



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 3034, RELATING TO PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII TO ESTABLISH RIGHTS FOR VICTIMS OF CRIME.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 9, 2016 **TIME:** 9:15 a.m.
LOCATION: State Capitol, Room 016
TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General appreciates the intent of S.B. No. 3034, shares the following concerns regarding certain provisions, and recommends the provisions of H.B. No. 1144, Proposed H.D. 1, scheduled for hearing by the House Committee on Judiciary on February 9, 2016.

S.B. No. 3034 extends the proposed constitutional rights for victims to a broad group of people. The breadth of that group is a logistical concern. It extends the rights to "surviving family members," defined on page 7, lines 5-8, as "any spouse, parent, grandparent, child, sibling, grandchild, guardian or any person who as a relationship with the victim that is substantially similar to the listed relationships." This could be a large group of people. The responsible entities might need to identify all of these people in each case in which the victim has died, contact them, notify them of their constitutional rights, and notify them of all relevant proceedings, deliberations, and changes in status. This may overburden the responsible entities and, criminal justice process.

S.B. No. 3034 does not limit the constitutional rights for victims such that they do not supersede the constitutional rights of the defendant. There may be a problem when the constitutional rights of the victim come into direct conflict with the constitutional rights of the defendant.

S.B. No. 3034 does not preclude causes of action against the State or counties, or any of their agencies, officials, or employees. This means that the constitutional rights for victims could create significant liabilities for the State and counties.

The Department is also concerned that many of the proposed constitutional rights for victims will adversely impact the processing of misdemeanor and petty misdemeanor cases and violations in the district courts. District courts process many cases as quickly and efficiently as possible. Many defendants enter pleas and are sentenced at their first court appearance. There may not be sufficient time before the first court appearance for the State to properly notify and confer with the victims. Plea negotiations may take place with little or no notice. In order to address a victim's rights in district court, matters may need to be continued, resulting in a backlog of cases for the courts. To the extent the Department can assist with timely notifications that mitigate against delays, the Department is committed to doing so.

Right number 10 at page 4, lines 9-14, confers on victims the right to be notified, and be offered the opportunity to participate and be heard in "any process or deliberation" that may result in the offender's post-conviction release from confinement, including any type of release by the department of public safety. The right to participation in "any process or deliberation" would appear to include internal administrative, management, or programming discussions or deliberations. That level of participation would be inappropriate and might create significant issues for corrections management.

Right number 12 at page 5, lines 1-6, confers on victims the right to be notified and heard regarding "any developments relating to the release, discharge, escape or commitment, or the unauthorized absence of the accused or offender who was committed or involuntarily hospitalized." This right 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.

The Department also notes some ambiguity with Right number 6 at page 3, lines 12-15, which confers on victims the right to be notified of "all proceedings related to the criminal conduct." Rather than specifying "criminal case" or "criminal prosecution," it refers to "proceedings related to the criminal conduct." It is not clear to which proceedings this right

relates. It could include various administrative proceedings that were triggered by the criminal conduct or were initiated to prevent similar criminal conduct from occurring in the future.

The Department appreciates the intent of the bill and commits to working with the stakeholders to provide further input.

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

February 9, 2016

S.B. No. 3034: PROPOSING AN AMENDMENT TO ARTICLE I OF THE
 CONSTITUTION OF THE STATE OF HAWAII TO
 ESTABLISH RIGHTS FOR VICTIMS OF CRIME

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 3034 which would amend the Hawaii Constitution to create provisions relating to the rights of victims of crime. Many of the provisions contained in this bill are already contained in the Hawaii Revised Statutes. H.R.S. Chapter 801D is entitled the Rights of Victims and Witnesses in Criminal Proceedings.

Elevating provisions to the constitutional level will cause irreconcilable conflicts with current constitutional provisions and could result in miscarriages of justice. Section 1 requires a victim to be treated with courtesy, fairness and respect. These terms are vague and all-inclusive. Meanwhile, the Sixth Amendment to the U.S. Constitution and Article I, Section 14 of the Hawaii Constitution afford all accused persons the right to confront witnesses against him/her. This right includes the ability to cross-examine witnesses including victims in trial proceedings. How will tough cross-examinations be reconciled with the right for victims to be treated with courtesy and respect? Often, victims who are subject to questioning in court before a judge or jury will feel that they are being "attacked" and not being treated with courtesy. Will this result in a constitutional violation? If it does, what would the possible legal remedy be?

Section 5 provides for the right to a speedy trial. The Sixth Amendment to the U.S. Constitution and Article I, Section 14 of the Hawaii Constitution provides for an accused's right to speedy trial. At first glance, the two provisions would appear to be parallel. However, it is inevitable that a victim and defendant will have vastly different interpretations of a speedy trial. Generally, a defendant's right to speedy trial is interpreted as a right to trial within 6 months. In the eyes of a victim, 6 months may be an excessive amount of time for resolution of the case. Moreover, there are many exceptions to the six month rule. In serious cases, it is not unusual for a case to go to trial more than six months after its inception. However, the extra time is often necessary for the court to make pretrial rulings and for discovery to be completed. Due process and the right to fair trial demands that a case not be forced to trial prematurely.

Section 7 of the bill affords a victim the right to be present at all court proceedings. Establishment of this constitutional right could result in scheduling difficulties and delays in the progress of cases. If, for some reason, a victim could not be present at a certain hearing, the hearing would have to be continued. This would delay the progress of the case and could result in excessive pretrial detention for the defendant.

Thank you for the opportunity to provide testimony in this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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

TESTIMONY IN SUPPORT OF
SENATE BILL NO. 679/SENATE BILL NO. 3034
PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE
STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME

Diana Gausepohl-White, Victim/Witness Program Director
County of Kaua'i

Senate Committee on Judiciary and Labor
February 9, 2016, 9:15 a.m., Conference Room 016

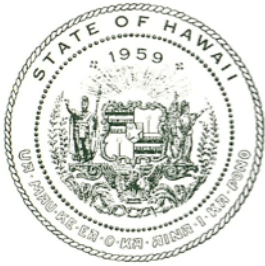
Honorable Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the
Committee:

Our American criminal justice system is second to none. That being said, it's naïve to think mistakes aren't made. We are afforded Constitutional rights to protect us when accused and there are well established processes to ensure corrective action is taken if there's an error. I've worked with victims of crime for the past 23 years. Although I've seen improvements, victims still have to rely on the discretion of others, a prosecutor or a judge, to right their wrongs when there's an oversight.

I know there are some who are concerned and fearful of this bill. I believe appropriate revisions have been made and it can be implemented without causing any undue ramifications. If everyone does their job diligently and stays true to our shared goal of "justice for all," guaranteeing the rights of victims of crime under our State Constitution can only be a good thing. Passing it doesn't require courage; just a recognition that without it there will continue to be daily consequences to victims.

I respectfully ask that you support SB679/SB3034.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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LESLIE WILKINS

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Executive Director
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February 8, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 3034, Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

Thank you for this opportunity to testify in support of SB 3034, which would create a victims' bill of rights within our state constitution. 32 other states in the nation have passed comprehensive constitutional provisions to protect victims of crime. In those states, defendants' rights and victims' rights co-exist and do not diminish one another. Currently, victims in Hawaii have statutory rights but they are not enforceable. In states with constitutional provisions, victims rights are permanent and enforceable.

The rights are basic: the right to be treated with courtesy, fairness, and respect for their dignity, the right to privacy, the right to be informed of services available to them, the right to be informed of their offender's whereabouts, and the right to consult with the prosecutor before a plea bargain is offered. The Commission interfaces with victims on a daily basis—they have complex needs and often need advocacy on their behalf, as navigating a criminal justice system after victimization can be difficult, exhausting, and for some, trigger serious mental health issues.

