the quality of life in Hawaii. Career criminals' repeated crimes cause millions of dollars of losses each year in physical injuries, medical costs, and property loss. The crimes they commit raise our insurance rates, keep us from enjoying the beauty and resources of our state, and keep us in fear for our families' safety.

This specialized attention ensures that repeat offender cases are handled consistently, which hopefully results in appropriate sentences and a safer community. The effectiveness of the unit has given the prosecution significant leverage in cases, often encouraging the accused to plead guilty to the crime before the case gets to trial.

For the reasons cited above we urge your full support for H.B 1293. Thank you for your time and consideration

[\$845-1] Findings and purpose. The legislature finds that a substantial and disproportionate amount of serious crime is committed against the people by a relatively small number of multiple and repeat felony offenders, commonly known as career criminals. In enacting this chapter, the legislature intends to support increased efforts by prosecuting attorneys' offices to prosecute career criminals through organizational and operational techniques that have been proven effective in selected counties in other states. [L 1979, c 104, pt of \$1]

[\$845-2] Career criminal prosecution program. (a) There shall be established a career criminal prosecution program, whose purpose shall be the investigation and prosecution of those persons identified as habitual or career criminals.

(b) The office of the attorney general shall administer the program, and develop a plan of financial and technical assistance for prosecuting attorneys' offices. The attorney general shall direct the program and may allocate and award funds to counties in which career criminal prosecution units are established in substantial compliance with the policies and criteria established by the attorney general. The establishment of these policies and criteria shall not be subject to chapter 91, but the criteria shall be based on the general definition in section 845-3. [L 1979, c 104, pt of \$1]

§845-3 Persons subject to career criminal prosecution efforts. (a) An individual shall be the subject of career criminal prosecution efforts if the individual falls into categories 1, 2, or 3 in subsection (b) and may be the subject of career criminal prosecution efforts if the individual falls into any other category of subsection (b).

(b) Subject to the restrictions in subsection (a), career criminal prosecution applies to an individual who:

- (1) Has had two or more felony convictions within the last five years.
- (2) Has had one or more felony and two or more misdemeanor convictions and/or arrests within the last three years. Misdemeanors will be limited to prostitution, theft II and place to keep firearm.
- (3) Is convicted and/or arrested for the offense of "felon in possession of a firearm" within the last five years.
- (4) Is on parole.
- (5) Is on probation.

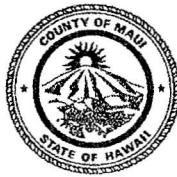
- (6) Is on bond awaiting an appeal.
- (7) Is on bond awaiting trial.
- (8) Is known or suspected to be an associate of organized crime.
- (9) Is known or suspected of recurring or ongoing criminal activity.
- (10) Has no adult record but who has an extensive juvenile record.
- (11) Is a juvenile with an extensive record who has been waived to the circuit court for trial. [L 1979, c 104, pt of §1; am L 1980, c 166, §1; gen ch 1985]

[\$28-111] Victim-witness assistance program. (a) There is established a victim-witness assistance program in the department of the attorney general, whose purpose shall be to provide information, assistance, and support services to the victims of and witnesses to crimes committed in the State.

(b) The attorney general shall allocate and award appropriated funds to counties whose victim-witness assistance units are in substantial compliance with the policies and criteria established. The attorney general and the county prosecutors shall work together to establish victim-witness assistance program policies and criteria which shall not be subject to chapter 91. The county prosecutors shall implement the program in their respective counties.

(c) Any sums appropriated by the State for the victim-witness units in each of the respective counties shall be contingent upon the respective counties providing a minimum of twenty-five per cent of the sum appropriated to each county. [L 1986, c 204, §2]

CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney

PETER A. HANANO
First Deputy Prosecuting Attorney

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February 14, 2009

HONORABLE JON RIKI KARAMATSU, CHAIR
HONORABLE KEN ITO, VICE CHAIR
COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN SUPPORT OF H.B. NO. 1293
RELATING TO LAW ENFORCEMENT

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports H.B. 1293, Relating to Law Enforcement for the following reasons.

At the outset, Chapter 845 of the Hawaii Revised Statutes mandates the prosecution of repeat and habitual offenders who are responsible for the majority of crimes committed in our community. Our Department recognizes the seriousness of this mandate and the huge responsibility of protecting the community from the serious and violent crimes that these career criminals commit. As a result, we have committed our most experienced attorneys to handle these serious cases. These experienced attorneys are not only familiar with the appropriate sentencing provisions for these career criminals, but are also aware of the various pitfalls to avoid.

Likewise, Chapter 801D of the Hawaii Revised Statutes recognizes the importance of victims/witnesses to the criminal justice system. Specifically, HRS § 801D-4 enumerates certain rights that a crime victim is entitled to by law. Indeed, our Department's Victim Witness Assistance Program assists victims of crime by guiding them through the complicating, frustrating and sometimes insensitive processes of the criminal justice system.

