

DAVID Y. IGE  
GOVERNOR



**LATE TESTIMONY**

STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 679  
PROPOSING AN AMENDMENT TO ARTICLE I OF THE  
CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE  
RIGHTS OF VICTIMS OF CRIME

By  
Nolan P. Espinda, Director

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

Tuesday, February 9, 2016; 9:15 a.m.  
State Capitol, Conference Room 016

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

The Department of Public Safety (PSD) **opposes** Senate Bill (SB) 679, 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.

The Department's opposition stems from the negative impacts the proposed provisions would have on PSD programs and not from any bias against victim rights. In fact, PSD asserts that the protections cited in the proposed measure are already a part of PSD's policies and procedures.

At the same time, some of the proposed provisions would severely hamper the PSD's 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. Primarily, our ability to fulfill the promise of the Justice Reinvestment Initiative (JRI), enacted in 2012, would be greatly compromised.

We are concerned, in particular, that four of the provisions of Section Two, which would directly impact us, are very ambiguous. We fear that such provisions could entangle the Department in litigation which would constrain our ability to carry out our operations in a timely and orderly manner. These are the following:

Number 8 would give victims the right “to be notified in a timely manner, be heard and participate in any process or deliberation which may result in a post-arrest release decision, a negotiated plea or sentencing of the offender”. This provision would stymie PSD’s ability to process recommendations to the courts for the release of pre-trial detainees. The Council of State Governments found in 2011 that Hawaii takes an inordinate length of time to release those detainees who are considered to be low-risk, which contributes to population growth in our Community Correctional Centers. As a result, Act 139, SLH 2012 required that PSD conduct an objective assessment “within the first three working days of a person’s commitment to the community correctional center to allow the courts to more quickly exercise discretion in determining whether to release a pre-trial defendant”. Identifying the victim, contacting and scheduling him/her, then having the person participate in the process is extremely difficult, if not, practically impossible to accomplish within the three-day period.

For decades, the Department has 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 staff to identify the alleged victims, and to allow them to be heard and participate in the process. Under this provision, PSD may have to terminate the 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 Oahu Community Correctional Center (OCCC), further exacerbating population concerns.

The Department is also concerned because of the uncertainty about the type of input we would be required to obtain from victims. We also do not know what the “process” entails or what “deliberations” means. 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 which 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 the 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 offenders on work furlough or parole. Under the 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. The census at PSD facilities would be even higher than they are today.

Number 11 would require the PSD to notify victims of inmate custody changes, facility transfers, escapes, furlough, work release, placement on supervised release, release on parole, bail bond, or appeal bond and any type of release by the PSD and full discharge at the end of the prison term. The addition of another official notification process, beyond what is already legally required would slow to a halt all of these processes and runs directly counter to the professionalized and efficiency enactments that were previously authorized and specified by the JRI. Having this provision inserted into the Hawaii Constitution would have the unintended consequence of essentially creating jail and prison overcrowding and making the jail and prison programming and security operations unreasonably restricted by subjective instead of objective criteria.

Number 13 would give victims the right "to receive prompt restitution from the person or persons convicted". The JRI Act required PSD 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.

The Department notes that the House Judiciary Committee is today hearing the proposed HD 1 of HB 1144, and is planning to offer supportive comments on that measure.

Thank you for the opportunity to provide this testimony.

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

ALII PLACE  
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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2016**  
**State of Hawai'i**

February 9, 2016

**RE: SB 769; PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE  
CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF  
VICTIMS OF CRIME**

**RE; S.B. 3034; PROPOSING AN AMENDMENT TO ARTICLE 1 OF THE  
CONSTITUTION OF THE STATE OF HAWAII TO ESTABLISH RIGHTS FOR  
VICTIMS OF CRIME.**

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong support of S.B. 679 and S.B. 3034, with amendments.

S.B. 679 and S.B.3034 propose 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. Although previous attempts have been made to enact constitutional rights for crime victims, beginning in 1997, it has been a more challenging process. According to the National Center for victims of Crime, thirty-three (33) 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 and advise 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.

We have prepared and attached a proposed S.D. 1 that more specifically outlines the provisions that we believe to be essential.

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. 679, and S.B. 3034 with the amendments proposed in our attached draft. Thank you for your time and consideration.

S.B. 679, proposed  
S.D. 1.

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A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE  
STATE OF HAWAII RELATING TO RIGHTS OF CRIME VICTIMS.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide recognized and protected constitutional rights for crime victims and their surviving immediate family members, to be known as "Marsy's Law".

The legislature finds that although those accused of crimes have various rights specified in article I, section 14, of the Constitution of the State of Hawaii, crime victims and their survivors currently have no constitutional protections. The legislature further finds that crime victims, whose injuries and losses provide the justification and responsibility of the State for criminal prosecution, should be treated with dignity, respect and courtesy and their rights should be protected in a manner no less vigorous than those of the accused.

The legislature additionally finds that because Hawaii is one of eighteen states that do not have a victims' rights



constitutional amendment, it must join the other states and amend its constitution to establish rights for crime victims. The legislature notes that the proposed amendment does not diminish the rights of offenders. Rather, it offers a better balance between the rights of crime victims and the rights of offenders.

The legislature therefore concludes that the Constitution of the State of Hawaii should be amended to guarantee that crime victims and their immediate surviving family members have specific rights related to information pertaining to and participation in the criminal justice process.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

**"RIGHTS OF CRIME VICTIMS"**

**Section** . A crime victim or a deceased victim's surviving immediate family members shall have the following rights:

1. To be informed by the police and the prosecuting attorney of the final disposition of the case. The victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney;

2. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant;

3. To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness to or a victim of crime, including information on how to apply for the assistance and services and the rights provided under this section;

4. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant;

5. To be notified in a timely manner of all public court proceedings related to the offense, major developments in the case and the final disposition of the case;

6. Upon request, to be informed by the hawaii paroling authority of all parole procedures, to be present at parole minimum hearings and provide a written statement or make oral comments. To provide information to the paroling authority to be considered before the parole of the offender, and to be notified, of the parole or other release of the



offender;

7. In all circuit court cases, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant's disposition, before imposing sentence. The court, service center, or agency personnel who prepare the pre-sentence diagnosis and report shall inform the victim of the sentencing date and of the victim's opportunity to be heard. In the case of a homicide or where the victim is otherwise unable to appear at the sentencing hearing or the victim is a minor, the victim's family shall be afforded the fair opportunity to be heard.

8. To provide input for 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;

9. To be notified in a timely manner regarding any developments relating to the release, discharge, commitment or unauthorized absence of the offender who was committed or involuntarily hospitalized under chapter 704 or 706, Hawaii Revised Statutes;

10. To be informed by the department of public safety of changes planned by the department in the custodial status of the offender that allows or results in the release of the offender

into the community, including escape, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term and;

11. Upon request, to have property expeditiously returned by law enforcement agencies when the property is no longer needed as evidence; and

12. Upon request, to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury; and

13. To be treated with fairness and with respect for the victims dignity and privacy; and

14. To proceedings free from unreasonable delay; and

15. to be present at any public court proceedings involving an offense against the victim unless the court determines that the victim's presence would materially affect the victim's testimony.