Last year, we learned that 15-20 felony sexual assault cases had run past the statute of limitations because an individual prosecutor had left the cases in a desk file. Surely, victims can be treated with more dignity than this. Surely, these basic rights can be upheld on more than a "case by case" basis. If anything, a constitutional amendment will change the way we view victims and the criminal justice process, and will serve as a constant reminder that our system can do better for victims.

Awarding basic rights to victims does not diminish the rights of the accused, nor does it change any burden of proof in any criminal case. In light of the ongoing media exposure of multiple cracks in our criminal justice system, now is the right time to pass a constitutional amendment and the fair thing to do.

The Commission respectfully urges this Committee to pass SB 3034. Thank you for this opportunity.



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, February 09, 2016, 9:15 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 3034, Proposing an Amendment to Article I of the Constitution of the State of Hawaii to Establish Rights for Victims of Crimes

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 3034, which seeks to amend article I of the Hawaii Constitution to guarantee specific rights to victims of crimes.

The Hawaii Constitution is the supreme and paramount law of the state subject only to the restrictions of the U.S. Constitution. Unlike regular statutes, which the legislature itself may repeal or revise, altering the Hawaii Constitution requires a more complex process, including, for example, an enhanced vote requirement of two-thirds majority of both houses if adopted in a single session and formal notice to the governor. *See* Article XVII, §3. Constitutional amendments should be reserved for those rare instances where there are no other alternatives available such as statutory legislation. Because each of the rights enumerated in S.B. 3034 could be provided by statute, a constitutional amendment is unnecessary.

The ACLU of Hawaii respectfully requests that the Committee defer S.B. 3034.

Thank you for this opportunity to testify.

Sincerely,

Daniel Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.



February 7, 2016

To: Hawaii State Senate Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, February 9, 2016 (9:15 a.m.)
Place: Hawaii State Capitol, Rm. 016
Re: Testimony of American Association of University Women –
Hawaii in **support of S.B. 3034**, relating to a constitutional
amendment to establish rights for victims of crimes

Dear Senator Gilbert S.C. Keith-Agaran (Chair), and Senator Maile S.L. Shimabukuro (Vice Chair), and Members of the Committee,

I am grateful for this opportunity to testify in **strong support of S.B. 3034**, relating to a constitutional amendment to establish rights for victims of crimes.

My testimony is on behalf of the approximately 400 members of the American Association of University Women (AAUW) in Hawaii, who list gender-based violence as an important current concern. My testimony is informed by many years of work in the field of domestic violence, and research conducted with survivors of intimate partner violence. In addition, when I lived in New Zealand, I managed a 24-hour, 7-days/week domestic violence hotline, and I also trained hotline Advocates to respond skillfully and empathetically to survivors of violence. I provided extensive education to Advocates for Women, and also worked with police, courts, and other service agencies on behalf of survivors.

Based on these experiences, I argue that passage of S.B. 3034 is important, with potential to improve assistance offered to survivors of violence, and other victims of crime in Hawaii. Many of the components of this bill are already fixed in New Zealand law, where I lived for many years, and observed first-hand the importance of these clauses in providing a criminal justice system attentive to the needs and rights of victims. Similar bills to the Hawaii one have also been passed in other American states, and it is time for Hawaii to join the majority of states in moving this bill toward enactment.

It is shocking to me that victims of crimes in Hawaii may not be notified of court proceedings, major case developments, or final case disposition. I personally know people in Hawaii who have been denied this type of information, which may place victims at personal risk, and certainly disturbs them emotionally. The rights mentioned in this bill are all similarly reasonable rights that victims assume would be provided to them, but so often are not in Hawaii.

In conclusion, passage of S.B. 3034 is an important step in improving justice for crime victims.

Thank you for the opportunity to testify.

Sincerely
Susan J. Wurtzburg, Ph.D.
Policy Chair



CATHOLIC CHARITIES HAWAII

**TESTIMONY IN SUPPORT OF SB 679 and SB 3034: PROPOSING AN
AMENDMENT TO ARTICLE 1 OF THE CONSTITUTION OF THE STATE OF HAWAII
RELATING TO THE RIGHTS OF VICTIMS OF CRIME**

TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Members, Committee on Judiciary and Labor

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawai'i

HEARING: **Tuesday, 2/9/16, 9:15 AM; CR 016**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members, Committee on Judiciary and Labor:

Thank you for the opportunity to provide written **testimony in support of SB 679 and SB 3034**, which propose a constitutional amendment for victim's rights/Marsy's law for Hawai'i. Catholic Charities Hawai'i supports these bills since they would benefit not only victims of domestic violence but also all victims of crime.

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 60 years. CCH has programs serving individuals, elders, children, developmentally disabled, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i.

As part of program services, CCH provides individual and group counseling services for domestic violence victims. These victims often must try to navigate the complex judicial system at the same time as they try to deal with their trauma. Many may feel re-victimized, forgotten, or ignored, since they lack enforceable rights. Crime victims deserve to be recognized as being as important as the defendant. Providing statutory right for victims does not infringe on the rights of the defendant. Instead, it will ensure that victims are treated with dignity, respect, and courtesy. This proposed constitutional amendment would put crime victims on the same level as defendants.

In 32 other states, the rights of victims are protected. Hawaii is only one of 18 states that lack a constitutional provision that protect victims' rights. It is time to recognize and protect the rights of victims.

Thank you for your consideration of this important issue. Please consider supporting these bills and helping to strengthen laws that protect victims of domestic violence.

Please contact me at (808) 373-0356 or bettylou.larson@catholiccharitieshawaii.org if you have any questions.



Catholic
Charities
USA



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Phone (808) 373-0356 • bettylou.larson@catholiccharitieshawaii.org



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February 9, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

From: Howard S. Garval, President & Chief Executive Officer
Date: Tuesday, February 9, 2016 (9:15 a.m., State Capitol Conference Room 016)

RE: In Support of SB679 and SB3034

Child & Family Service (CFS) has a long history of providing services to survivors and perpetrators of domestic violence and their families. We operate four domestic abuse shelters, three transitional housing programs for survivors of domestic abuse, court-ordered counseling for perpetrators, and Domestic Violence Advocacy, a program that serves women who receive a waiver from First to Work due to domestic violence. We also provide domestic violence services to families in the child welfare system as well as serving sexual abuse victims and kupuna who are at risk of abuse. We serve large numbers of victims each year who suffer from significant trauma. Unfortunately, the justice system sometimes exacerbates this trauma rather than protecting victims.

I am writing in **support of SB679 and SB3034** that propose a constitutional amendment for victims' rights in what has become known as Marsy's Law for Hawaii. While victims have certain statutory rights under Hawaii law, defendants and perpetrators of crime have certain constitutional rights that victims currently do not have in Hawaii. Hawaii is one of only 18 states that do not have a constitutional provision that protects victims' rights. These bills do not deprive defendants of their rights. The current statutory rights for victims are not enforceable so a constitutional amendment is necessary to ensure that all crime victims in Hawaii have permanent and enforceable rights.

CFS asks for your support for these bills to move a step closer to protecting the rights of victims of crime in this state.

Mahalo for the opportunity to submit testimony.



"We're all about FAMILY"

Mission: Strengthening Families and Fostering the Healthy Development of Children

DATE: February 9, 2016, 9:15 a.m.

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
And Members of the Senate Committee on Judiciary and Labor

FROM: Lisa Dunn, Executive Vice President & Director of Programs
The Children's Alliance of Hawaii

RE: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution
of the State of Hawaii Relating to Rights of Crime Victims

POSITION: Strong Support

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on
Judiciary and Labor:

Thank you for providing this opportunity to testify in strong support of SB 679/SB 3034.

The Children's Alliance of Hawaii believes that each child is resilient, creative, courageous and strong and deserves every opportunity to thrive to their fullest potential. Children who have been traumatized by sexual abuse need special ongoing support to help them become healthy and successful adults. The Children's Alliance of Hawaii is dedicated to providing caring support for children who have been sexually abused, offering hope for the future.

