

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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TED SAKAI
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Keith Kamita
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No. _____

TESTIMONY ON SENATE BILL (SB) 509
A BILL FOR AN ACT RELATING TO
PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF
THE STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS

By
Ted Sakai, Director
Department of Public Safety

House Committee on Public Safety
Representative Henry J.C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, March 14, 2013, 9:30 a.m.
State Capitol, Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

The Department of Public Safety (PSD) **opposes** SB 509 which proposes an amendment to the Constitution of the State of Hawaii guaranteeing that crime victims and their immediate surviving family members have specific rights. Some of the proposed provisions would seriously hamper our ability to process inmates through our system based on their level of dangerousness and their readiness to re-assume a place in our community as law-abiding citizens. As such, our ability to fulfill the promise of the Justice Reinvestment Initiative, enacted just last year, would be greatly compromised. Our overcrowding problem would only get worse if we are unable to release inmates, or even transfer them to lesser security facilities.

Moreover, three of the provisions which would directly impact us are very ambiguous. We fear that such provisions would entangle us in litigation that would distract us from carrying out our operations in an orderly manner.

We are particularly concerned with three provisions of Section Two of this bill, which specifies the rights crime victims would have under this proposed constitutional amendment. These are: Number 8 would give victims the right “to be notified in a timely manner, be heard and participate in any process or deliberation that may result in a post arrest release decision, a negotiated plea or sentencing of the offender.” This provision would have a profound impact on our ability to process recommendations to the courts for the release of pre-trial detainees. The Council on State Governments found in 2011 that Hawaii takes an inordinate length of time to release those detainees who are considered to be low-risk. This contributes to the chronic overcrowding in our Community Correctional Centers. As a result, Act 139 SLH 2012 requires that we conduct an objective assessment “within the first three working days of a person’s commitment to a community correctional center to allow the courts to more quickly exercise discretion in determining whether to release a pre-trial defendant.” If we have to gather input from victims and allow them to be heard and participate in the process, it would be very difficult to provide the courts with the required risk assessments within three days, and one of the primary components of JRI would be undermined. We don't know how we would be able to identify the victims and allow for them to be heard and participate within three days.

Moreover, for decades, we have conducted other reviews and assessments at police cellblocks in Hilo and Honolulu which lead to post-arrest release at the defendants’ first court appearance. This process allows the courts to grant release to low-risk offenders, who are presumed innocent under our system of justice, at the earliest possible time – even before commitment to a correctional facility. At this point in the process, it would be impossible for our Intake Service Center workers to identify the alleged victims, and to allow them to be heard and participate in the process. Under this provision, we may have to terminate this program, as we would not be able to identify victims, contact them and arrange for their input and participation prior to the first court appearance.

As a result, we would see more defendants admitted to OCCC, further exacerbating an already severe overcrowding problem.

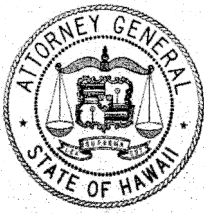
We are also concerned because we are not sure what kinds of input we would be required to get from victims. We also do not know what the "process" entails or what "deliberations" mean. For example, if a worker conducts an assessment and confers with a supervisor as to the recommendation prior to submitting the assessment to the court, is he or she "deliberating"?

Number 9 would give victims the right "to be notified in a timely manner, provide input, be heard and participate in any process or deliberation that may result in the offender's post-conviction release from confinement, including any kind of release by the department of public safety." This provision likewise would create a myriad of problems for us. Under JRI, we are required to provide evidence-based risk assessments for consideration by the Hawaii Paroling Authority. The process of conducting risk and needs assessments identifying suitable programs, and monitoring successful participation eventually leads to a decision to release of offenders on work furlough or parole. Under JRI, this is a decision made by professionals, guided by evidence-based risk assessments, who monitor participation in evidence-based programs. Based on these observations and deliberations inmates who are considered low-risk, and who have completed their recommended programs are gradually reintegrated into their communities. This process is designed to protect the safety of the community while providing offenders the opportunity to become productive, law-abiding citizens. If victims have a constitutional right to participate in these processes and deliberations, the rate of release will decline, as more likely than not victims would oppose release on furlough or parole. Our facilities would become even more overcrowded than they are today.

Number 13 would give victims the right "to receive prompt restitution from the person or persons convicted." The JRI Act requires us to deduct 25% of an inmate's deposits for restitution payments. The HRS allows courts to set restitution payment schedules. We wonder if this proposed provision could be

interpreted to require that offenders fulfill the entire restitution promptly. This needs to be clarified.

Thank you for the opportunity to testify on this matter.



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SEVENTH LEGISLATURE, 2013

ON THE FOLLOWING MEASURE:

S.B. NO. 509, PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, March 14, 2013

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Aquino and Members of the Committee:

The Department of the Attorney General submits testimony in opposition to this bill.

While the Department is sympathetic to crime victims and supportive of them, it is very concerned about this proposed constitutional amendment to establish constitutional rights for crime victims. Unlike the constitutional amendments adopted by other states, this amendment confers very broad rights upon crime victims that may adversely impact the criminal justice process.

The Department's three main concerns are that the rights conferred in this bill: (1) will likely conflict with the constitutional rights of defendants potentially creating issues that may (and in our judgment are likely to) result in making it more difficult to obtain convictions, because the criminal justice process will become more complicated and defendants will have more opportunities to create error in the process; (2) will likely create new liabilities for the State; and (3) may allow victims to participate in a criminal case at inappropriate times.

Conflicting Constitutional Rights

Some of the constitutional rights conferred on victims may conflict with a defendant's state and federal constitutional rights. Right (1) at page 2, lines 16-18, which requires a victim to be treated with "courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice process," could, if applied **while the victim is on the witness stand**, easily interfere with a criminal defendant's right to cross-examine, and otherwise vigorously defend him or her self. Right (4) at page 3, line 1, the **victim's** right to "speedy trial or disposition of

their case," could conflict with a defendant's right to prepare his or her own defense. It could also interfere with the prosecutor's need to prepare its case as well.