#### ENFORCEMENT

In any court proceeding involving an offense against a crime victim the court shall ensure that the crime victim or their surviving immediate family members are afforded these rights.



The crime victim, or the crime victim's lawful representative,  
and any attorney for the State may assert and enforce a right  
established in this section.

(a) "Victim" means a person against whom a crime has been committed by either an adult or a juvenile or a person who is a surviving grandparent, parent, sibling, spouse or reciprocal beneficiary, child, or legal guardian of a deceased victim.

(b) "Surviving immediate family members" means surviving grandparents, parents, siblings, spouse, reciprocal beneficiary, children, and any legal guardian of the homicide victim.

(c) A victims' exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(d) "Major developments" means arrest or release of the suspect by the police, case deferral by the police, referral to the prosecutor by the police, rejection of the case by the prosecutor, preliminary hearing date, grand jury date, trial and sentencing dates, and the disposition of the case.

(d) 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 of any of its political subdivisions, or any officer or employee of the court.

(e) The legislature shall, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings. No provision of this section shall be construed as limiting any rights for victims previously conferred by statute.

(f) No right conferred by this section shall be construed to supersede the constitutional rights of the offender.

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall crime victims and their immediate surviving family members be provided rights in the Constitution of the State of Hawaii, including fair and respectful treatment throughout the criminal justice process; notification of public court proceedings; possible plea agreements and case dispositions; proceedings free from unreasonable delay; the opportunity to be present at public court hearings; the opportunity to speak at the sentencing hearing; financial reimbursement from the offender; and notification of the offender's release from custody?"

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

**Report Title:**

Constitutional Amendment; Rights of Crime Victims

**Description:**

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.



Date: February 8, 2016

**LATE TESTIMONY**

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

From: Lorraine Davis, Chief Operating Officer  
Sex Assault Support Services  
A Program of the YWCA of Hawaii Island

Re: Testimony in Strong Support of Senate Bill 679 Proposing an  
Amendment to Article I of the Constitution of the State of Hawaii  
Relating to the Rights of Victims of Crime

Good afternoon Chair Rhoads, Vice Chair San Buenaventura, and  
members of the House Committee on Judiciary

The YWCA of Hawai'i Island strongly supports S.B. 679, which proposes an  
amendment to the Hawai'i State Constitution guaranteeing that victims of  
crimes and their surviving immediate family members have specific rights  
with respect to being informed about, and participating in, the criminal  
justice system.

The YWCA of Hawai'i Island is dedicated to eliminating racism,  
empowering women and promoting peace, justice, freedom and dignity for  
all. To that end, one of the programs of the YWCA of Hawai'i Island is the  
Sexual Assault Support Services, a program dedicated to providing  
services to primary and secondary victims of sexual violence. In our work,  
we deal with the trauma and subsequent effects of sexual assault for all  
ages and stages of victims. In the course of our service to victims, we  
witness the frustrations and perceived ideas that victims have no rights and  
watch the devastation those frustrations have on the healing process for the  
victim and their family. In a presentation to a community service agency,  
our County of Hawai'i Prosecuting Attorney admitted that offenders have  
more rights than victims, discussing the disparities between the two groups.

We believe that survivors should be informed about, and be afforded the  
opportunity to participate in, the investigation, prosecution, and ongoing  
management of their cases. Survivor's voices in these matters are an  
important reminder to other key participants in Hawai'i's criminal justice

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**Our Mission: YWCA Hawai'i Island is dedicated to eliminating racism, empowering women,  
And promoting peace, justice, freedom, and dignity for all.**

*A partner agency of the Hawai'i Island United Way*

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*Preschool and School Age*

*Sexual Assault Support*

*Services*

*Teen Court*

system of the magnitude of the issues the victim's face with violent crimes. Our victims face physical and emotional harm that is often long-lasting or permanent. These victims have names and faces and are in our community. We need to allow them their voice. Assisting survivors to participate in the legal process can help to empower and heal them, and sends a strong message that the State of Hawai'i cares about and will protect their victims as much as, if not more, than the offender.

The YWCA of Hawai'i Island applauds the efforts of the enumerated rights found in Chapter 801D of the Hawaii Revised Statutes. However, we firmly believe that a Constitutional mandate will enhance the protections and rights of our victims of crime in the State of Hawai'i.

The YWCA of Hawai'i Island respectfully requests that you pass S.B. 679 and grant the People the authority to appropriately prioritize the needs of survivors of crime in our State Constitution, our most powerful legal document.

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**Our Mission: YWCA Hawai'i Island is dedicated to eliminating racism, empowering women,  
And promoting peace, justice, freedom, and dignity for all.**

*A partner agency of the Hawai'i Island United Way*

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB679 on Feb 9, 2016 09:15AM  
**Date:** Monday, February 08, 2016 4:00:56 PM

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**LATE TESTIMONY**

**SB679**

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 |
|----------------|--------------|--------------------|--------------------|
| anita di mauro | Individual   | Support            | No                 |

Comments: I have been with MADD Hawaii since we began in 1984. I have met with, talked to and sat in court with victims/families. They need and deserve the same constitutional rights and services that others in the judicial system have. Please give them that right. Wouldn't you want it for yourself if you became a victim?

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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TO: Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

FROM: Anonymous Domestic Violence Survivor

LATE TESTIMONY

HEARING: Tuesday, February 8, 2016

### Testimony in Support of SB 679, Victims Rights Constitutional Amendment

Thank you for the opportunity to provide testimony in **strong support** of SB 679. All the reasons I am requesting to remain anonymous are also all the reasons I'm in **strong support** of this bill. As a domestic violence victim my safety and the safety of my children are constantly in jeopardy because the current system does not protect victims like me. I have experienced numerous incidents where my rights have been violated. To be honest, in my experience the only thing the system has done consistently is - it's made me feel like I have NO rights.

For 2 ½ years I tried desperately to escape the hands of my abuser. I've made several reports of abuse and numerous TRO violations. I've dealt with the police department, judiciary system, victim witness, etc. It's been a long haul because I felt like I was in this battle alone. Every department, every step of the way, I was constantly reminded that this man, who repeatedly held a gun to my head, knives to my throat, kicked, punched, bled and beat the life out of me - has rights! This man who not only physically abused me, but, also caused harm to my children - has rights! What about mine? At NO time did anyone in the system tell me I had rights too.

Passing this bill would **ensure** victims have rights and are treated with the dignity and respect they deserve. NO victim should be called "Dumb" "Stupid" or told "Girls like you end up dead in a ditch!" by responding police officers the way I was. It's embarrassing and humiliating to be treated this way by police officers - those who serve and protect our community and are domestic violence victim's first line to safety. This bill would ensure victim's right. And, that those rights are upheld.

My abuser was sentenced to 2 jail terms in this 2 ½ years. I found out about his release when I walked to my vehicle after work and found him hiding in the bed of my truck waiting for me. The abuse I faced because I was not notified is indescribable. Someone should have told me. By not notifying me - the system put my children and I in harm's way.