It is heartbreaking to see innocent children who are violently harmed left defenseless against perpetrators. It is just as disturbing when the rights of child victims are not enforced as the case winds its way through the court system.

The proposed constitutional amendment for a victims' bill of rights would guarantee basic rights of crime victims. They will have permanent, constitutional, and enforceable rights.

There will be no fair treatment of victims until their rights are guaranteed by our state constitution, which is the final authority assuring the rights of the accused. Victims, especially children deserve no less.

Please pass SB 679/SB 3034 out of your Committee.



TO: Chair Gil Keith-Agaran
Vice Chair Maile Shimabukuro
Members of the Committee

FR: Nanci Kreidman, M.A

RE: S B 3 0 3 4 (SB 679)

Support

Aloha. And thank you for your consideration of this testimony. It is our responsibility to urge you to examine, improve and support the needs of survivors and their family members. This Bill, pertaining to a Victims Bill of Rights deserves your careful review.

The express statements included as Rights of Victims of Crime seem quite obvious, and would be basic features of a system that has been built to secure our safety and freedom. The fact that this Bill is before you underscores the reality that many victims, survivors and their family members have not been informed, included or empowered by the system after they have been victimized. We would like to see the system more responsive, timely and effective in holding offenders accountable for their crimes and certainly more compassionate for those who are forced to engage with it, because of victimization.

Avoiding re-victimization by the system is an important step in the right direction. And one that is long overdue. With all the wisdom we have gained and experiences we have had these last 30 years in Hawaii, may we respectfully urge your favorable action to advance our work to inform, support, empower and protect victims of crime.

Thank you.

**TESTIMONY OF STACY EVENSEN ON BEHALF OF MARSY'S LAW HAWAII IN SUPPORT OF
SB 679 and SB 3034**

Date: Tuesday, February 9, 2016

Time: 9:15 a.m.

To: Chair Gilbert Keith-Agaran and Members of the Senate Committee on Judiciary and Labor

My name is Stacy Evensen and I am the State Director of Marsy's Law Hawaii. We support SB 679 and SB 3034 both of which propose enumerating the rights of crime victims in our State Constitution. These rights include, among others, the right to be treated with courtesy, fairness and respect; the right to be informed of services available for crime victims; the right to be protected from the accused; the right to be notified, present and heard at court proceedings; and the right to a speedy trial. By elevating these rights to the constitutional level, victims will be assured that their rights will be honored and protected in a manner no less vigorous than the protections afforded criminal defendants. Hawaii is one of only 18 states without constitutional protections for crime victims. Passage of this measure will allow voters to make Hawaii the 33rd state to protect the rights of victims in their State Constitution.

With us today is Meg Garvin, a national expert on crime victims' rights. She will provide comments on the bills based on her experience working with victims and law enforcement throughout the country and will be available for questions. There are many others in the room today who want to tell you why passing a bill to elevate victims' rights to the constitutional level is so important. These victims have suffered unspeakable harm through no fault of their own. Some have had a good experience with the criminal justice system, most have not. They will tell you that, while the passage of these bills will not bring back their loved ones or erase the crime they suffered, it will give future victims enforceable rights as they participate in court proceedings involving themselves or a loved one. They will tell you about the re-victimization that resulted from their being excluded from court proceedings. They will urge you to pass a bill to give equal rights to crime victims so that no one in Hawaii will have to feel confused, scared or silenced when involved in the criminal justice system.

On behalf of these victims and others across the state, Marsy's Law Hawaii also urges you to support equal rights for crime victims. While we support both bills, we prefer the language of SB 3034 with one suggested amendment, and that is, the inclusion of the following language from SB 679:

"Nothing in this section shall be construed to create a cause of action against the State or counties, or any of their agencies, officials or employees."

Thank you for the opportunity to testify in support of equal rights for crime victims in Hawaii.



February 6th 2016

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senator Will Espero
Senator Sam Slom

Senator Mike Gabbard
Senator Les Ihara Jr.
Senator Laura H. Thielen

NOTICE OF HEARING

DATE: Tuesday, February 9th 2016
TIME: 9:15 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

RE: TESTIMONY IN STRONG SUPPORT OF **SB679 and SB3034**
Constitutional Amendment; Rights of Victims of Crime

Dear Committee on Judiciary and Labor:

The Pacific Alliance to Stop Slavery (PASS) strongly supports SB679 and SB3034 aka “Marsy’s Law.” As a victim service provider who has assisted numerous survivors of human trafficking and sexual crimes through the justice system, I can attest that there is great need for improvement, on every level, in the way law enforcement treats victims of all types of crime.

All too often, *preventable* mistakes are made throughout our justice system that put victims either at risk or re-victimized. It is the responsibility of our elected officials to heed the testimony in support of these measures, from survivors and families of survivors of crime, and work diligently to ensure that victims’ rights are established.

Without ensuring these rights, law enforcement’s efforts to effectively curtail crime will be largely impotent, rife with victims’ fatigue and/or drop-out from court cases, and at minimum a blatant insult to all persons affected by serious crime.

PASS respectfully urges this committee to support and pass SB279 and SB3034. It is long overdue.

Sincerely,

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



TO: Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor
FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)
DATE/LOCATION: February 9, 2016; 9:15 a.m., Conference Room 016

RE: TESTIMONY IN SUPPORT OF SB 3034 – PROPOSING AN AMMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII TO ESTABLISH RIGHTS FOR VICTIMS OF CRIMES.

My name is Ryan Kusumoto. I am the President & CEO of Parents And Children Together.

I strongly urge you to support SB 3034. We support this bill that is designed to provide recognition of and protection of the constitutional rights for victims of crimes and their family members. The proposed constitutional amendment will support the following basic victim's rights:

- Respectful treatment
- Safety from harm or threats of harm
- Information about rights and available resources
- Timely resolution or right to speedy trial
- Notice of significant events relating to the case
- Right to be present at all court proceedings
- Reasonable notice to provide input on plea agreements
- Notice and participation related to pleas, sentencing and court proceedings that may result in post-arrest release decision
- Notice and opportunity to be heard for any process related to post-conviction release of the perpetrator
- Notice and opportunity to heard in developments relating to status of an offender committed or involuntarily hospitalized
- Right to timely notification of changes in custodial status
- Prompt return of property
- Right to full and timely restitution from person(s) convicted

The bill would create a balance between those rights already afforded to the convicted and the accused, with the rights for crime victims. Victims are should be afforded the opportunity to be heard, receive timely notification, and be kept informed. This is a very traumatic and confusing time for victims and this bill will help enforce the necessary rights and protections so needed in this process. This is an opportunity to make meaningful change that all victims and survivors deserve.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii's not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 18,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 16 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, child and adolescent behavioral health programs, and community building programs. PACT provides the most comprehensive services in domestic violence ranging in services for survivors, children, and batterers.

Thank you for the opportunity to testify in **support of SB 3034**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.



THE SEX ABUSE TREATMENT CENTER

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

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Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

DATE: February 9, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of S.B. 3034
Proposing an Amendment to Article I of the Constitution of the State of
Hawaii to Establish Rights for Victims of Crimes

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the
Senate Committee on Judiciary and Labor.

The Sex Abuse Treatment Center (SATC) strongly supports S.B. 3034, an amendment
to the Hawai'i State Constitution guaranteeing that victims of crime and their surviving
immediate family members have specific rights with respect to being informed about,
and participating in, the criminal justice process.

All states and the federal government have passed laws to establish a set of victims'
rights, requiring that survivors of crime have access to certain information, protections
and a limited role in the criminal justice process. However, Hawaii's statute (Haw.
Rev. Stat. § 801D-4) has been little known and unevenly implemented.