Some states have included a limitation that the rights of victims not interfere with the constitutional rights of the accused.

New State Liabilities

These constitutional rights may create new liabilities for the State. They appear to create causes of action for victims for injunctive relief and possibly damages against government authorities involved in the criminal justice process. These new liability issues could adversely impact prosecutions. If a victim perceives that the prosecutor is not treating the victim "with courtesy . . . and respect," the victim may sue the prosecutor. This could occur, even though the prosecutor was acting appropriately. The prosecutor, already fully engaged with the criminal prosecution of the case, would also have to also deal with the victim's civil actions.

Some states have addressed this concern by including a provision that nothing in the constitutional amendment or any enabling statute adopted pursuant to the amendment shall be construed to create a cause of action against the state or any of its agencies, officials, employees, or political subdivisions. The present proposal does not do that.

It is important to note that some victims are adverse to the criminal justice process and law enforcement, or are uncooperative for other reasons. Some victims are supportive of the defendant, or continue to have a relationship with a defendant, and as result may take advantage of these broad victim rights to help the defendant in the criminal justice process. Other victims may be manipulated by defendants who want to take advantage of these broad rights to interfere with the criminal justice process. This could be a problem in many different types of cases, but especially in household abuse cases and intrafamily sex assault cases.

Inappropriate Participation

It should also be noted that some of the rights conferred in this bill may allow victims to interfere with the criminal justice process. A victim is not a third party to a criminal case. Right (6) at page 3, lines 5-7, the right to be present "at all public court proceedings related to the offense unless the court determines that the victim's presence would materially affect the victim's testimony," could conflict with the witness exclusion rule, pursuant to chapter 626, Hawaii

Revised Statutes (HRS). Although it purports to make an exception for that, the exception may not be broad enough.

Rights (8) and (9) at page 3, lines 10-18, conferring on victims the rights to be notified, heard, and **participate in any process or deliberation that may result** in a post-arrest release decision, a negotiated plea, sentencing, or post-conviction release, could adversely impact the criminal justice process. These rights seem to suggest that a victim is entitled to participate in any process or deliberation, including internal deliberations of the prosecutor's office or the Department of Public Safety, as well as discussions between those offices and the defendant's attorney, and conferences with the court. Victim participation at these points in the process may not be appropriate.

Right (10) at page 4, lines 19-21, and page 5, lines 1-2, requiring a victim to be notified and heard regarding "**any developments relating** to the release, discharge, commitment, or unauthorized absence of the offender who was committed or involuntarily hospitalized," is extremely broad. The administration at the State Hospital may engage in regular reviews and assessments of a defendant's medical condition, and work on developing or revising treatment plans. It may not be appropriate for a victim to participate in these processes.

We believe that these proposed constitutional rights are **not** simply aspirational (conferring no enforceable rights until actually legislated into law). As currently drafted, the amendment granting these rights appears self-executing. The provision saying, "The legislature shall have the power to enact laws to define, implement, and preserve the rights guaranteed by this section," does not appear to change the self-executing nature of the amendment. The amendment is intended to create strong, enforceable rights for victims.

Furthermore, government authorities, including the police, prosecutors, prisons, parole, the Department of Health, and the courts, may need additional resources to fully comply with the broad rights for crime victims and to respond to any court actions filed by victims who are not satisfied with the efforts of government authorities. For example, right (2) broadly requires that a victim "receive protection from threats of harm." It does not specify a time period for this right, nor limit it to threats by the defendant or agents acting on behalf of the defendant. And it does not specify the type of protection. A victim could expect very broad protections and file actions to enforce this right. Other states have adopted more specific and clear rights of

protection. For example, one state established a right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court. Another state established a right to be reasonably protected from the accused throughout the criminal justice process. The present proposal is vague.

The Victims' Bill of Rights, in chapter 801D, HRS, should be adequate to properly address victims' rights. Chapter 801D provides for enforcement of its provisions. Section 801D-5(a) provides:

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

The entities that participate in the criminal justice process, including law enforcement, prosecutors, the courts, and corrections, are supportive of victims and very cognizant of their rights under chapter 801D.

For the foregoing reasons, the Department opposes this bill and respectfully asks that it be held.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

BERT Y. MATSUOKA
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MICHAEL A. TOWN
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FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

No. _____

TESTIMONY ON SENATE BILL 509, HD1
PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE
STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS

BY

Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

House Committee on Public Safety

Representative Henry J.D. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, March 14, 2013; 9:30 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

With respect to Senate Bill 509 HD1, the Hawaii Paroling Authority's (HPA) comments will only address the section(s) that relate to the HPA.

With respect to Section 2 (item #6), HPA's Administrative Rules (23-700-22J) already provides for the notification and voluntary presence of victims or their designees or surviving family members at minimum sentencing hearings. The category of persons currently allowed to attend minimum sentencing hearings is greater than proposed in SB 509, HD1.

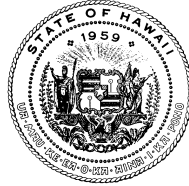
In addition, at present, victims or their designees or surviving family members are allowed to submit written comments to the parole board for consideration during parole hearings. They also have the option of working with the Victim/Witness staff within the County Prosecutor Offices to submit their comments to the parole board. This is in addition to their ability to register free of charge with the State of Hawaii's Automated

Victim Information Notification (SAVIN) system to receive notification on twenty-one (21) separate “trigger events,” which includes minimum sentencing and parole hearings, requests for reduction of minimum term(s) of imprisonment, release on parole, active warrant notification and return to custody notifications, transfers, etc.

In summary, HPA feels it is not necessary to codify the provisions of item #6 and #10 of this measure as they relate to the HPA into statute. The current provisions of HPA's Administrative Rules, standard operating practices, and the Hawaii's SAVIN system addresses the proposed statutory changes.

We are not in position to comment on sections that do not involve the HPA. For the remaining sections, we defer to the Departments and Agencies that are affected by the proposal.