I was subpoenaed to testify against my abuser in court. I had to sit in the hallway of the court house waiting for our trial to begin. My abuser sat in the same hallway a few feet away from me taunting and harassing me. I was subpoenaed and I had a restraining order in effect. But, I

had to explain and beg out of fear to a security guard to help me. Because, I didn't feel safe with my abuser a few feet away saying he'd "Kill me" visually upset that he was facing charges for abuse. The prosecutor's office knew I had a restraining order. Arrangements should have been made ahead of time. Instead, I had to face my abuser in the hall before testifying. I should not have been placed in that predicament. I should have been protected and ensured safety prior to testifying. These are just some of the ways the system failed to protect my rights.

Again, not once did anyone tell me I had rights too. I gave up and lost all hope in the system. My way out of my abusive relationship was a one way ticket to the mainland because, there was NO support for victims like me. The system makes victims shy away from calling for help. But it doesn't have to be this way. Passing this bill will ensure victim's rights. Passing this bill will ensure victims are treated with the respect and dignity they deserve. Passing this bill will ensure victims are notified of their offender's custodial status. Passing this bill could save someone's life. Please – I beg you all, to pass this bill.

Thank you for the opportunity to provide my **strong support** for this bill while remaining anonymous. By doing so, you're ensuring my safety.

Anonymous

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDL Testimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB679 on Feb 9, 2016 09:15AM\*  
**Date:** Monday, February 08, 2016 4:29:14 PM

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**LATE TESTIMONY**

**SB679**

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 |
|--------------|--------------|--------------------|--------------------|
| Teri Heede   | Individual   | Oppose             | 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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## LATE TESTIMONY

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I support SB679 PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME mostly because in the 42 years I've lived here and followed the news of victims of crime, I am overwhelmed and sickened by what appears to the many rights and protections of criminals. Victims of crime are simply not afforded the same protections as criminals, something that seems to be accepted in legal proceedings, but appalling to victims, their families, and even to 'outsiders' just reading or learning about local crimes.

Mahalo

Cinde (Lucinda) Fisher (808) 381-5545, cell

I stand in strong support of Marsy's Law (SB 679/HB 1144) because I am the mother of a murdered son. I started the Hawaii Chapter of POMC (Parents of Murdered Children) after our 24-year-old son, Michael, was shot to death in our Hawaii Kai home. It is still unsolved after more than 32 years.

We were so badly abused and further traumatized by the only system in place at that time to assist victims - the Victims' Compensation Commission. When I went into testify at the hearing, I was told by the woman who was Chair of the Commission, "You have your nerve coming here expecting the State of Hawaii to give you anything when your son was a known drug user!". This was not the only nasty comment she made. Her impression that my son was a known drug user I later found out came from a statement made to the police by a neighbor boy. The boy, caught up in the excitement and wanting to be part of the murder investigation, told the homicide detective my son had smoked pot. My son like most teenagers during that era had smoked pot, and was not a known drug user. This boy's comment was of course noted in the homicide detective's report.

The night my son was murdered, I left on a trip to the mainland to attend my brother's funeral in Seattle. Once I landed in Los Angeles, I was called by the homicide detective who told my son had been murdered. I left my home that night saying goodbye and I love you to my son hearing him telling me to try to have a good time as I closed the front door on my way to the airport. My having left the Island the night my son was murdered appeared to the police that I was fleeing the crime of murdering my son. I was considered a suspect and was taken into custody for questioning the minute I landed in Honolulu having taken the next flight back. The fact that they considered me a suspect was also noted in the homicide detective's report. It was only years later that the police determined I was in the air travelling half way to the mainland when the shooting occurred.

At the hearing that day, another member of the Victims' Compensation Commission, an elderly Asian, slept through the entire hearing. This, plus the Chairwoman's reprehensible attitude toward me and my son whom she had never met, further traumatized me and I left me feeling abused even to this day.

## LATE TESTIMONY

Date: February 9, 2016

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

RE: Testimony in Strong Support of S.B. 679  
Proposing an Amendment to Article I of the Constitution of the State of Hawaii  
Relating to the Rights of Victims of Crime

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

Being a survivor of IPV (intimate partner violence), I was thrust into a world I was not ready for. My first court experience was unexpected – I didn't know who was my prosecutor, what to do, where to stand, what I could or couldn't say. I was overwhelmed with anxiety. I didn't know about the victim/state witness orientation until the second or third time that I went to court. If I attended that on the first time, it would have helped me understand a little of what to expect in the legal process and the court room.

While it was extremely difficult, I attended each court hearing. During the first couple of months I appeared in court, I didn't feel included in the court process. Sometimes my support system would encourage me to ask that I be on call for the hearings, but I didn't want to. I heard stories of cases that were dropped or dismissed because the victim didn't attend. I thought that if I didn't show up at each court hearing, it would lead to assumptions about my commitment to the legal process or seriousness of the crime or how much it impacted my life. To keep the strength and courage to attend each time, I had to be reminded that it wasn't me against my ex, the defendant – it was the State against him.

A message that victims receive is to help the prosecutor help them. In addition to group therapy, individual therapy, working with various agencies, trying to work, and take care of my family, my main concern was to help myself FIRST. I'm not an expert in the legal process and I don't know what to say or do to better help.

People told me in the beginning that it would be a long process, but I didn't know what that meant until I went through it. It's been difficult, emotional, and challenging. There are times I wanted to quit and give up. There were times I was so angry. There were times I was sad and powerless.

Based on my experience, I believe crime victims deserve better rights. I strongly ask you to support SB 679 (Marsy's Law) so other victims and their family will not have to endure the same traumatic experience.

Sincerely,

Anonymous Survivor



## LATE TESTIMONY

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: Adam Gaines

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.

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.

As the President of Maui Search and Rescue and the hanai brother of Charli Scott; I have experienced personally and professionally the dire need to enact common sense constitutional rights for crime victims in our state. Although we have statutory rights for victims these rights are not guaranteed and their use is provided at the discretion of the prosecutor of the given case. This can and does result in victims being underrepresented and further victimized by the legal process. My sister and her unborn sons murder has forever altered my life. I lost much more than just someone I dearly loved; I lost my home, my wife, my business, my animals, and my vehicles. Everything I worked for in the ten years leading up to Charli and Joshua's murder was stripped away from me by the actions of her murderer. Although I am fully aware that if passed these new constitutional rights will not apply to my sisters case; I feel it is paramount for me to fight for change to benefit future victims of all crimes in Hawaii. Please do not continue to stand by as people like myself, my family, and the families I now dedicate my life to serve through my volunteer organization; are treated with less dignity than the people who victimized them.

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

Thank You  
Adam Gaines  
President Maui Search and Rescue

## LATE TESTIMONY

DATE: February 9, 2016

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

FROM: Jennifer Snowden, Victim and Survivor

RE: Testimony in support of S.B. 679  
Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to the Rights of Victims of Crime

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

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

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

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

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



LATE TESTIMONY

Date: February 5, 2016

To: The Hon. Gilbert Keith-Agaran, Chair, and the Hon. Maile Shimabukuro, Vice Chair – Senate Judiciary & Labor

Re: SB 679 & SB 3034 on 2/9/16 at , Conference Room 016, Amendment to Art. 1 of Constitution

From: Sharon L. Young (formerly Sharon Y. Martinez), Co-Founder of the Missing Child Center Hawaii

I support SB 697 & SB 3034 which will help to ensure the rights of victims by giving them a constitutional right to be informed of notifications about proceedings and major developments in their criminal cases.