This underscores the need for an amendment to the Hawaii State Constitution to
ensure that survivors of crime are aware of their rights, and state and local
governments are cognizant of what is needed to protect and heal people whose lives
have been touched by crime and violence as their cases progress through the criminal
justice system.

The SATC has encountered both the best and worst that Hawaii's system has to offer
survivors of crime. Some are able to access community resources that assist them to
experience a relatively smooth interaction with the criminal justice system, such as
legal systems advocacy available through sexual assault centers on each island.
There are also tireless and sympathetic advocates embedded in some government
agencies, such as the Victim Witness Programs of the County Prosecutors' Offices,
who work hard to keep survivors of crime involved in and informed about what is
happening with their cases.

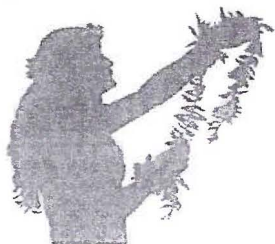
However, many survivors are not so fortunate. They may interact with agencies or portions of the system where victim advocates are not available or accessible, and consequently may find themselves shut out of the process or cut off from information they need. Moreover, they may not be treated with respect by all of the people they encounter in the system, or their concerns and needs may not be afforded appropriate priority when they conflict with those of others. This can lead to feelings of anger, resentment, and revictimization, or even place survivors at safety risk.

Survivors should be consistently informed about, and afforded the opportunity to participate in, the investigation, prosecution, and ongoing management of their cases. Survivors' voices in these matters are important, and engaging survivors fully in the process is empowering and healing.

S.B. 3034 would allow the People of the State of Hawai'i to join with their peers in 32 other States to enact a constitutional amendment that protects the basic rights of survivors of crime. The proposed amendment would not take away any of the protections currently afforded to accused criminals or curtail the discretion of prosecutors or judges. Rather, it is narrowly tailored to provide only reasonable, necessary rights to ensure that survivors receive sufficient information about, and are able to participate meaningfully in, the criminal justice process.

Moreover, strengthening state constitutional protections for survivors of crime acknowledges the existing good work of advocates in community organizations and government agencies, while making sure that survivors' experiences are consistent throughout the criminal justice system.

Therefore, we respectfully urge you to join SATC in strongly supporting S.B. 3034.



VISITOR ALOHA SOCIETY OF HAWAII

TO: Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair
And Members of the Senate Committee on Judiciary and Labor

FROM: Jessica Lani Rich, Visitor Aloha Society of Hawaii

SUBJECT: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution
of the State of Hawaii Relating to the Rights of Victims of Crime

Hearing February 9, 2016, 9:15 a.m.

POSITION: SUPPORT

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor. Thank you for the opportunity to provide testimony in support of SB 679/SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their surviving family members have enforceable rights.

My name is Jessica Lani Rich and I'm the President and CEO of the Visitor Aloha Society of Hawaii, a non-profit agency that assists visitors who are victims of a crime or other adversity. Our agency assists approximately 1,800 to 2,000 visitors every year. We request your support for an Amendment to the Hawaii Constitution that guarantees basic rights to crime victims. These basic rights include the right to be treated with courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice proceedings, the right to receive information about their rights and services available to crime victims, and the right to restitution.

Crime has a negative impact not only on the people of Hawaii but also on our visitor industry. Hawaii is one of just 18 states that does not have a constitutional provision protecting victims' rights. The proposed amendment does not diminish the rights of offenders – their rights remain intact. This bill offers a better balance between the rights of crime victims and the rights of offenders.

I urge your Committee to pass this measure. Thank you for considering my testimony in support of SB 679/SB 3034.

Legislators,

It is my belief that victims of crime, such as intoxication manslaughter, should have constitutional rights that guarantee they will be treated with dignity, and informed of the criminal justice process. Ethan Couch killed my brother, Brian Jennings, by driving under the influence of alcohol and other substances. My family has been completely devastated by his careless behaviors ever since, and is further insulted by having to hear the details of this case in the media (which may or may not be completely factual information). It is important for the victims to be involved for their own healing and grieving process. I also believe that excluding victims from the criminal justice process also allows the criminal to avoid seeing the faces of those he or she has so deeply affected, thereby increasing the odds of them repeating their behaviors once released. Please consider amending the constitution to help the victims to heal from their traumatic experience.

Very respectfully,
Amy Peets

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Friday, February 05, 2016 8:37:01 PM

SB3034

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Ana Sorote	Individual	Support	No

Comments:

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COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Tuesday, February 09, 2016
TIME: 9:15 a.m.
PLACE: Conference Room 016

I am in **STRONG SUPPORT** of **SB3034** that proposes a constitutional amendment to guarantee rights to victims of crimes and their surviving family members.

Aloha Chair Keith-Agaran and members,

We support this bill that would establish a long-overdue bill of rights for crime victims. It is a sad fact that convicted felons have more rights than victims of crime. Moreover there is an epidemic of violence against women in this state, in the country and in the world. This bill would afford the women who experience this outrage against common humanity, a measure of protection they do not now have.

Every day, women and men who are victims of violent crimes are drawn into the criminal justice system and forced to maneuver through the complex judicial system in the midst of their trauma.

Many crime victims feel re-victimized by the system because while they have some statutory rights, these rights are too often ignored and are not enforceable. Crime victims deserve to have permanent, constitutional, and enforceable rights.

We urgently request your support for an Amendment to the Hawai'i Constitution that guarantees basic rights to crime victims. The Constitutional Amendment for Victims' Rights guarantees the following basic rights to crime victims:

- **The right to be treated with courtesy, fairness and respect for their dignity and privacy throughout the criminal justice proceedings;**
- **The right to receive information about their rights and the services available to crime victims;**
- **The right to receive notification of proceedings and major developments in their criminal case;**
- **The right to receive timely notification of changes to the offender's custodial status;**
- **The right to be present at court proceedings;**
- **The right to provide input to the prosecutor before a plea agreement is finalized;**

- **The right to be heard at plea or sentencing proceedings or any process that may result in the offender's release;**
- **The right to restitution.**

The proposed amendment does not diminish the rights of offenders. In fact in none of the states where there is such a law, has there even been a violation of due process because of it.

These rights seem to us to reflect common sense and common decency. But without this constitutional amendment to codify these rights, victims will continue to be at the mercy of a capricious legal system. Since this bill was passed there have been too many horrific stories of women murdered or sent to the hospital as a result of an offender released from jail with no notification to the victim.

Court proceedings are too often about legal duels between prosecutors and defense attorneys with crime victims left out of the equation entirely. Please pass this victims' bill of rights. The women and men of Hawaii deserve this protection.

Mahalo for allowing me to testify

Ann S. Freed

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Monday, February 08, 2016 1:50:28 PM

SB3034

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Viggiano	Individual	Support	No

Comments:

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TO: Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair
And Members of the Senate Committee on Judiciary and Labor

FROM: Anonymous sexual abuse survivor

HEARING: February 9, 2016, 9:15 a.m.

Testimony in support of SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to the Rights of Victims of Crime

I am submitting this testimony anonymously because the criminal case is ongoing.

For many years I lived in the fear of actually doing something, and coming forward to the legal system. I imagined that my perpetrator would have been arrested immediately, and this would all be over, and I could finally move on with my life. In reality, he was arrested for less than a day. I am left to wonder what is happening with the case, whether there will be a trial or if he will ever pay for what he did. I came to the conclusion that the unknown made me feel safer than actually doing something because I am still in the same situation, nothing happened to him. The criminal justice system hasn't helped me in the way I thought they would. I ran into the arms of the law for help, understanding, and safety, but only to find out I felt safer in the room that the crime was committed. I expected the weight I carried around for years to be lifted as soon as I said something, but it felt heavier than before. My reasoning for supporting this bill is the belief that victims deserve to have basic rights, a speedy process, and feel like they are being taken care of.