To be specific, these counselors assist the victims of crime

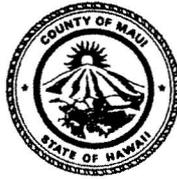
by: informing the victims of any financial assistance available to them; providing or assisting victims in obtaining counseling that may be necessary as a result of the crime; informing victims of the status of the case; helping victims get through hearings, continuances, trial, appeals, and parole hearings, and generally assist in the prosecution of crimes by providing a vital link between the deputy prosecuting attorney and the victim.

Finally, in order to ensure that justice for both the victims and the community prevails, it is very important that these programs continue to be adequately funded to afford the citizens of Hawaii the protection that they deserve.

Accordingly, our Department supports the passage of H.B. 1293. Thank you for the opportunity to testify.

(H.B. 1293, Relating to Law Enforcement)

CHARMAINE TAVARES
Mayor



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TESTIMONY IN SUPPORT OF HB 1293
Judiciary Committee
Tuesday, February 17, 2009
Conference Room 325 at 2:00 p.m.

To: The Honorable Jon Riki Karamatsu
Chair, Judiciary Committee
State House of Representatives

From: Lena Lorenzo, Director
Victim/Witness Assistance Division
Department of the Prosecuting Attorney
County of Maui

We are asking for your support of HB 1293 to provide grants to the Prosecuting Attorney's office of each county for the Career Criminal Prosecution Units and the Victim/Witness Assistance programs. The Maui Victim/Witness Assistance Division has been providing vital services to crime victims and witnesses and their families since its inception in 1982. The services provided include, but not limited to, crisis and short-term counseling, referral for financial assistance and social services, case information and notification, preparation for court testimony, court accompaniment, explanation of the judicial system, return witness program for visitors, victim impact statement and advocacy for victims' rights.

Despite the continued demand for services, the victim/witness fund has been steadily declining since 1995. The combination of increases in bargaining unit salary and fringe benefits result in less money going to actually pay for the position incumbents. We respectfully urge you to appropriate the money for victim services so that there is no elimination of present positions or disruption in services currently being provided to victims of crime. The impact of such action, if it is done, will be immediate and adverse to both victims and successful prosecution. Prosecution will be less effective because it will cut off a part of the crime-fighting arm and victims will be left to fend for themselves as they navigate their way in the maze of the criminal justice system. Not having adequate funding for the program that provides the much-needed services would obliterate the many years it has taken to develop services for crime victims.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Committee on Judiciary Representative Karamatsu, Chair and Representative Ito, Vice Chair

FROM: Carol Lee (clee@hscadv.org), Hawaii State Coalition Against Domestic Violence

Re: House Bill 1293 Relating to Law Enforcement

Aloha, my name is Carol Lee. The Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV strongly supports HB1293.

Becoming involved with the court system can be frightening and confusing. This is particularly true for victims of domestic violence. Not only has a violent crime been perpetrated against them - but the violence was perpetrated by someone who was supposed to love and respect them. Attending court can be intimidating, frustrating and feel like everyone is speaking a foreign language. Additionally victim often must face their batterer in court. This can be terrifying and confusing.

Victim Witness Kokua Services (VWKS) provides advocates to work with victims through this process. They remain in contact with the victim, attend court hearings, providing them information for their safety and explaining what is happening at each step in the legal process. No other service is able to do this in the same way by working hand in hand with prosecutors and other court officials.

Victim Witness Kokua has sustained many cuts to their budget and without funding would not be able to sustain an appropriate level of services for victims. Without funding for this much needed program more victims will be lost to the system and placed in further danger. HSCADV supports VWKS request for a grant in aid.

Thank you for your consideration.

karamatsu3-Leanne

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Tuesday, February 17, 2009 9:00 AM
To: JUDtestimony
Subject: HB1293 to be heard Tuesday, February 17th at 2:00pm in Room 325 by the House Judiciary Committee

Importance: High

TO: Representative Karamatsu, Chair
Representative Ito, Vice Chair
Members of the Judiciary Committee

FROM: Dara Carlin, M.A.
881 Akiu Place
Kailua, HI 96734
(808) 218-3457

DATE: February 17, 2009

RE: Support for HB1293

Good afternoon. Please support this initiative despite the difficult economic times we are facing because these services are crucially needed in ensuring justice for Hawaii citizens who have been wronged by a criminal act. Being the witness to a prosecution case is not an easy thing to do; it's not about just showing up on trial day, pointing a finger and saying "He/she did it". The majority of crime victims struggle with and suffer from emotional consequences related to the crime committed against them and the victim-witness advocates serve as a lifeline in helping the victims through the uncomfortable process of prosecution. When victims realize the stress and strain they must endure to see a prosecution case to its end, the urge to drop out and say "Forget it" can be overwhelmingly strong. Victim-witnesses are the invisible support system to victims of crime, providing the reassurance and comfort their clients need to see a case to its end where justice can be served.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Independent Domestic Violence Survivor Advocate

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