Thank you for the opportunity to provide testimony on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Public Safety

**S.B. 509, Proposing An Amendment to Article I of the Constitution of the State of Hawaii
Relating to Rights of Crime Victims
Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

March 14, 2013, 9:30 a.m.

1 **Department's Position:** The Department of Health (DOH) appreciates the intent of this measure.

2 **Purpose and Justification:** The bill proposes to amend the Constitution of the State of Hawaii to
3 ensure that crime victims and their immediate surviving family members are guaranteed fair treatment,
4 the right to be informed of the major developments of their case, to have input into plea negotiations and
5 sentencing, and the right to restitution. We understand and agree with efforts to explicitly acknowledge
6 the rights of victims.

7 We have a number of questions as to how this proposed constitutional amendment would affect
8 legal proceedings. We are concerned that the draft constitutional amendment treats the victims where
9 there is not a finding of guilt the same as the victims where there is an individual found guilty. We
10 understand the need to give victims a voice, but, how exactly, will this be accomplished in the instance
11 of hearings for individuals never adjudicated guilty of an offense? We are also concerned how victims
12 rights would affect proceedings if there are issues of fitness to stand trial.

13 Once a finding of unfitness or an acquittal due to lack of penal responsibility is made, there are a
14 number of professional opinions proffered regarding readiness for placement, suitability for discharge,

1 and suitability of an appropriate placement. The victims' role on these issues is not clear. Further, if a
2 defendant demands a speedy trial, but is not given one, the remedy is to dismiss the case. If a victim
3 demands a speedy trial and one does not occur, what is the remedy?

4 The department requests that this measure be considered in light of the substantial rights already
5 granted victims and witnesses in the HRS §801D.

6 The Department of the Attorney General (AG) has expressed concerns about various sections of
7 the proposed bill, and the DOH defers on these concerns to the AGs.

8 Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

March 14, 2013

**RE: S.B. 509; PROPOSING AN AMENDMENT TO ARTICLE I OF THE
CONSTITUTION OF THE STATE OF HAWAII RELATING TO RIGHTS OF CRIME
VICTIMS**

Good morning, Chair Aquino, Vice Chair Ing and members of the House Committee on Public Safety, thank you for the opportunity to testify before you today. The Department of Prosecuting Attorney provides the following testimony **in strong support of S.B. 509**, which proposes an amendment to Article I of the Constitution of the State of Hawaii to establish a section on crime victims' rights.

We are strongly supportive of the concept of an amendment to Hawaii's Constitution clearly establishing the rights of crime victims, as it will help to effectuate the type of legal protections currently available to criminal defendants. As we once again approach this critical issue for victims, we find ourselves at the same crossroads we have visited before. Deciding how to effectively assure crime victims' rights in a justice system designed for the needs and rights of the accused is no easy task. It took nearly seven years to establish Hawaii's current victims' rights statute, *H.R.S. Chapter 801D*. Its passage was due in large part to the efforts of this Committee, which was at that time also headed by its current chair, Senator Hee. Although previous attempts have been made to enact constitutional rights for crime victims (most notably by this Committee in 1997), it was a road far less traveled in the past. According to the National Center for victims of Crime, thirty-two (32) states now have some type of constitutional protection for victims' rights. In states that have successfully passed such amendments (none has ever failed a public vote) an average of more than seventy percent (70%) of voters has favored the passage of these measures.

However, we do not suggest that Hawaii's constitution should be amended to protect victims simply because it is a popular idea. We are here in strong support of this measure because **it is the right thing to do**. Similar to the rights of the accused, it is justice and fairness that demand that victims be given meaningful and enforceable rights within Hawaii's criminal justice process. The rule of law that protects the rights of the accused, regardless of how

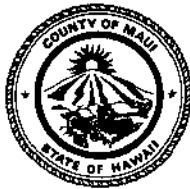
unpopular, and victims have the right to expect no less. As stated in the bill's purpose clause, the rights of victims "should be protected in a manner no less vigorous than those of the accused." It is a constitutional amendment that can provide the legal backbone to assure that this slogan can become a reality.

As to the specifics of the proposed language in the constitutional amendment, we reiterate our belief that the enumerations of each specific right to be granted to victims be included in the amendment. Among those that we view as critical are: the right to restitution, the right to be notified of "major developments" in a case, the right to be present at all public court proceeding on their case (except where a court determines that the victim's testimony will be materially affected), the right to be consulted by the prosecution regarding proposed plea agreements, the right to be heard at all criminal justice proceedings that involve the sentencing, incarceration or release of an offender, and finally, the right to be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice process. Just as importantly, an effective constitutional amendment should empower the Legislature to enact some type of meaningful enforcement measure. We agree with the bill's provisions for enforcement as the lack of legislative enforcement power could ultimately render any implementation ineffective and futile.

A constitutional amendment would not take away any of the precious rights of the accused that we all cherish. It would only give victims the essential rights of participation that the constitution currently provides to defendants. Nor would it curtail the discretion our system provides for such decision makers as prosecutors and judges. However, it would guarantee that victims would be able to see and hear the way that their cases are being handled, and to have their concerns heard by the decision makers.

There will be no fair and equal treatment of victims until their rights are guaranteed by our state and federal constitutions. Our constitution is our most powerful legal document. It is the final authority assuring the rights of the accused. The victims deserve no less. The constitution is the measure of what we believe basic justice should be. It reflects what we are as a people, and should assure the fundamental fairness that we expect from our government.

In conclusion, we urge your strong support for S.B. 509. Thank you for your time and consideration.



DEPARTMENT OF THE PROSECUTING ATTORNEY
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CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 509 - PROPOSING AN AMENDMENT TO ARTICLE I OF
THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO
RIGHTS OF CRIME VICTIMS

March 14, 2013

The Honorable Henry J. C. Aquino
Chair
The Honorable Kaniela Ing
Vice Chair
and Members
House Committee on Public Safety

Chair Aquino, Vice Chair Ing and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES SB 509, Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims.