As a victim of sexual abuse, I wasn't presented with the rights that I thought I had. I kept quiet for many years because I was scared of the law and what would happen, but what motivated me was to receive the rights that I thought I was entitled to, which I didn't even receive. I thought that having a voice and saying something would make a difference but this person is still in my life due to circumstances beyond my control and I was only offered a restraining order against him. I feel like for the crime he committed there was no justice and I am still waiting and I do not think that the law should be like this. I can't imagine what victims of more serious crimes, like those involving death, go through while waiting to see what will happen to their case. The process has taken much longer than I expected.

In Psychology, we learn that if a child does something wrong, immediate punishment needs to take place in order for them to learn that they did something that they were not supposed to do. The criminal justice system needs to work the same way; offenders need to be punished as soon as possible in order for them to even know that they committed a serious crime, and to understand the intensity of the crime. As time goes on, they think they got away with it. For example, I'm sure that my perpetrator thinks the one-day of arrest was his punishment and he is now free. If he feels that his punishment was over with, and it wasn't as bad as he thought it would be, he has the opportunity to do it to someone else.

What gave me the strength to say something was the fact that I could not move on, and better myself as a person until I did something. I was also motivated to use my voice in hopes of making a difference and helping others. I wanted to protect other potential girl's lives that could have been in jeopardy, but he is still in the same living circumstances and capable of hurting someone else. Victims need to be taken care

of. They should be able to turn to the law and receive justice. I reached out to the law for help and there was no consolation at all.

I have a lot of unanswered questions and I wish that there was somewhere I could turn to like an organization to help me understand my situation, my environment and rights. Victims experience a lot of psychological trauma that affects them mentally, physically, and emotionally. Victims need guidance during this difficult time. Victims are vulnerable and can be taken advantage of because of their vulnerability. I think it is important for victims to be informed of their rights and provided with resources so that they do not feel alone as they go through the criminal justice process.

Victims should be informed of their rights and should have their questions answered. Victims should be protected by the law and feel safe to use their voices. This is why I strongly support SB 679/SB 3034.

Testimony in Favor Senate Bill 679, Senate Bill 3034

Proposing an Amendment to Article I of the Constitution of the State of Hawai'i Relating
to the Rights of Victims of Crime

This is my experience with a student/s at UHM:

Said student comes into my class having obviously either been in a terrible accident of some sort, or having fallen down a flight of stairs. Her face and body are bruised and she has bandages in various places on her body and face. She is an "A" student. I asked her to come to my office after class.

It turns out that her husband beat her....again. Previous restraining orders have never worked. I beg her to get a divorce and, get her to go see a psychologist at the Student Health Center several times. In the past, as it turns out, she has been afraid to try to divorce him since he has told her he would kill her. She is finally ready to leave the marriage and files for divorce.

The husband is sent to jail, eventually, and a few months later gets out.

The wife (and student) is not notified that the husband has been released and he, in fact, finds her, beats her and attempts to kill her. He is sent back to jail.

Bottom line:

1. The wife (now former student) was never notified that the husband was being released from jail/prison, and was nearly killed.
2. The wife never had a chance to tell of her experiences regarding the history of abuse to a prosecutor.

Criminals have many constitutional rights.

What about the rights of victims?

**Victims MUST have Constitutional Rights in
Hawai'i**

as victims do in other states

Thank you for listening to a voter. Carol A Dickson, PhD

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Monday, February 08, 2016 8:55:41 AM

SB3034

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments: Standing in STRONG SUPPORT - mahalo!

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Cc:
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Friday, February 05, 2016 1:34:36 PM

SB3034

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Individual	Support	Yes

Comments: I FULLY SUPPORT this bill for the following reasons: 1.) As an ex-con, I need to atone for my past misdeeds. The violence I had subjected my victims to, and the heinous intrusion into their person, property & lives has inevitably subjected my victims to a wide range of psychological & physical damage. While incarcerated for over 27 years, I had the opportunity to reflect upon my actions & realized that the damage & harm that I have caused, was not only limited to my victims, but to their families, friends and even society as a whole. Since my release, I have sought to give back to society & to make a difference wherever I can. Having first hand knowledge of how our criminal justice system works, I know that Hawai'i is tough on crime & criminals face a myriad of potential sentences, none of which we fully are aware of when we commit crimes. I also know how victims are treated, and how they are treated by the system that is designed to hold accountable those who have wronged them, whether it's intentional or not, is quite brutal & insensitive to victims & their families. Victims have virtually no say in the entire process, except at the very end when they are allowed to give a "victims impact statement" at sentencing & at the minimum setting for parole eligibility. It's just how the Prosecutors in particular treat victims & their families that is deplorable. Recently, through my paralegal work, I saw first hand how a victim & his family was treated by the Prosecutors office. A Writ of Mandamus was filed by the victim to try to force the Judge to instruct the Prosecutor to push for what the victim wanted in the case. The Hawaii Supreme Court denied the Writ & in so doing stated to the effect that the victim had no standing in the case & was merely a witness. This language from the Highest Court in this State greatly damaged the victims morale & left the family feeling like they were just pawns in the judicial process. Victims are not pawns, they are innocent people who were victimized by bad people with cruel intentions. Then victimized again by a cold & calloused system who has relegated victims to being treated as just "witnesses" whose only duty is to testify & give statements. Whether or not this problem can be fixed by an Amendment to the Hawaii Constitution or by simply amended existing laws or creating a new victims rights law, is for this August body to decide. For now, my Na'au prompts me to stand with victims & what they desire for relief. Mahalo.

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Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Sunday, February 07, 2016 8:29:27 PM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Oppose	No

Comments: sorry, unclear and too broad.

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Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Saturday, February 06, 2016 4:46:59 AM

SB3034

Submitted on: 2/6/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

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

Comments: MY NAME IS EVELYN, MY SONS WERE RECENT VICTIMS AT THE HANDS OF BOUNCER OF THE M NIGHT CLUB ON 1/31/16. IF THEY KNEW THAT BY WALKING IN THAT PLACE THAT THEY WOULD PROBABLY NOT BE WALKING OUT ALIVE, DO YOU THINK THEY WOULD HAVE WALKED IN? I THINK NOT. IT WAS TOTALLY UNPROVOKED, MANY PATRONS WITNESSED IT, A FEMALE PATRON WAS BRAVE ENOUGH TO TAKE FOOTAGE ON HER CELLPHONE, LATER WALKED UP TO THEM AND SAID, I SAW THE WHOLE THING. WITH THE HELP OF CHELSEA DAVID OF HAWAIIENOW WAS I ABLE TO FIND THIS FOOTAGE AS THE WOMAN POSTED IT ON YOUTUBE: https://you.tube/lmN4Ho_-dAQ WITH THAT BEING SAID I AM EXTREMELY SUPPORTIVE OF THIS BILL THAT GIVE VICTIMS A VOICE. THAT NIGHT MY SON WAS LEFT FOR DEAD WITH HIS BROTHER HOLDING HIS HEAD AND CRYING AS HE WAS BEING BEATEN AND DIDN'T FIGHT BACK BECAUSE IF HIS BROTHER WAS TO DIE HE WANTED TO BE WITH HIM. CHECK OUT ALL OF THE VIDEOS SHE POSTED ON THIS LINK AND YOU WILL SEE. HOW DID I KNOW ABOUT THIS BILL, BECAUSE I WAS SEARCHING FOR VICTIM SUPPORT ONLINE AND FOUND MARSY'S LAW. M NIGHT CLUB IS NOTORIOUS, MY SON'S AREN'T THE FIRST, THEY WON'T BE THE LAST, UNTIL M NIGHT CLUB AND PLACES LIKE THIS IS SHUT DOWN, AND SPOTLIGHT IS ON IT AND I THINK THIS AVENUE IS THE BEST WAY TO DO SO. WE NEED TO BE PROACTIVE TO PREVENT THESE KIND OF BEHAVIOR. THEIR LAWYER MICHAEL GREEN AND DOCTOR KALANI BRADY BOTH SAID THAT THEY ARE LUCKY TO BE WALKING OUT ALIVE, THEY'VE SEEN IT WHERE PEOPLE WEREN'T SO LUCKY. WITH THAT BEING SAID, I SUPPORT THIS BILL AND MARSY'S LAW. MAHALO EVELYN

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Cc:
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Friday, February 05, 2016 12:38:45 PM

SB3034

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Hairgrove	Individual	Support	No

Comments:

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Cc: [REDACTED]
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Sunday, February 07, 2016 7:55:25 PM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Pan	Individual	Support	No

Comments:

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To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
And members of the Senate Committee on Judiciary and Labor

From: Karen Rose

Date: February 2, 2016

Re: **Senate Bill 679/Senate Bill 3034:** Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

As an advocate for victims of crime, I've heard hundreds of stories over the years from survivors of domestic violence, sexual assault, and other violent crimes, about the daily struggles they endure to feel safe. Unlike offenders who have a multitude of rights protected by the constitution, the victims of their most heinous crimes do not.