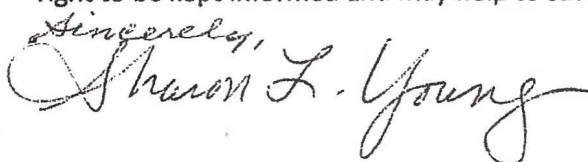
On 8/1/91 my three children were abducted by my ex-husband from my Manoa home, and taken into Mexico, where their father filed petitions within the Mexican court system to make it impossible for them to leave Mexico without his permission. The State of Hawaii issued four felony warrants against my ex-husband for his actions.

Years later, in 2009, I discovered that my ex-husband was back in the United States. I contacted Charlene Takeno of the Missing Child Center Hawaii, to have the court system follow up on the apprehension of my ex-husband. We both discovered that the State of Hawaii had removed the felony warrants for his arrest years earlier; neither Charlene nor I had ever been informed.

On December 18<sup>th</sup>, 2009 my son, Ariel Martinez (who successfully escaped from his abusive father in Mexico and escaped back to Hawaii on May 8<sup>th</sup>, 1994), Charlene Takeno and I went to the Prosecuting Attorney's office to find out when and why the warrants had been dismissed. A representative of the Prosecuting Attorney's office met with us and stated that he had no idea how the warrants had been expunged, when they had been expunged or who had initiated the dismissal of the warrants. I asked why I was never notified of their dismissal. We were told it was highly unusual for me not to be notified but that it would be impossible for the state to re-instate the warrants. My ex-husband had tried to murder me in 1985 and once the warrants were dismissed my life was in danger again. At the meeting at the AG's office my son angrily stated that his father could get off from any responsibility to the people he had harmed, and would never be held liable. The representative said that unfortunately was the case. Later I learned from the new Prosecuting Attorney that in January 2004 the deputy Prosecuting Attorney proposed that the warrants be dismissed and on 3/14/05 the State dismissed the warrants. No one knows why I was never informed.

This is why the state needs to change an un-enforceable statute into an enforceable law. We have a statute that states that victims must be informed, but sometimes this protocol is not followed. If victims had constitutional rights the state would make an effort to notify victims and follow the protocol. How many violent acts would be stopped if victims were properly informed?

In the 1990's John Walsh of America's Most Wanted told me that criminals had more rights than victims and I didn't want to believe him. His observation was right then and is still correct. When will Hawaii do something to change this? If someone in your family was victimized wouldn't you want them to have the same rights as the criminals perpetrating the crime? I believe passing SB 679 will ensure a victim's right to be kept informed and may help to save lives.

Sincerely,  
 Sharon L. Young



**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 33<sup>rd</sup> 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.

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

**LATE TESTIMONY**

Hearing Date/ Time: Tuesday February 9, 2016/ 9:15am

Place: Hawaii State Capitol, Conference Room 016

Re: **SB679/SB 3034: PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO THE RIGHTS OF VICTIMS OF CRIME**

**Position: Support**

Dear Senators Keith-Agaran, Shimabakuro, and Committee Members,

I sustained a life changing assault by my husband three years ago which put me into the shameful category of a "victim of domestic violence." After years of putting up with verbal, emotional, and ultimately physical abuse that put me in a hospital, I finally filed a police report.

The report had momentum due to the severity of my complaints and injuries. Unfortunately, the prosecutor's office did not have the same sentiment. I called multiple times over the course of a year and a half to find out the status of my case. The last time I called, the person on the other end threatened me saying "if you call here one more time I'll just hang up on you and I'll tell the others to do the same." I decided to go to the top, (it was at that time when Keith Kaneshiro was getting a lot of bad press about the rape victims so I figured, was his chance to do something right). It took two letters to Mr. Kaneshiro, but I finally got a prosecutor assigned to my case.

Things moved along quickly for which I was very thankful, he was indicted, but on a much lesser charge than I expected. What kind of bargaining occurred that I was not aware of? How is this possible? Why is the victim NOT ALLOWED to be part of the preliminary hearings? Why were my medical records or doctors not questioned before a lesser charge was given? It is now my understanding that it is HIGHLY UNLIKELY that the charge will INCREASE despite evidence to prove otherwise.

He was allowed to post bail for a ridiculously low amount.

In the interim, while awaiting trial, he has threatened to kill me. I filed a Terroristic Threat suit. I also filed another TRO which has been granted, I am uncertain how truly worthwhile these are when the perpetrator is a sociopath. His attorney has waived my husband's rights to speedy trials for both cases. Both have been continued three times. I am not allowed to be present at court hearings to defend myself against his perjures statements because my presence "may upset the



defendant." Nor will I be allowed to be present during his part of the trial when we finally get there. Remember this is the man who put me in the hospital for several days and then threatened to kill me. Where is the justice here?

This brings me to what the Attorney General 's office has to say in DEFENSE OF THE DEFENDANT

{ The court may need to make accommodations for the victim. It could affect the scheduling of court proceedings. If a victim cannot be present at a court hearing, but wants to be present, the court may have to reschedule the hearing. If a victim does not appear for a court proceeding, the court may have to determine if the victim received timely notification of the proceeding, and if so, whether or not the victim waived the victim's constitutional right to be present. If it cannot be established that the victim received timely notification of the proceeding, then the proceeding may have to be rescheduled. Right (8), starting on page 3, line 19, confers on victims the right "to be given reasonable notice of and be offered the opportunity to participate and be heard in . . . any court proceeding in which a right of the victim is at issue" This right could also adversely impact the criminal justice process. Due to the great breadth of the proposed rights of victims, it would appear that their rights would be at issue in all court proceedings. Therefore, in accordance with this right, victims must be offered an opportunity to participate and be heard in all court proceedings. But in many court proceedings, victim participation is not necessary or appropriate. Court proceedings will likely be delayed or adversely impacted to address this right. }

I'm Sorry but it is the DEFENDANT who is on trial, not the victim.

I have lost my job due to the severity of injuries sustained by the assault from my husband. I was found to be ineligible for compensation through the Victims Compensation Program due to "late filing" despite the fact I explained to the very sympathetic yet powerless clerk that I was never given these papers until two years after the assault because the initial paperwork sat on someone's desk for eighteen months.

I am certain there are hundreds, possibly thousands of victims who have also been discouraged by or felt "victimized" by the bureaucratic legal system in Hawaii. There is NO SOUND REASON why we should not join the other 32 states in the nation that have adopted an Amendment to the Constitution to provide rights to victims of crime that is more balanced to the rights of offenders.

I appreciate the opportunity to express my thoughts, although anonymous because I continue to live in fear. Until justice is served and he is behind bars, I will never feel safe.

I am I STRONG SUPPORT of SB679/SB 3034.

Sincerely,

Anonymous



## LATE TESTIMONY

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

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.