While we fully support the rights of crime victims, we are concerned that SB 509 will create potential liability against the State and counties, and also against employees of the State and counties. The proposal would place a "victims' bill of rights" in the State Constitution that echoes HRS Chapter 801D. However, HRS § 801D-5(b) provides:

(b) Neither the failure of the State or county officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or county officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority.

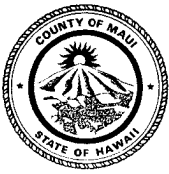
SB 509 does not include such language in the proposed constitutional amendment. By example, the Constitution of the State of California provides:

This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or any of its political subdivisions, or any officer or employee of the court.

We suggest that if this bill is passed, that similar language be included in the bill.

We ask that the committee HOLD SB 509.

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



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

March 13, 2013

The Honorable Henry J.C. Aquino, Chair
and Members of the Committee on Public Safety
House of Representatives
Hawaii State Capitol
Honolulu, HI 96813

RE: Senate Bill No. 509, PROPOSING AN AMENDMENT TO ARTICLE I
OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO
RIGHTS OF CRIME VICTIMS

Dear Chair Aquino and Members of the Committee:

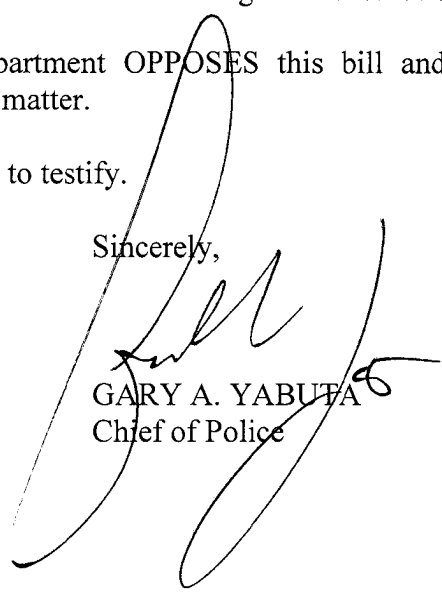
The Maui Police Department OPPOSES Senate Bill No. 509 in its current form. This bill proposes an amendment to the Constitution of the State of Hawaii guaranteeing that crime victims and their immediate surviving family members have specific rights related to information pertaining to and participation in the criminal justice process.

Although the Maui Police Department supports the rights of crime victims, it has been brought to our attention that this bill does not effectively guard against potential liability against the State and counties, and also against the employees of the State and counties. Currently, under HRS Chapter 801D-(b), it provides for this protection against this liability brought on by passing this bill and amending the Constitution.

Again, the Maui Police Department OPPOSES this bill and we thank your committee for your opposition in this matter.

Thank you for the opportunity to testify.

Sincerely,


GARY A. YABUTA
Chief of Police

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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**TESTIMONY IN SUPPORT OF
SENATE BILL NO. 509
A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE
HAWAII CONSTITUTION TO ESTABLISH CRIME VICTIM RIGHTS**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Public Safety

Thursday, March 14, 2013
9:30 a.m., Room 309

Honorable Chair Aquino, Vice-Chair Ing, and Members of the House Committee on Public Safety, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 509.

The purpose of Senate Bill No. 509 is to amend Article I of the Constitution of the State of Hawai'i to ensure that crime victims are guaranteed fair treatment, the right to be informed of the major developments of their case, to have input into plea negotiations and sentencing, and the right to restitution.

By creating a constitutional amendment establishing a crime victim's bill of rights, the weight of it will ensure that the rights of victims and witnesses are globally addressed appropriately by law enforcement agencies, prosecutors, judges, etc. Nonetheless, it would create a permanent balance in the rights for defendants and victims.

Currently, House Bill No. 236 proposes the right for a victim to be notified on the status of the defendant's whereabouts, fitness to stand trial, discharge etc. It is clear that measures within the legislature are still being proposed in order to clearly define the rights to victims to afford them the same protection and participation in their cases as defendants are given.

We need to always keep in mind that a crime victim never had a choice in the defendant's act against them, and because of that, the victim is forced into the criminal justice system. Unfortunately the system today does not guarantee any type of

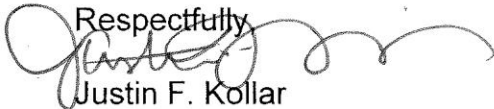
permanent rights or protection for the victim. While the defendant made the choice to commit a crime, he/she is guaranteed enforceable rights as to a speedy trial and is able to participate in the case; the victim on the other hand is not guaranteed these rights and does not have the ability to participate in the case.

It is important that the Constitution of the State of Hawai'i is amended as such considering it is *the* fundamental basis of principles regarding authority and governance within our State.

Currently, Hawai'i is one of seventeen states that does not have rights of crime victims. In today's society, we believe it would be an appropriate time to adopt such rights for victims.

For these reasons, we are in strong support of Senate Bill No. 509. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in dark ink, appearing to read "Justin F. Kollar", with a large, stylized flourish extending to the right.

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 509 A BILL FOR AN ACT PROPOSING AN AMENDMENT TO ARTICLE I OF THE HAWAII CONSTITUTION TO ESTABLISH CRIME VICTIM RIGHTS

Committee on Public Safety – Hearing March 14, 2013, 9:30 a.m.
Henry J.C. Aquino, Chair, Kaniela Ing, Vice Chair, and Members

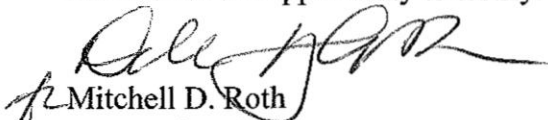
Thank you for the opportunity to provide testimony in support of Senate Bill 509, proposing an amendment to Article I of the State of Hawaii Constitution to establish crime victim rights. Over the years, the Hawaii State legislature has created various statutes to address victim rights. While this office is committed to enforcing these statutes, many in the community perceive that these rights are not upheld unless there is a state constitutional amendment. This debate has been ongoing for many years, and we believe the time is ripe for a constitutional amendment which provides victims certain basic rights. We support this Legislature's efforts to draft such a constitutional amendment.