For several years I worked as a victim advocate at the Hawaii County Prosecuting Attorney's Office. I saw time and time again how important it is for victims of crime to stay informed of legal proceedings, to have the option to make a statement at a sentencing, or to provide valuable input to judges and parole boards on how their lives have been affected by these crimes.

While it is encouraged that our system keep victims informed of these proceedings, it's not a right that is guaranteed under our constitution, and therefore many victims fall through the cracks, or worse, get completely ignored by our legal system. There's a reason it's called the 'criminal justice system', and not the 'victim justice system.' It's not right, it's not fair, it's inhumane, and it needs to change.

Victims and their families deserve equal rights in Hawaii, and this is why I am an advocate for Marsy's Law for All. As a state and a nation that values human rights, we shouldn't tolerate this kind of callous discrepancy in the treatment of our citizens.

Hawaii is one of 18 states without a constitutional amendment to provide enforceable rights for victims of crimes. We are the Aloha State. It is our kuleana to create a legal environment where victims are confident that their rights are protected and respected - a system that doesn't re-traumatize victims by withholding knowledge that could affect their safety and well-being.

A measure supporting equal rights for victims is one of the bills presented this legislative session. Please support Marsy's Law For All and pass this important bill today.

Karen Rose
Executive Director
Visitor Aloha Society of Hawaii Island

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Monday, February 08, 2016 10:30:48 AM

SB3034

Submitted on: 2/8/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kari Benes	Individual	Support	No

Comments: Thank you Senators for Hearing this measure. I recently accompanied a friend through several hearings related to a domestic violence case. As a victim, my friend was put through an already horrific event, and the court proceedings gave my friend no hope that anyone in the court system really cared. I hope that through this change, the courts begin to realize what its like to be a victim of both a crime and a challenging process. Please keep my email address confidential. Mahalo.

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Cc:
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Friday, February 05, 2016 3:50:12 PM

SB3034

Submitted on: 2/5/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kathryn Weldon	Individual	Support	No

Comments: I support this bill to help victims of crimes.

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Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Sunday, February 07, 2016 7:28:45 PM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kristi Adachi MD	Individual	Support	No

Comments: Victims should have the same rights as the defendants, treated with fairness and dignity, rights to fair and and speedy trials, right to their own private attorneys, right to receive information about their rights and services available to crime victims.. , etc. Hawaii is one of eighteen states in the nation that does not recognize rights for victims. I personally feel this is inconceivable that a progressive state such as Hawaii has no such laws.

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To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB3034 on Feb 9, 2016 09:15AM
Date: Sunday, February 07, 2016 9:36:04 AM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Ellen Smith	Individual	Support	No

Comments: Criminals have rights under the Hawaii Constitution, crime victims and their survivors currently have no constitutional protections. During what may be the most traumatic time in a victim's life, it is unconscionable that Hawaii does not have protections in place for them. Please consider ensuring that any victim of a crime is given rights.

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February 9, 2016, 9:15 a.m.

TESTIMONY ON SB 679/SB 3034 PROPOSING AN AMENDMENT TO ARTICLE I OF
THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF
VICTIMS OF CRIME

To: Senator Gilbert S.C. Keith-Agaran, Chair Committee on Judiciary and Labor
From: Marilyn B. Lee
Re: SB 679/SB 3034

Dear Chair Keith-Agaran and Members of the Committee,

I am Marilyn Lee, a Commissioner of the Hawaii State Commission on The Status of Women, Member of Neighborhood Board 25, Board Member of Friends of Hawaii State Center for Missing Children, and President Elect of Soroptimists of Central Oahu.

I speak today as a private citizen in support of SB 679/SB 3034 Proposing an amendment to the Constitution of the State of Hawaii relating to the Victims of Crime.

I believe our Hawaii Constitution should include a Bill of Rights for crime victims, along the lines of the victim's rights amendment, which has previously been introduced in Congress.

This amendment is rooted in the belief that victims of crime deserve a role in the criminal justice process that matches constitutional protections for criminal defendants.

There is a growing National consensus that victims belong inside the criminal justice process, illustrated by the fact that Hawaii is one of only 18 states that do not recognize victim's rights in their Constitution.

Crime victims deserve fairness, respect and dignity, and until this is enshrined in the Constitution, enforcement of Victim's Rights will be lax.

Please pass SB 679/SB 3034 today and work with the House to bring about equal treatment of crime victims in Hawaii.

Thank you for the opportunity to testify.

Aloha,
Marilyn B. Lee

DATE: February 9, 2016

TO: Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice-Chair
And Members of the Senate Committee on Judiciary and Labor

FROM: Martha Ross, LSW
Mailing: P.O. Box 390, Waimanalo, HI 96795 E: mrosshawaii@gmail.com

RE: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to Rights of Crime Victims

POSITION: Strong Support

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Judiciary and Labor:

Thank you for providing this opportunity to testify in strong support of SB 679/SB 3034. As a licensed social worker with over 20 years of experience working with victims of crime, I have seen first-hand that a victims' bill of rights in the Hawaii State Constitution is necessary for survivors and their families who have suffered from devastating loss, grief and pain.

As a victim witness advocate with the Honolulu Prosecutor's Office from 1982 - 1991, I was able to establish and coordinate their Victim Witness Assistance Volunteer Program and served as an advocate and counselor for victims and witnesses of violent crimes with the Victim/Witness Kokua Services. I have also worked at the Sex Abuse Treatment Center, and co-founded the first counseling-education/support empowerment group for battered women on Oahu. Currently, I serve as a Commissioner for the Crime Victim Compensation Commission.

I have seen and am familiar with many cases in which victims and their families were re-traumatized and felt powerless because they were not given their basic rights as victims. These cases that range from the family not being informed of the convicted murderer being granted an early release from the Hawaii State Hospital only to commit another heinous violent act to survivors diligently wanting to attend sentencing and parole hearings but are either not informed at all or after the hearings have taken place.

Too often, victims and their families learn after-the-fact that a plea bargain was entered or that the defendant was sentenced. Some discover what happened in the case when the offender shows up at their doorstep. In the courthouse, they find themselves sitting across the hallway from the offender. Later they are confronted with the reality that restitution ordered will not come close to covering their out-of-pocket costs resulting from the crime.

In 1988, the legislature enacted a Basic Bill of Rights for Victims and Witnesses (HRS § 801D-4). It covered victims of crimes against the person and surviving immediate family members of a homicide victim. The legislative intent set out in § 801D-1 recognizes the importance of victims to the health of

the criminal justice system and declares its intent that victims be treated with respect and agencies and individuals in the criminal justice system honor and protect the rights of victims and witness:

In recognition of the civic and moral duty of victims and witnesses to cooperate fully with law enforcement and prosecutorial agencies and in further recognition of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declared its intent, in this chapter to ensure that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

Responsibility for enforcement of the Basic Bill of Rights was assigned to the individual counties in HRS § 801D-5. However, state and county officers and employees could not be held liable in a civil action if it failed to carry out its responsibility, and the statute imposed no other penalty for non-compliance.