I am 54 y/o now and living a scrappy degenerated life all due to the Event that happened when I was 36, January 28, 1998. Thanks to your Law Officers and the Lack of Rights I had during an investigation and charges made by the Dept of Police; the officers on dirty duty that I went through in an entire 15 hour ordeal that left me stripped of mental, physical and physiological capacities to the point of suicidal thoughts. NOT BECAUSE OF THE PERPETRATOR, but because the the brutal and forceful interrogation and obnoxiousness of the way that each and every single cop on duty drilled and drilled and drilled me from Station to classic police abuse of power to the ONE AND ONLY CLINIC where their behavior threatened and forcibly demanded that evidence be collected against my will and the the DR. of whom we had discussed was better to go to Maui for, in complete disagreement these officers not only bullied me and bullied the acting physician, to RAPE MY BODY OVER again for THEIR MUCH NEEDED EVIDENCE WHETHER it was done properly or not. The physician had no prior expertise, "BUT HAD TO" by coercion of very loud and very broadcasting officers who pretty much announced it to the entire neighborhood what they wanted from both him and myself. Lo and Behold, I asked for it not to be in the newspapers,...well, in a small town,...EVERYONE knew who was this age,..with five kids!!! The whole town, thanks for the social ===ANX-ZIETY AND PANIC ATTACKS. DAMAGING MY ENTIRE LIVELIHOOD IN RIDICULE.... IN A TOWN THAT EVERYONE KNOW OF ME, and not know the facts. I had every Jealous women seething with JOY at my misfortune!! staring and snickering, Enjoying belittlements went on and on for years,...harrassed, and battling the world on my fingertips, has frazzled and had me pulling out my hair, and crushed my very threads that were left.

Tearfully forced that morning at 9am two officers came to pull me off of work to take me down to the station to get any information they could by getting tipped off by someone other than myself. Unbeknown to me,...I was already in a extremely exhausted and fragile state due to being a single mother of five, and working 60 hrs incl overtime,...and managing with 5 different timed babysitters for 5 different ages to manage preschoolers, kindergarteners, and middle schooler and the timing of extraneous hours to keep up in a survival mode.

With no concern whatsoever, the five hours of battering by two to three cops interrogating me, and two belligerent and obnoxious that forcibly drove me to the Local one and only clinic for another 5 hours, and finally, without feeding or allowing me food, time to manage my children, pick them up or catch my breath... call someone, or allow me to have an attorney present... another 5 hours to rake through and intrude my house and in taking my stuff that they needed (and of course never returned) till 12 midnight.

I cannot impress how devastated, torn, completely obliterated my spirit, soul, body, mental state, and crushed I was to be treated in such a terrible terrible manner. I in the following months lost all functionality of reason... my job skills, my homemaking skills, my ability to think clearly, having lost clarity on life, who I was or what purposes that I had in life left me,...within 3 mos I was asked to leave work as my performance was lacking terribly, I eventually could no longer organize my household, and lost all sense it seems drifting farther and farther away into oblivion,...with no help, aid, or consult of what was going on. I barely remembered there were two women who came from a Victim Witness Program, ineffectively, apparently, since they were on Maui, quite far from being anywhere close enough to help aid a very smashed and busy mother with ages 3, 5,6,7, 10 yr old children in tow. I got my \$2k two years later,...something they made me fill out as compensation for selling my soul to the cops. Less than two years later,...I lost my children to CPS. My island lacked confidentiality as well as social agencies to help me. No Sexual Assault Treatment Center, no mental health counselor that had a sensitivity to females, who are not just alcoholic/addicts; as the MSW available, was a 1st born Japanese, Stoic, stern, and invalidating to a women who he disapproving looked at as incapacitated. There was no respite caregivers altho I begged of some friends and some other social agencies that could not help me.

Funny, Every one in the LPD wanted something from me,...and I HAD NO RIGHTS as far as they were concerned. The treatment, the whole process now 18 years later has stolen my dignity,... or minds reverence to completely mess me up the remaining years ... that still til today... and am always treading on thin ice... ALL BECAUSE OF WHAT THEY, THE STUPID COPS, WANTED DONE. BECAUSE IT WAS THE LAW TO PROSECUTE. STATE vs ME. because that is all I have left. It really never came to pass having pressed charges against a Man who defiled me wasn't anything compared to what the cops did to ruin my livelihood, my mental state, my sacred home, body and soul... has since left me,...and I have yet to get anywhere close to getting it back.

2nd story: My daughter, at 15 years old, committed suicide, because the STATE (CPS) who placed her in a home of 7 MALES at the age of 12 because she had a "different" dad than the daughter that came home to me later in the year 2002. She told me of how the officers called her names and said "All kinds of shet to her saying vicious things about her, and her bf who was 21" Arrested for the 3rd time for driving a vehicle, she was obviously unguided in her fathers family home and so the LPD then proceeded to charge her bf with 6 counts of sexual assault, all because Under threats, and verbal abuse, psychological trauma they were not able to stand up against the whole force of police brutal verbal accusations to say: Yes we love each other. A double suicide occurred no more than 500 ft behind the Police Station, and the bodies were not found for 3 days.

Ridiculously hilarious how the protection of the cops are to their own needs to be met. Thanks for making me Crazy. Depressed. Mentally challenged through Major Depressive Orders the last two decades of my life... and for the rest of my life as well. Thanks now, I am medically managed,... mentally unstable...and what, what can be done to help me after losing a daughter, losing all my children...who have now grown up beyond me?? What? what will ever compensate me for all the losses, and shame, and ridicule, and hardship of gravely emotional PTSD. May I be raped rather than protected by a system that crushed me, the victim, into millions of pieces.

"Humpty Dumpty Sat on a Wall, Humpty Dumpty had a great Fall. All the Kings Horses and all the Kings Men,

COULDN'T PUT HUMPTY TOGETHER AGAIN."



## LATE TESTIMONY

From: Mary Spears & Phil Slott  
PO Box 847, Kamuela, HI 96743  
[mary@maryspears.com](mailto:mary@maryspears.com)  
(808) 987-0357

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

RE: Senate Bill 679 – Proposing an Amendment to Article I of the Constitution of the State of Hawaii relating to the Rights of Victims of Crime

Date: February 3, 2016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Judiciary Committee:

My name is Mary Spears and I am writing in strong support of SB 679 advocating for equal rights under the law for victims as well as criminals.

Victim is an ugly word.

Twenty-two years ago on October 1, 1993 at 8:30 am, my husband became the victim of a drunk driver.

That moment on Highway 250 on the island of Hawaii forever changed our lives.

As Phil says "the new me stinks. I said goodbye to the guy who wrote Never let 'em see you sweat for Gillette and hello to the guy who had to sweat everything. I said goodbye to the guy who was chairman of BBDO/London and hello to the guy who got lost in airports. I said goodbye to the guy who competed in triathlons and hello to the guy who could barely walk."

Our experience in Hawaii's criminal justice system, illustrates how the rights of victims and families are denied.

While we were never treated with contempt, we were treated as an afterthought.

We weren't provided with timely information to attend hearings. Due to his extensive physical injuries and traumatic brain injury, Phil needed several days to recover from a trip across the island. When proceedings were announced at the last minute, he was incapable of handling the trip and, at that time, I was unable to leave him alone. When we were notified early enough, we would spend two days at a hotel to prepare Phil for the court appearance only to have the proceeding cancelled at the last minute.