The criminal justice system functions effectively because of the cooperation of victims and witnesses, yet these same individuals are afforded no constitutional rights in the process. Currently the Hawaii constitution provides rights to the defendant, the public, and even the media. There are no provisions for crime victims. Concerns and opposition were submitted in prior testimony by the Department of the Attorney General of the State of Hawaii. These concerns have resulted in proposed amendments to the Bill.

We support the intent behind the bill to give victims the right to be treated with courtesy, fairness, and respect for their dignity. Historically, some concerns stemmed from proposed language that could be interpreted to allow victims to interfere with plea negotiations or place an inordinate burden the prosecutor. The bill, as amended should clearly convey that the prosecutor retains control and ultimate responsibility for plea negotiations and agreements. While the state and victim may not agree on a plea or the direction the state takes in prosecuting or not prosecuting a case, the victim still has the right to know and hear about it in a timely way, and in turn it is important for the state to hear from the victim.

The Hawaii County Office of the Prosecuting Attorney supports the passage of Senate Bill 509 with amendments.

Mahalo for the opportunity to testify.


Mitchell D. Roth
Prosecuting Attorney



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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MARI MCCAIG
Chair

THOMAS T. WATTS
Commissioner

L. DEW KANESHIRO
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY IN SUPPORT OF
SENATE BILL 509
A BILL PROPOSING AN AMENDMENT TO
ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII
RELATING TO RIGHTS OF CRIME VICTIMS

Mari McCaig, Chair
Crime Victim Compensation Commission

House Committee on Public Safety
Representative Henry Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, March 14, 2013, 9:30am
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Ing, and Members of the House Committee on Public Safety:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify in support of Senate Bill 509, proposing an amendment to Article I of the Constitution of the State of Hawai'i relating to Rights of Crime Victims. The Commission is dedicated to helping provide compensation to crime victims and promoting the rights of crime victims in general.

Over the years, the legislature has shown commitment to improving the status of crime victims by creating statutes that enable crime victims to receive restitution (HRS § 706-646), requiring that crime victim statements be included in the Presentence Report (HRS § 706-602), allowing crime victims to speak prior to sentencing (HRS§ 706-604), and setting forth basic crime victim rights (HRS ch. 801D). The intent has always been "that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." HRS § 801-D-1. That intent cannot be truly realized until crime victims have their own constitutional bill of rights.

A constitutional amendment is necessary because “[r]ules to assist victims frequently fail to provide meaningful protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia or the mere mention of an accused’s right – even when those rights are not genuinely threatened.” Lawrence H. Tribe and Paul G. Cassell, Let’s Protect Victims’ Rights, www.nvcap.org/docs/cassell/9807_cassell_tribe.html.

In criminal cases, the Hawai‘i constitution provides rights to everyone involved (defendant, media and the public) EXCEPT the crime victim. Yet, the crime victim has more at stake than the media and the public and just as much interest in the outcome of the case as the defendant. While HRS § 801D-4 was intended to provide a basic bill of rights for victims and witnesses, it does not establish permanent, enforceable rights for crime victims guaranteed by the constitution. As a result, HRS § 801D-4 can and has been ignored.

HRS § 801D-4 requires the crime victim to make a written request to be informed of the disposition of the case and to be consulted about any plea bargain without requiring anyone to inform the victim that he or she has the right to make the request. Even if a crime victim makes a request, the rights set forth in HRS § 801D-4 are not enforceable by the victim. Without standing, enforceability, and the force of the constitution, the rights enumerated in HRS § 801D-4 have little meaning. Courts, prosecutors, and defense attorneys have continually disregarded the rights of crime victims.

The crime victim’s bill of rights seeks to create a balance in which the rights of a defendant are protected while at the same time allowing the crime victim meaningful participation in the criminal system. A crime victim’s bill of rights in no way diminishes a criminal defendant’s constitutional rights. Requiring a crime victim to be advised of proceedings, to be consulted on plea agreements, and to be heard at proceedings does not infringe on a defendant’s constitutional rights. Nor does requiring a defendant to pay restitution infringe on a defendant’s constitution rights. To the contrary, being ordered to pay restitution can have a positive effect on a defendant’s rehabilitation as the defendant is making a positive contribution to his or her victim’s recovery. The crime victim’s bill of rights seeks to ensure speedy trial just as the constitution guarantees a speedy trial to the defendant. In instances where a defendant seeks a long delay of trial, the court can and should balance the defendant’s need for the continuance against the desire of a crime victim for a speedy trial. A crime victim’s right to a speedy trial would not trump a defendant’s right to develop his or her case, but rather it allows the courts to consider the competing needs of the defendant and the victim.

The bill would not create a danger of a victim interfering in the prosecution of the case. The proposed bill provides victims with the opportunity to be heard, kept informed, to receive restitution, and the return of their property. Consulting victims before making plea agreements does not provide victims with the right to refuse the plea agreement. It does, however, provide an opportunity for the prosecutor to learn information that may be pertinent to the plea negotiations. The bill does not require the prosecutor to consult with victims regarding the technical or tactical aspects of prosecuting the case.

Thirty two states have constitutional amendments. While some states have clauses limiting civil liability, others do not. According to the national proponents of victim's rights, the states that do not limit civil liability have very few suits filed. The Commission is unaware of any suit that resulted in substantial liability to the State.

The crime victims' right to restitution has not been adequately protected by HRS § 801D-4 or by the 2006 amendment to HRS § 706-646 which made restitution mandatory. In 2003, the Commission began a pilot project to distribute restitution payments collected from inmates and parolee to their crime victims. Since the inception of the project, the Commission has opened over 4,000 restitution files and collected over 1.8 million dollars in restitution. Through this project, the Commission has become familiar with the institutional barriers to the ordering and collection of restitution. Some of these barriers were brought to the public's attention in a series of articles in the Honolulu Star Advertiser which ran on June 2011.