Twenty-seven years later, some progress has been made, most notably the Statewide Automated Victim Information and Notification or SAVIN electronic system that alerts victims to changes in an offender's custody status. However, the Bill of Rights has not been institutionalized, and compliance is inconsistent. My understanding is that victims are falling through the cracks of the criminal justice system. Often, they receive some rights but not all of their rights. Some victims still enter the criminal justice system not knowing how to get information or even whether there are services available.

The experiences of victims/surviving families and victim service providers make it clear that, despite strong efforts by criminal justice agencies, the system is failing to consistently enforce and protect the rights of victims. Whether or not victims receive their rights should not depend on the variation of victims' rights offered by each police officer, prosecutor, victim witness advocate, or judge. Our justice system depends on the participation of victims, for the system to change and acknowledge this truth, victims must have constitutional rights.

SB 679/SB 3034 recognizes the critical role victims perform in the criminal justice system and ensures that their rights are institutionalized and internalized. The justice system must be able to assure victims and families of murdered victims that their rights are safely embedded in the state's constitution and will be honored and protected.

I urge your committee to pass SB 679/SB 3034.

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Sunday, February 07, 2016 7:06:21 PM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Jo Morrow	Individual	Support	No

Comments:

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.

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From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB3034 on Feb 9, 2016 09:15AM*
Date: Sunday, February 07, 2016 7:17:33 PM

SB3034

Submitted on: 2/7/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mary McEldowney	Individual	Support	No

Comments:

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.

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Support for Constitutional Amendment for Victim Rights: SB 679/ SB 3034

Hearing Date: February 9, 2016 9:15 a.m.

I would like to strongly support SB 679/ SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their surviving family members have enforceable rights.

I urge your Committee to pass this measure.

Thank you.

Molly Strode
2093 Laukahi Street
Honolulu, HI 96821

373-
4015

State Constitutional Amendment for Victim Rights Marsy's Law for Hawaii

The proposed amendment will provide victims with the right to:

- Be treated with courtesy, fairness, and respect for their dignity and privacy throughout the criminal justice process;
- Be informed of rights and services available;
- Be told when the defendant is charged and advised of the charges;
- Be informed when court hearings will be held and given a chance to speak at the hearing if appropriate;
- The opportunity to provide input to the prosecutor about plea deals and sentencing;
- Be given a chance to tell the judge how the crime impacted them and their opinion about the appropriate sentence;
- A speedy trial;
- Have property taken as evidence returned expeditiously;
- Be provided restitution for losses arising from the crime;
- Notification of the offender's release from custody; and
- The ability to enforce their rights if necessary.

To: Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair
And Members of the Senate Committee on Judiciary and Labor

From: Nicholas Iwamoto

Subject: SB 679/SB 3034 Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

Hearing Date: February 9, 2016, 9:15 a.m.

On Super Bowl Sunday, 2009, I hiked Koko Head to train for my upcoming enlistment in the Hawaii Army National Guard. I did not finish the hike. When I got to the summit, a man randomly attacked me with a knife. When I begged for mercy, he stabbed me in the head 6 times. When I fought back, he cut my throat and dumped me off a cliff. I broke my neck. I fractured my skull. My lungs were destroyed. In the hospital, I coughed up pieces of lung and small rocks for two weeks.

I lived. My survival has been accompanied by agony and anguish, but the support from the good people of Hawaii has been overwhelming. It has gotten me through my darkest days.

The silence from the State has been heartbreaking. For the last 7 years, I have been left out of the loop. I was barred from testifying. Those who were supposed to fight for me would not even let me fight for myself. My attacker was released after spending just 6 years in the state hospital. He had the privilege of taking online classes during that time. He will probably graduate before me.

The deference shown to my assailant and other violent criminals is absolutely despicable. The days of personal accountability have vanished. It seems that the constitutional rights of violent felons are more important than public safety. Doing what is right has given way to the quest for political expediency. This country has the greatest legal system in the world; how can this happen in our state? What happened to "liberty and justice for all"? These criminals have liberty, but justice is just a myth for many of us.

Marsy's Law is the best chance to give victims justice and compassion in a seemingly hopeless situation. It will give us a voice in the courts. It will keep us in the loop. All we ask for is the same rights afforded to violent offenders who have done such deplorable things to us and our families.

I survived for a reason. I will be silent no more. I will fight with every drop of blood left in my body to give the people of Hawaii what has been taken from us: a voice. Please, pass Marsy's Law. Thank you for your service.

Mahalo,
Nicholas Iwamoto

February 5, 2016

To: Senator Gilbert Keith-Agaran, Chairman of the Senate Committee on Judiciary and Labor; Senator Maile S. L. Shimabukuro, Vice Chair; and members of the committee.

From: Peter E. Robb

Re: Senate Bill 3034 - Proposing an Amendment to Article 1 of the Constitution of the State of Hawaii Relating to Rights of Crime Victims.

I am Peter Robb, an individual who is speaking in strong support of HB 1144, HD1 calling for a Constitutional Amendment for Victims Rights. I became a victim as a result of a head-on car crash on May 25, 1975. My wife, Mairi, our unborn daughter Fiona, who was still born at 8 pounds 3 ounces, and a 19 year old soldier on a motorcycle all died from injuries as a result of that crash.

The first officer on the scene, who was a friend of the driver that caused the crash, incorrectly assumed by the position of the cars on the highway that I had caused the crash. Unfortunately, because it was the era of law enforcement where the thinking was that it was okay to do favors for friends. Due to an apparent mark on his head and his unresponsiveness, more concern was placed on the defendants care at the scene. There was no testing at the scene or hospital for his possible impairment. As a result he was never charged with DUI. My most vivid memory of the other driver continues to be his being passed out on a gurney in the emergency room. All of the emergency room personnel commented on the defendants high level of intoxication while they were tending to the injuries sustained by myself and our two sons.

Anecdotally I would like to add that since MADD and other victim assistance programs were non existent, I was basically told to suck it up and get on with my life and take care of my 3 and 4 year old sons. The world was not going to stop because of our loss. Unfortunately that advice caused me to delay the grieving process for twelve years.

Approximately ten months later, I was invited to participate in the Criminal Justice System where I became one of a number of witnesses who gave testimony on the events of the evening. The Prosecuting Attorney, interviewed me just once for approximately two hours the Friday before the trial. During the trial I was sequestered in a small room on the first day until I was called to give my testimony. I was not allowed to hear any of the legal proceeding. In summary, I stated that I had observed the defendant pass another car and from my perspective continued straight through a curve in the Highway and ran into the motorcyclist as he was attempting to get out of harms way by going completely off the highway. In attempting to get back on the highway and onto his side of the road he hit us in the right front of the car making it impossible to open the passenger door. Since our closing speed was estimated to be

85 miles per hour (his at 50 mph, us at 35 mph) and we were about 75 yards behind the motorcycle, we had less than 2 seconds between crashes.

Unbelievably, the last question I was asked when on the witness stand was if I had recently remarried. In spite of my look of incredulity to the judge for relevance, I was directed to answer. Because the defendant was never charged with DUI for this crash, evidence of a previous conviction for DUI was inadmissible at trial. In spite of all the evidence, It took the jury only two hours to decide that the defendant was innocent of three charges of first degree negligent homicide.

What I continue to have issue with is that since all of the money is on the Civil side of the ledger, more time was spent investigating and gathering information by my attorneys. It was found that the driver had been at a church picnic with his family on the day of the crash where he was observed drinking beer. After the picnic, he took his family home, left them there and went alone to another party where he was observed to drink Scotch straight from a bottle and take a few hits off a joint. He left that party and just prior to the crash, stopped off at a bar and had a few more drinks before heading home. The insurance company for the bar made a settlement and the driver contributed \$300 and a note of condolence to the cause.