The inefficiencies of the system were evident.

In a case where none of the facts were disputed, the process took almost two years from the day of the crash to sentencing.

Immediately after the crash, the drunk driver who ran Phil over was profoundly disturbed by what he had done. As almost two years passed before he was prosecuted, he returned to drinking and, in his mind, became the victim of the system. By the time he was sentenced to four (4) weekends in the



county jail, he opted to leave the country and return to Germany, the country of his birth. Despite requests to the prosecuting attorneys office to have his passports confiscated, he left to avoid both criminal and civil penalties. The process lasted so long that the driver forgot the horrible act he perpetrated.

We were disappointed by the sentence.

It was impossible to understand the minimization of the drunk driver's crime. If he had stolen the million dollars Phil's accident cost, he would have spent many years in jail. If he had used a baseball bat instead of a Ford F-250 truck to beat Phil's body within an inch of life, he would have spent many years in jail. If he had crushed Phil's skull with a rock instead of the front end of his vehicle, he would have spent many years in jail.

Instead we were told that the driver was not a high risk to society.

I beg to differ.

Victims and their families need to know that they are accorded a place in the justice system; a place that provides equally for the rights of the accused and the rights of the victim.

We are grateful that the Legislature is considering passage of Marsy's Law. This amendment would be a great step in ensuring that victims of all crimes are provided the protections and comforts necessary to endure court already exhausting and emotional court proceedings to find justice.

Sharing our story with you is one way to personalize the victims' experience.

As we've learned, there is no end, there is just learning to live and cope with grace and humor.

Thank you for your consideration.

## LATE TESTIMONY

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.



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: Jenny D. Delos Santos, a survivor of domestic violence

Re: S.B. 679/S.B. 3034 Proposing an Amendment to Article I of the  
Constitution of the State of Hawaii Relating to the Rights of Victims of  
Crime

Date: Feb. 9, 2016, 9:15 a.m.

I support S.B. 679/S.B. 3034, which will help to ensure the rights of victims by giving them a constitutional right to be informed of rights and services available as well as be given a chance to tell the judge how the crime has impacted them and their opinion about the appropriate sentence.

My experience of domestic abuse happened in the 1980's when it was not talked about in public or the media. It was sort of pushed under the rug, and there were no real services let alone rights for domestic abuse victims and their children.

While I was married to my ex-husband, he owned a couple of guns and kept it in our apartment. For two months in 1987, he kept me up until 2 or 3 a.m. in the morning intimidating, threatening and terrorizing me that he would kill me, the children and the neighbors if I didn't admit that I was having an affair with someone, which I wasn't. As I stood my ground and tried to convince my husband that there was no affair, the threats became more and more violent as the days progressed.

One day while my ex-husband threatened me, my body fell to the floor lifelessly, and I was extremely very cold and unable to get up. My children (4 and 5 years old) screamed and cried and asked their dad what happened, who wasn't sure himself what happened. Later, I found out it was a nervous breakdown.

When I got better, my ex-husband said he would stop all the threats, intimidation and terroristic threatening. He also gave me flowers, candy and was extremely really nice. Then a month later....the violence started again.

I finally went to a domestic abuse shelter with help from a neighbor in Sept. 1987. By that time, I was very sick (mentally and physically), and I had post-traumatic stress. It took more than 20 years to finally overcome PTSD.

If victims had constitutional rights back in 1987, maybe I wouldn't have had to go through all the threats, intimidation and terroristic threatening. I also wouldn't have to go through 20 years of experiencing post-traumatic stress.

I believe passing S.B. 679/S.B. 3034 would ensure victims of constitutional rights.

## LATE TESTIMONY

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

From: Christina Simmons

Subject: **SB 6779/SB 3034** Proposing an Amendment to Article 1 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.

Thank you for allowing me the opportunity to provide testimony IN FAVOR OF supporting Hawaii adopt the constitutional right that crime victims and their surviving family members have enforceable rights.

As the former Family Centers Director for Parents And Children Together I dealt with many victims of crime. When I discovered their rights were limited or nonexistent the idea of this bill seemed like an opportunity to balance the scales within the judicial system.

We wish for you to support the following actions within this passing of the Amendment:

- to be treated with respect and receive timely notification of proceeding and other major developments in their case.
- The right to receive timely notification of changes to the offenders' custodial status
- The right to be present at court proceedings
- The right to provide input to the prosecutors 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

These rights only seem reasonable for those crime victims. They may also lay the foundation for the healing process to begin for the victims and their families by being included in the judicial process rather than an afterthought.

As an average citizen on Kaneohe I urge you to PASS this measure.

Sincerely,

Christina Simmons

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

LATE TESTIMONY

From: Wayne Braden

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.

I, Wayne Braden, was the father of a 17 month old baby, Aliyah Emily, who was killed by a drunk driver. I was treated well by the court, county and state offices, mostly because I demanded it. Victims shouldn't have to demand it. I lost my baby Aliyah, I am mad as ever one could be and when I read a brochure telling me that my troubles had just begun with the state, I bit my tongue. My aim is to change the words of that brochure to read, "Hawaii is the most helpful, shows and is the most supportive of all the states, and Hawaii proves it is the state of aloha."

This is why I'm in support of a constitutional amendment guaranteeing victim's rights. Thank you for considering my testimony in support of SB 679/SB 3034.



## LATE TESTIMONY

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: Lynn Karinen

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.

Thank you for the opportunity to provide testimony in support of SB 679/SB 3034.

As the sister of a victim who was killed by a drunk driver who was released without me being given the opportunity to provide input, I believe this amendment is imperative. Victims and their families should be informed when court hearings, including hearings that could result in the release of offenders, will be held and given a chance to speak at the hearing about how the crime impacted them.

The gentleman who drove drunk and killed my sister was released and drove drunk again, which violated his parole, only to be re-incarcerated and released again. The impact is that I resent that he is able to drive after receiving over seven DUIs and killing two people and severely injuring another, and I think the laws should be changed.

Because the system forgets victims and there is no direct communication with victims, I was not informed that the man who killed my sister had requested a reduction, that a hearing on his request would take place, when the hearing would occur, or that his request for a reduction had been granted. I was not given the opportunity to provide input regarding his release and he was released, broke probation, was re-incarcerated, and now he walks the streets free again. I wish I had had the opportunity to provide input through speaking with those who decided he would be released. All victims deserve the right to be notified of any hearings or actions regarding the early release of drunk drivers who kill multiple people.

Thank you for considering my testimony in support of SB 679/SB 3034.

## LATE TESTIMONY

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: Andrea Maniago

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.