In 2012, the legislature and the governor made restitution a key component of the Justice Reinvestment Initiative. As a result, HRS § 353-22.6 was amended to require the collection of 25% of all inmate earnings, deposits, and credits. The amendment became effective July 1, 2012. The Commission continues to receive judgments that fail to reflect the amendment to HRS § 353-22.6.

Another example of the failure of HRS § 801D-4 to protect victims' rights made the news on December 28, 2008. Rita Makekau was accused of assaulting her five nieces and nephews by, among other things, breaking their teeth with a hammer, forcing them to eat dog food, pushing them down stairs, and holding them underwater. Ms. Makekau made a conditional plea in which she pled no contest to the charges but was allowed to appeal whether a Hawai'i court had jurisdiction over a self-proclaimed member of the Hawaiian sovereignty. At her sentencing, her nieces and nephew were present and so was their court-appointed Guardian ad litem and social worker. At the sentencing, Ms. Makekau requested being allowed to remain on bail pending her appeal. The court set a hearing on the issue. The children's Guardian ad litem and social worker intended to be present at the hearing to represent the children's interest. When they arrived at court at the scheduled time, they found out that the attorneys and court held a status conference in chambers at least fifteen minutes prior to the scheduled hearing time. The parties then held and concluded the hearing prior to the Guardian ad litem's arrival. The Guardian ad litem had not been informed of the advanced hearing time. The court granted Ms. Makekau's request to remain free. When told, the Guardian ad litem said that the children "yelled. They were angry and disappointed." Without standing, the Guardian ad litem and the children could not protest being excluded from the hearing. It was fortunate for the children that the case was high profile and the prosecutor's office sought reconsideration of the court's ruling.

Making victims' rights enforceable will not result in an avalanche of lawsuits by victims. In 1982, California became the first state to have a victims' rights constitutional amendment. There are currently thirty two states that have ratified a victims' rights constitution amendment. The Commission is unaware of any state with a constitutional amendment that has had an onslaught of lawsuits filed as a result of the constitutional amendment.

Every day, victims are thrust into the criminal justice system and asked to navigate its complexities in the midst of their trauma. Sadly, this means that victims' rights are often forgotten or ignored. Crime victims deserve to have permanent, constitutional, and enforceable rights.

Thank you for allowing the Commission the opportunity to testify in support of Senate Bill 509.



THE SEX ABUSE TREATMENT CENTER

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

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Gidget Ruscetta

DATE: March 14, 2013

TO: The Honorable Henry J.C. Aquino, Chair
The Honorable Kaniela Ing, Vice Chair
House Committee on Public Safety

FROM: Alana Peacott-Ricardos, Policy Research Associate
The Sex Abuse Treatment Center

RE: S.B. 509
Proposing an Amendment to Article I of the Constitution of the State of
Hawai'i Relating to Rights of Crime Victims

Good morning Chair Aquino, Vice Chair Ing, and members of the House Committee on Public Safety. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC strongly supports S.B. 509 to propose an amendment to the Constitution of the State of Hawai'i to provide recognized and protected constitutional rights for crime victims and their survivors.

SATC serves hundreds of victims of sexual violence each year. As our services include legal systems advocacy to support victims through judicial proceedings, we are well-aware of the challenges victims can encounter in the criminal justice system. We firmly believe that victims must be afforded certain basic rights throughout the process. In particular, victims should have the right to a speedy trial; to be notified of major developments in the case; to be present a public court hearings (unless it would affect the victim's testimony); to be consulted and advised of plea agreements; to be notified and able to participate in processes relating to sentencing, release, or other dispositions of the offender; and to receive restitution. We further believe that these rights should be guaranteed by our state constitution.

Although Hawai'i has a basic bill of rights for crime victims and witnesses, victims still do not have the type of legal protections currently available to criminal defendants. In enacting Chapter 801D of the Hawai'i Revised Statutes, the Legislature expressly stated that its intent was "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." Despite this, the Constitution of the State of Hawai'i affords criminal defendants a number of protections, yet is silent with respect to the rights of victims.

The proposed amendment would not take away any of the rights currently afforded to the accused or curtail the discretion our system provides for prosecutors and judges. Instead, it would give victims the essential rights of participation that are now provided to defendants and guarantee that victims would be aware of how their cases are being handled and have their voices heard.

We urge you to pass S.B. 509. Our constitution is our most powerful legal document. It is the authority that assures that the rights of the accused are protected and victims deserve no less.

Thank you for the opportunity to testify.



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, March 14, 2013, 9:30 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 509, Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims

Dear Chair Aquino and the Committee on Public Safety:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 509, which would fundamentally alter Hawaii's Constitution.

S.B. 509 proposes to give victims of violent crimes in state court the right to participate throughout the criminal case. Although this seems to be a laudable goal, S.B. 509 is unnecessary and threatens to jeopardize the right to a fair trial and the presumption of innocence.

The Constitution should only be amended when there are no other alternatives available.

Amending the Hawaii Constitution is a serious matter and should be reserved for those issues where there are no other alternatives available. S.B. 509 does not meet this standard because there are other alternatives available to protect these rights. Greater effort should be made to enforce already existing laws instead of amending the federal constitution.

S.B. 509 erodes the presumption of innocence.

The framers of Hawaii's Constitution were aware of the enormous power of the government to deprive a person of life, liberty and property. The constitutional protections afforded the accused in criminal proceedings are among the most precious and essential liberties provided in the Constitution. S.B. 509 will undermine these basic safeguards. For example, the proposed Amendment gives rights to the accuser at the time a criminal case is filed when the accused is still presumed to be innocent. In some cases, the accuser is not the victim, such as in cases of domestic violence. Battered women are often charged with crimes when they use force to defend themselves against their batterer. Under S.B. 509, the battering spouse is considered the "victim" and will have the constitutional right to have input into each stage of the proceeding from bail through parole. Why should a man who has spent years abusing his partner be given special constitutional rights? Many victims groups that assist battered women oppose these provisions for this very reason.