I find it ironic that the defendant gets to listen to all of the testimony at trial and to review all depositions prior to trial to prepare his defense, but as a victim who was also a witness, I was not allowed to hear testimony on the basis that I might have changed my testimony as a result of what I heard. With the defendant typically going last, are we naively to assume that all defendants will tell the truth.

Although much improvement has been made to the Criminal System since that time, I do not think that it is time to rest on our laurels. Please take up this cause to pass HB 1144, HD1 and truly give victims equal rights in this system of justice.

Hearing Date: Tuesday, February 9, 2016 at 8:30 a.m.

Senate Committee on Judiciary and Labor, **SB 679/SB 3034** Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crimes

Testimonial from Sandra Lynn Hailiopua Storm-Conway *On behalf of the Families of Michelle Anne Ku'uipo Benevedes and Racquel Lynn Ilimelakuuleimomilani Aila Akau*

Today is the ninth anniversary of the brutal and horrific deaths of my baby sister, "Rocky" and my first cousin, Michelle. We have sought justice for Rocky, Michelle and their children, all minors with the exception of two at the time of their deaths to no avail. Once again, this year, as the family spokesperson, I was asked to provide testimony to both the State of Hawaii House committees and the State of Hawaii Senate committee regarding the Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime and the passing of Marsy's Law for Hawaii. For the first time in the nine years that we as a family have been fighting for justice for Rocky and Michelle, I found that I had nothing to say. I also found that in the place of nothing to say, all that was left was raw emotion, i.e. intense grief, frustration and anger.

Since our story has been on television and in the newspapers repeatedly since Rocky and Michelle were killed, most of you know everything there is to know. Last year, I outlined in vivid detail the grievous failure of the judicial system and the many formal grievances that were filed against many departments within that system utilizing the statutes enacted by the State of Hawaii to prove overwhelming negligence in our case. You, the elected voice of the people of the State of Hawaii did nothing. It was the final slap in the face of every surviving family member in the Benevedes family, the Aila family and the Akau family. At this point in time, Tyler Duarte, the offender, has quite literally "gotten away with murder" and we, the surviving family members are left with betrayal, disgust, frustration, and anger.

In speaking to one of the representatives of Marsy's Law National I said "Have you ever had one of those happy days when you feel a "rush" of pure joy?" **That was the day.** I was standing in my kitchen in Kaneohe and all of a sudden felt so very happy and blessed. I had a huge, wonderful family, a loving husband, good friends, a job I loved and the best boss in the world, a beautiful home, and now our first grandchild born on January 7, 2007 in Ogden, UT. I was beyond happy at that moment. And then the phone rang. It was my sister-in-law, Elsa, crying hysterically and repeating over and over "Rocky and Michelle are dead!" My world stopped right then and there and for the last nine years has never been the same. Before that moment, when I thought of my baby sister, whom I held in my arms when she was born, I saw her as light-hearted, always full of laughter; now all I see is her screaming for her life, crushed against that brick wall, with the steering column and her dead cousin on her lap. And, the tears start to flow over and over again; Rocky's laughter and sense of humor, Michelle's generous and kind nature – gone forever. Then Uncle Brian Benevedes, Auntie Yvonne Benevedes, Ronald Aila, Sr. – all dead; two fathers and a mother who loved their only daughters more than their own lives. Tyler Duarte killed them all.

At this time, we would like to thank those that did attempt to achieve justice for Rocky and Michelle. The Honorable Judge Frances Wong whom imposed a sentence with very strict probation provisions to include restitution to be paid in full for Rocky and Michelle's funerals (which did not happen). The Honorable Senator Brian Taniguchi for introducing SB 29 related to mandatory sentencing for offenders convicted of first degree negligent homicide. Probation Administrator, Ms. Janice Yamada, who took our formal grievance seriously and initiated an investigation into the policies/procedures of the probation department. Pamela Ferguson-Brey, Executive Director, Crime Victim Compensation Commission who has never given up the fight for the victims of crime in the State of Hawaii. And, our newest champion, Stacy Evensen, State Director of Marsy's Law for Hawaii.

It is clear that we will never achieve our goal of justice for our precious Rocky and Michelle. We support Marsy's Law for Hawaii and the Amendment to the Constitution so that other victims of violent crime do not have to suffer what we have had to endure. **This is your opportunity to finally do what is right and just for the victims of violent crime in the State of Hawaii.**



Racquel Lynn Ilimelakuuleimomilani Aila Akau
Michelle Anne Ku'uipo Benevedes

Date of Death 01/20/2007 in Waimanalo, Hawaii

In memoriam, we love you; miss you and thank you for all the joy you have given us during your lives cut short.

WE WILL NEVER FORGET



Sandra Lynn Hailiopua Storm-Conway, sister, cousin and Family Spokesperson



Louis Pohl Gallery
1142 Bethel St.
Honolulu, Hawaii 96813
(808) 521-1812
www.louispohlgallery.com

Date: 1-28-2016

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
And Member of the Senate Committee on Judiciary and Labor

From: Sandra Pohl, Louis Pohl Gallery

RE: Support SB 679/SB 3034 State Constitutional Amendment for Victim Rights

Thank you for the opportunity to provide testimony in support of SB 679/SB 3034 to amend the Hawaii State Constitution to guarantee that crime victims and their immediate surviving family members have enforceable rights.

I believe it is necessary to have a constitutional amendment securing permanent enforceable rights for victims, with equal protections under the Hawaii State Constitution as the right of their offenders. Victims have a right to be treated with fairness and with respect for their dignity and privacy. They have a right to receive reasonable protection from threats' and harm.

The proposed amendment does not diminish the rights of offenders their rights remain intact. This offers a better balance between the rights of crime victims and the rights of offenders.

I urge your committee to pass this measure. Thank you for considering my testimony in support of SB 679/SB 3034.

Sincerely

SANDRA POHL

February 9, 2016, 9:15 a.m.

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
Senate Committee on Judiciary and Labor

FROM: Theresa Paulette

RE: Testimony in Strong Support of SB 679/SB 3034
Proposing an Amendment to Article I of the Constitution of the
State of Hawaii Relating to the Rights of Victims of Crime

My name is Theresa Paulette, a MADD Board member and a victim, and I am writing in strong support of SB 679/SB 3034. I believe there is a real need for Crime Victims Rights to be included in the Constitution of the State of Hawaii. Victims of violent crimes – like negligent homicide or manslaughter – should be provided with basic assurances pertaining to the person who was allegedly responsible for the crime.

My life was changed forever twenty-three years ago, when my only son, Brian, was killed in a crash involving a 6x DUI arrestee. My daughter and I were devastated and overwhelmed with shock, grief, and anger.

In my grief, I was immediately thrown into the unfamiliar world of the “criminal justice system” and left to navigate it on my own. I trusted there would be justice, however I found it lacking in any regard for me, the victim, and my son, who lost his life.

From the start, if I sought information or tried to give information, I felt as though I was imposing and annoying. I initiated calls to the Police because I didn’t receive any information after the crash. I felt resistance every step of the way as I inquired or met to discuss the status of the investigation and whether charges would be filed. It was agonizing waiting for the traffic accident investigation report, which took nearly a year, and the final decision was not to press charges. No accountability. No justice. Even though the driver wasn’t criminally charged, I have lived and felt the gamut of emotions that all victims of violent crime feel.

As a volunteer Victim Advocate I support victims of impaired driving crashes and I hear about the range of emotions and injustices that still prevail.

Victims' voices count. The victims of crime are entitled to equal rights guaranteed by the State Constitution. We should be acknowledged and informed every step of the way. I urge the committee to support SB 679/SB 3034.

Thank you for the opportunity to submit testimony.