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

I am a mother of 4. In 2009 I lost my 16 year old son Kai'o Fukushima in a car crash. In my son's case the process was long and difficult. Long sad story short my son decided to go to a party without my knowledge. I was told that there was underage drinking and when a fight broke out at this party the cops were called. My son's friend left the party without him. Kai'o got into the car with someone else. The person driving the car that Kai'o was in, was driving recklessly, speeding and racing with other drivers. Due to the recklessness the driver lost control of the car causing 4 passengers in the vehicle to be thrown out except the driver. The driver left the scene without rendering aid. I was told later by the other passengers in that car that the driver was drinking and that was the reason he fled the scene. The car crash was reported at around 1:30 a.m. My family and I was notified about my son's death around 4 a.m. We were so emotional and the process of finding out any information through the police report took one year and a half. We didn't know who was involved. We relied on a lot of information through word of mouth while the police report was being completed. Although I am not complaining about the police doing their job and being very thorough but my family and I started to feel like we had no control. That was the most difficult part of the situation was not feeling in control so I started to become active and started to speak at high schools about my son's story and later joined MADD. We just wanted to be active with what we had control of. About 2 years after the crash I got a phone call from Victim Assistance notifying me about charges that will be made to Stevens Ramos (driver of vehicle). Stevens Ramos appeared in

front of the grand jury and we were not notified. I was heartbroken. Then we heard that Stevens Ramos made a plea in front of the court and again we were not notified, again I was heartbroken. I wanted to be active from the start I wanted to be a part of everything that they would legally allow me to be a part of. It would have made the process and the pain a lot easier just to know what was happening involving Kai'o's case. I know and understand that for Prosecutors with is normal for them but it wasn't normal for us and all we wanted was to be notified, we asked to be notified. Some days I would get a phone call from the Victim Assistance and they would say "oh yeah the court date has past but the defense attorney asked for a contingency, so stuff like that happens all the time". This happened a lot throughout that year (2011). Honestly I still would have liked to know. My son was the victim but so were we and I wanted to show up anywhere to be a support for my son and to just have knowledge of the process.

We got to sit with the prosecutor and was told respectively (depending who you ask) that they would like input about the charges which was going to be changed from manslaughter to negligent homicide and even if we don't agree the Prosecution does have the last say on what happens to the case. We discussed it and they were able to explain why they wanted to lessen the charges. We came to an agreement and was somewhat satisfied. Again I asked to be notified of anything and everything which included set court dates, cancellations or anything. So my story may not be as bad as the other stories that you will hear throughout this process, however I ask that you respectively consider passing Marsy's Law to help all the victims go through a more organized process with knowledge and understanding because although this story was the short version I can't explain the heartbreak and tears that my family and I have gone through. We also felt some fear due to the people that was involved in my son's case. I have prayed for changes in the system regarding this subject. I was lucky, in the process of the worse time in my life, I had my entire family's support (mom, sisters, brother, nieces, nephews and friends). I can't imagine other victims that have to go through any of this alone. Please consider giving these victims a voice so they have some control and so they don't feel like victims any longer.

Mahalo,

Andrea Maniago



## LATE TESTIMONY

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: Sally Little, Community Volunteer  
94-160 Hokualea Place, Mililani, Hawaii 96789

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

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

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, which will amend the Hawai'i State Constitution to guarantee enforceable rights for crime victims and their surviving family members.

I have a long history of performing community outreach and program development for non-profit organizations. I was previously the Executive Director of PATCH. For over 16 years, I was the president of Entrepreneurial Solutions, LLC, which provided non-profit organization management, social enterprise development and management, and small business development services. I am a retired adjunct professor with Chaminade University's Business School.

Having worked with many non-profit organizations and members of our community, I have seen first-hand that a constitutional amendment for victim's rights will benefit the citizens of Hawai'i. I urge you to support this important Amendment to the Hawai'i Constitution that will guarantee basic rights for crime victims. These basic rights include the right to be treated with courtesy, fairness, and respect, to be informed of their rights and the services available to them, to be informed when court hearings will be held, to be given the opportunity to provide input to the prosecutor about plea deals, to tell the judge how the crime impacted them, and to be provided restitution for losses arising from the crime. Providing services to victims should not be implied as a "nuisance" as it appears the case in testimony opposing this bill by the Department of the Attorney General and the Department of Public Safety.

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

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

**LATE TESTIMONY**

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

FROM: Mari McCaig

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

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

Thank you for the opportunity to testify in strong support of S.B. 679/S.B. 3034.

The purpose of this Bill is to propose an amendment to the Constitution of the State of Hawaii. It is designed to provide recognition of and protection of the constitutional rights for victims of crime and their surviving immediate family members.

This Bill in no way takes away any rights of those accused of crimes as specified in Article I. Section 14 of the Constitution of the State of Hawaii. Rather, it is to create an equal playing field for the victims of crime and to establish within the State Constitution clearly defined rights that offer constitutional protection. Those specific rights are clearly listed in S.B. 679/S.B. 3034. All of these rights are fair, reasonable, and necessary.

My name is Mari McCaig. For 22 years, I worked as a Victim Witness Advocate for the Department of the Prosecuting Attorney in Honolulu. During those years, I guided crime victims, witnesses, and surviving family members through the criminal justice process. This included preliminary hearings/grand jury, court hearings, trial, sentencing, parole board hearings, and final disposition of the case.

I have seen first-hand the arduous and difficult journey that victims and their families must experience as they navigate through the criminal justice system. Most people know little about the criminal justice system except for what they might see on a television program or in a movie. The reality is that many victims and their families are traumatized by crime and often fearful of the offender. They may have suffered physical, emotional and psychological harm. Sometimes these effects are permanent and their lives are changed forever. They often can't talk about the crime and isolate themselves from family and close friends. In cases where the victim dies, there is an overwhelming sense of loss and grief that surviving family members' experience.

Then, to compound matters, they are thrown into a system that places difficult expectations on them when they are in a most fragile condition. Here is what they have

to look forward to: They are required to cooperate with law enforcement and the prosecutors and to testify in court when subpoenaed. The prospect of testifying in court and confronting the offender is anxiety provoking. The innocent victims have to retell and relive the crime and endure having their credibility challenged by the offender's attorney. They suffer financially, often taking time off from work, losing pay and/or vacation time every time they meet with the prosecutor or go to court. The financial and emotional toll worsens with every delay or continuance.

Innocent victims make these sacrifices and participate in the hope that they will see some measure of justice for the ordeal they are forced to undergo. They endure all this on their own, without any of the legal recourses available to offenders.

This is simply wrong.

The Constitutional Amendment in S.B. 679/S.B. 3034 addresses the fundamental needs of the victim that are often overlooked by the criminal justice system. Victims should be assured that they will be treated with "courtesy, fairness and respect for the dignity and privacy throughout the criminal justice process." They should have the right to be protected from further harm and notified immediately if the offender's custody status changes so that they can take appropriate precautions.

Exclusion from the process and lack of information only heightens a victim's anxiety, distress and lack of control. Victims should be informed about every major development in their cases. They should have the right to be present at all court proceedings and receive reasonable notice of proceedings. Victims should also be entitled to have input into what happens to the offender – whether it is a pre-trial release, a plea bargain, sentencing or post-conviction release.

It is essential that you keep in mind the fact that from the victim's perspective, a criminal act has turned their lives upside down, never to be the same, and hurled them down a path that they did not choose and have no control over. The consequences to the person who caused this harm is in the hands of the prosecutor, defense attorney, and a judge in a system of complex rules and procedures that at best, are indifferent to victims, and at worst, treat them as a piece of evidence.