S.B. 509 erodes the right to a fair trial.

American Civil Liberties Union of Hawaii
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S.B. 509 would give crime victims a constitutional right to attend the entire criminal trial even if that person is going to be a witness in the case. In many instances, the testimony of a prosecutorial witness will be compromised if the person has heard the testimony of other witnesses. Yet, S.B. 509 gives the victim a constitutional right to be present even over defense or prosecution objections.

S.B. 509 would also give the right “to a speedy trial or disposition of their case.” Any victim or victim representative of a violent crime has standing under the S.B. 509 to intervene and assert a constitutional right for a faster disposition of the matter. This could be used to deny defendants needed time to gather and present evidence essential to prepare their defense, resulting in innocent people being convicted. It could also be used to force prosecutors to trial before they are ready, leading to guilty people going free. Most importantly, protecting the rights of a person accused of a crime would no longer be a preeminent focus of a criminal trial.

S.B. 509 is likely to be counter-productive because it could hamper effective prosecutions and cripple law enforcement by placing enormous new burdens on state and federal law enforcement agencies.

Prosecutorial efforts could be hampered by the right of crime victims to “be heard and participate in any process or deliberation that may result in a post-arrest release decision, a negotiated plea or sentencing of the offender.” It is unclear how much weight judges will be required to give to a crime victim’s objection to a plea bargain. Over 90 percent of all criminal cases do not go to trial but are resolved through negotiation. Even a small increase in the number of cases going to trial would burden prosecutors’ offices. There are many reasons why prosecutors enter into plea agreements such as allocating scarce prosecutorial resources, concerns about weaknesses in the evidence, or strategic choices to gain the cooperation of one defendant to enhance the likelihood of convicting others. Prosecutorial discretion would be seriously compromised if crime victims could effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case in order to persuade a court to accept a plea. Ironically, this could backfire and result in the prosecution being unable to get a conviction against a guilty person - this would not serve society, or victims’, interests.

S.B. 509 would impose inflexible mandates that will be difficult to meet.

Under S.B. 509, the State would be constitutionally required to make reasonable efforts to find and notify crime victims or their representatives every time a case went to trial, every time a criminal case was resolved, and every time a prisoner was released from custody. To comply with S.B. 509, thousands of notification forms would need to be sent out.

Chair Aquino and Members of the Committee on
Public Safety
March 14, 2013
Page 3 of 3

S.B. 509 may also authorize appointment of counsel for victims. The term “crime victim’s lawful representative” could be interpreted as providing a constitutional right to counsel for victims in order to adequately protect their newly created rights. The cost of providing counsel to victims as well as defendants in criminal cases might be prohibitively expensive. In many states, criminal defendants do not receive adequate counsel. Adding the financial burden of providing counsel to victims will likely further limit defendants’ access to counsel.

Crime victims deserve protection, but a victims’ rights constitutional amendment is not the way to do it. S.B. 509 unnecessarily amends the federal constitution, includes inflexible mandates, may hinder prosecution of criminal cases and threatens the rights of the accused. We urge you to vote against this amendment.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union (“ACLU”) is our nation’s guardian of liberty working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

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Mothers Against Drunk Driving
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Suite 700
Irving, TX 75062

214.744.6233 direct
877.MADD.HELP victim support
877.ASK.MADD

March 13, 2013

RE: SB 509

Dear Hawaii Lawmakers:

I address you today, personally, representing thousands of parents each year who are forced to unexpectedly bury our children due to a criminal action taken upon them. My request is simple: I impress upon you the urgent need for Hawaii's lawmakers to pass a long-overdue proposal for a State Constitutional Amendment for Crime Victim Rights.

For the past twenty years, I have wished the death of Alisa Joy, my precious daughter, to be a horrible dream that I could awaken from. Sadly, the reality is she is dead, and I like so many others now bear the label, "crime victim." One saving grace for me is that I have the honor to represent a nation of vehicular crime victims and survivors currently serving as National President for Mothers Against Drunk Driving (MADD).

Again, I felt honored when I heard that Hawaii's legislators are presenting a bill that would secure essential rights for victims of crime and was asked to submit a letter of support for this historic endeavor. If my figures are correct, passing this legislation would make Hawaii the 34th state in the nation to enact such rights for both residents and visitors that become victims of crimes.

Since 1980, MADD has fought tirelessly to ensure that crime victims are afforded fundamental rights through the justice process. Together with a coalition of crime victims' rights partners, we have made remarkable progress for crime victims, despite many challenges. Only 30 years ago, crime victims had no rights, no access to crime victim compensation, and limited basic services to help rebuild their lives. They were often excluded from courtrooms, treated as an afterthought by the criminal justice system, and denied an opportunity to speak at the sentencing of their offenders.

The power of partnerships launched the crime victims' rights movement and the achievements we celebrate every year. Families of murdered children and victims of sexual assault, drunk driving, domestic violence, and other crimes mobilized at the grassroots level and joined forces to demand justice for victims of crime. The National Campaign for Victims' Rights founded by these partners led to President Ronald Reagan's reforms on behalf of crime victims, his declaration of the first National Crime Victims' Rights Week, and victims' rights legislation and victim services. Moving forward on this momentum, by December 1996, 29 states had enacted state constitutional amendments for victims' rights. Through decades of advocacy and hard work, we have come a long way. Today, all states have established crime victim compensation funds. More than 10,000 victim service agencies help victims throughout the nation.

But all too often, we hear from a disparaged family of individual unique victims which remind us that many challenges remain. Crime victims' rights are not universal and are often not enforced. Only a small percentage of victims receive crime victim compensation, which is usually limited to victims of violent crime. According to last year's National Crime Victimization Survey, more than 50 percent of violent crimes were not reported to police between 2006 and 2010. In addition, a 2011 report called the *Use of Victim Services Agencies by Victims of Serious Violent Crime* showed that only 9 percent of violent crime victims received needed services in the 1993-2009 timeframe.

Today, you personally have the ability to make remarkable, historical progress for all crime victims in Hawaii. By enacting this vital legislation, you will move one step closer to balancing the scales of justice for defendants and those victimized by their crimes.

As we gather across the nation, April 21–27, to acknowledge all victims and survivors of crime through National Crime Victims' Rights Week ceremonies and events, I hope to feel honored, once again, to celebrate the passage of the Hawaii Crime Victims' Rights Constitutional Amendment. What a proud moment it will be when Hawaii's crime victims are guaranteed:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay, and
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

Most Sincerely,

A handwritten signature in cursive script that reads "Jan Withers". The signature is written in dark ink and is positioned below the "Most Sincerely," text.

Jan Withers
President, Mothers Against Drunk Driving

Memories of our lives, of our works and our deeds will continue in others. — Rosa Parks (1913-2005)



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
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Phone (808) 532-6232
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March 14, 2013

To: Representative Henry J.C. Aquino, Chair –House Committee on Public Safety;
Representative Kaniela Ing, Vice Chair; and members of the committee

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

Re: Senate Bill 509 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Rights of Crime Victims

I am Carol McNamee, representing MADD Hawaii and speaking in support of SB 509 which calls for a Constitutional Amendment for Victims Rights. MADD is one of the largest victim service organizations in the Country. In Hawaii, MADD provides services for victims of homicide as well as for negligent homicide, negligent injury, manslaughter, failure to render aid and for any victim of an impaired driving crash, whether or not the offender is charged or convicted. A MADD memorial in Kaka’ako Waterfront Park stands as testimony to the indescribable pain resulting from the losses that hundreds and hundreds of victims of violent crime experienced after the tragedy which either killed or injured their loved one – or loved ones.

Too often, these victims are destined to suffer more pain when they are revictimized by the criminal justice system which is supposedly designed to support victims through the court process and deliver justice in the end. There is no doubt that gains have been made over the 29 years that MADD has been serving victims in Hawaii. The Victim Bill of Rights in Hawaii Revised Statutes was enacted in 1987 and certainly provides the basis for more rights than were even articulated before the 1980’s. However, in Hawaii and in other states across the country, victims have found that there are times when statutory rights are not enough. There is no guarantee the justice described on paper will actually be delivered. “Victims still do not receive justice that affords rights of access and participation that are equal to those of accused.” (*National Association of Attorneys General – 2000*). For this reason, 33 states have now given victims the gift of a state constitutional amendment for Victims Rights. In most states a high percentage of the electorate voted to adopt the constitutional amendment. MADD is hopeful that there will also eventually be a U. S. Constitutional amendment.

Senate Bill 509 will offer Hawaii victims important protections including the right :

- To be treated with courtesy, fairness and dignity
- To be informed of their constitutional rights and available programs of assistance (financial and other)

- To be notified, in a timely manner, of various proceedings and developments in their case
- To be notified of all public court proceedings To be advised of plea agreements
- To be notified in a timely manner, to be heard in, and participate in any process or deliberation that could result in an offender's release, negotiated plea, or sentencing – or in a change in the offender's status
- To have property expeditiously returned, and
- To receive prompt restitution from the convicted offender

It is important to stress that the request to strengthen victims' rights through a state constitutional amendment is not intended to diminish any rights of the offender. It is important that victims gain more equality with offenders in how they are treated by the criminal justice system. This feeling of equality can help the victim regain a feeling of control and contribute to their eventual healing. As our statue in Kaka,ako Park portrays, the families of victims will always have a hole in their hearts but the knowledge that they have constitutionally protected rights will help them through the difficult criminal justice process and beyond. As a MADD past president who attended the dedication of our Victim Memorial said, "Criminal defendants have the *right* to remain silent; crime victims all too often are *required* to remain silent. Where is the justice in that?"

MADD encourages this committee to pass SB 509. Thank you for the opportunity to testify in support of this important measure.

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 13, 2013 10:57 AM
To: pbstestimony
Cc: leealdrige@msn.com
Subject: Submitted testimony for SB509 on Mar 14, 2013 09:30AM

SB509

Submitted on: 3/13/2013

Testimony for PBS on Mar 14, 2013 09:30AM in Conference Room 309

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Lee Aldridge | Individual | Support | No |

Comments: I wish to thank the PBS Committee for this opportunity to submit testimony on Senate Bill 509. I support any legislation that proposes a constitutional amendment to strengthen and reinforce the rights of the victims of crimes.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Doug Chin
2423 Lana'i St
Honolulu, HI 96817
dougchin@stanfordalumni.org

March 13, 2013

Aloha, Chair Aquino, Vice Chair Ing and Public Safety Committee Members:

My name is Doug Chin and I am submitting testimony in support of SB509 in advance of the House Committee on Public Safety on Thursday, March 14, 2013 at 9:30 am.

As a prosecutor for over 10 years and the City & County of Honolulu's First Deputy Prosecutor from 2006 through 2010, I had the honor of prosecuting several murder and sex assault cases and brought over 40 cases to a jury trial. A significant portion of these cases included victims, often a child or someone with very challenging circumstances happening in their life. Being the victim or family member of a victim to an incident involving assault, robbery, rape or murder is only one part of the process. Sadly, to victims, the criminal justice system is a lengthy, complicated journey that can be exceptionally traumatic on its own, with no protections apparent except for the perpetrator.

As a lawyer educating victims about the process, I often found myself telling victims and their families about a defendant's various constitutional rights – the right to privacy, the right to remain silent, the right to a jury trial, the right to confront witnesses face to face, etc. Few objected to a criminal defendant having those rights, but they would all ask, "What are my rights? Does the constitution protect victims?"

The current answer is "No". Placing this measure before voters offers an opportunity to correct this injustice.

Mahalo for the opportunity to testify.

Sincerely,

Doug Chin