It is also critical to keep in mind that when the criminal case ends, crime victims should not feel that they were betrayed or re-victimized by the criminal justice system. The criminal justice system must recognize a victim's interest in the outcome of the case. By endowing victims with codified indispensable rights, this proposed Constitutional Amendment will give victims the respect, consideration and dignity they deserve.

I, therefore, strongly urge this Committee's support of S.B. 679/S.B. 3034.

**It's simply the right thing to do.**



JO KAMAE BYRNE  
P. O. BOX 2390  
HONOLULU, HI 96804

LATE TESTIMONY

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: Jo Kamae Byrne

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 March 9, 2016 at 9:15 a.m. Conference Room 016

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 immediate surviving family members have enforceable rights.

Balancing individual rights in a democracy is one of the primary purposes of a constitution. Our country's founders made sure anyone accused of a crime was protected from possible misuse of governmental authority in our national Constitution. This same protection has been included in our State constitution. What needs balance now are the rights of crime victims and their immediate surviving family members.

As an involved advocate for women's issues in the 1980s and 1990s we worked hard to raise awareness of Domestic Violence and its impact on women and families. Through those efforts laws were changed and better protection was gained. What was most gratifying was the shift in the legal system to provide better protections for victims of domestic abuse. The legal changes gave better consideration for the safety of the victim in a domestic violence situation, but did not diminish the constitutional protection of the perpetrator. We need a similar balance for victims of all types of crimes.

The proposed constitutional amendment does not diminish the rights of offenders – their rights remain intact. The proposed changes justly 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.

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

**LATE TESTIMONY**

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

FROM: Michelle Tagovailoa

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

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

I have been a crime victim advocate for 6 years from the state of Michigan. I have also been awarded the:

2005 Outstanding Advocate Award, from The Crime Victim Foundation and State of Michigan Representative William Van Regenmorter

William Van Regenmorter is the individual himself who wrote the Crime Victim Rights' Act for the state of Michigan. I just want to let you know it is a shame that Hawaii is an offender state and that the poor victims' will be re-victimized through the court system here. If there is anything I can do to help please let me know.

Good Luck and I hope the victims in Hawaii will have a voice and be able to hold those that victimized them accountable. Victims need to feel in control not the offender.

Regards,  
Michelle

## LATE TESTIMONY

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: Kenneth Gordon

EMAIL: [etccfitness@hotmail.com](mailto:etccfitness@hotmail.com)

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

DATE: Tuesday, February 9, 2016 @ 9:15 am, Conference Room 016

POSITION: Support; Individual Testimony; Not testifying in person

Please count me as an overwhelming supporter of SB 679/SB3034, which is long overdue. Any society which deems itself humane, moral, and ethical must ensure that the rights of crime victims and witnesses of crimes are, at the very least equal to those of criminal defendants.

I strongly urge you to create an environment where victims of crime are no longer minimized. Anything less would be a travesty. It's the right thing to do.



## LATE TESTIMONY

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

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: Abelina Shaw

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

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

Thank you for providing this opportunity to testify in strong support of SB 679/SB 3034. I am currently a Commissioner for the Crime Victim Compensation Commission.

Hawai'i absolutely needs a constitutional amendment for victim's rights. A constitutional amendment is necessary to ensure that crime victims are guaranteed fair treatment, are informed of major developments, are allowed to provide input into plea negotiations and sentencing, and are afforded the right to restitution. Only a constitutional amendment will give victims the enforceable rights that they deserve and will provide them with standing to enforce their rights.

As a Commissioner for the Crime Victim Compensation Commission, I have seen how important it is for crime victims to receive restitution. Currently, because crime victims do not have standing to move the court for restitution, they have no remedy if restitution is not requested on their behalf or if a plea deal that does not include restitution is entered into. The constitutional amendment will allow the crime victim to move the court to allow the issue of restitution to be addressed.

Crime victims deserve to have permanent, constitutional, and enforceable rights.

Thank you for allowing me the opportunity to testify in strong support of this important constitutional amendment. I urge your committee to pass SB 679/SB 3034.

Lalena D. Thompson  
Maui, Hawaii

## LATE TESTIMONY

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

I am writing in strong support of House Bill 1144 and Senate Bills 679 and 3034.

I believe that there is a real need for Crime Victim's 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. In addition, victims need to be informed of any change in the status of the offender once he or she is convicted and incarcerated.

On the night of November 18, 2014 at approximately 10:15 p.m. I was on my way driving to work. I have worked night-shift as a registered nurse for the past eight (8) years and have driven the same route all those years. Per the police report as I was entering Maliko Gulch I was hit head on by a drunk driver at 10:33 p.m. I say per the police report as I have no memory of the car "crash" as I suffered a severe concussion from the "crash". I was driving a small SUV and was hit head on by a Ford 250 Pick-up truck. My car was totaled and I was transported to the hospital via ambulance. The driver of the truck was given an alcohol test with the result of .213, he was arrested and taken to jail. I have no memory of being taken to the ER, my next memory is being wheeled up to a floor because I was admitted for two (2) days due to the severe concussion. I later learned the drunk driver was bailed out the following morning at approximately 8:30 a.m. While I was admitted to the hospital he was already out back to his life. Mind you he suffered no injuries in the crash, walked away free of injury. I am a mother of two (2) boys who are my life. I can not even begin to imagine in the blink of any eye being taken away from them all because a man decided to drink and celebrate a birthday (the drunk driver's birthday was the next day, November 19<sup>th</sup>) and get behind the wheel of his massive truck to drive himself home, being almost THREE TIMES the legal limit DRUNK! It breaks my heart to think I could have died that night, it is a miracle and by the grace of God I am still here. I later learned that I called one of my son's from the ER to tell him what happened, he is 6,000 miles away in college. Again, I do not remember doing this. He told me that I called him to let him know what happened but I was ok. I did not go into detail of my concussion and the rest of my injuries. He was brave and thankful for the phone call, but later called his dad and broke down crying. My younger son was home asleep with my mother at the house. I learned that I also told the ER nurse to call my workplace and my mom, which she did. My mom and sister came immediately to the ER. My younger son was informed the next day of the crash and his basketball coach had called me a couple of weeks after the crash to check on me and told me that my son broke down in tears to him telling him what happened to me. I can not even begin to imagine the thoughts that were going through my boys heads and the thought of the possibility of losing their mother. And the thought of losing my life to someone who was drunk, something that was preventable! Someone who CHOSE to get



behind the wheel after an evening of drinking! I spent two days in the hospital, extremely sore and frustrated because I could not remember what happened to me. Thank goodness I have a strong support at home with family and friends who were there for me. I work full-time to support myself and my boys, I had to miss a month and a half of work due to my injuries. Like I stated earlier I suffered a severe concussion and had post-concussion syndrome where I was having difficulty with my memory recall. The thought of the possibility of not regaining my recall memory is very frightening. My job depends on me to be sharp and ready at a moment's notice. That is something I had to think and worry about everyday. And my body was bruised from head to toe on my right side. These injuries have healed, but I still live everyday with the frightening fact that my life could have been taken in an instant...all because a man decided to drive DRUNK instead of calling a taxi or a friend. I am still driving the same route to work, but now a little more cautious of cars/trucks that are coming at me. I still cry at the thought of not being here for my children. I still get very angry that the man who was drunk is blaming me for the car crash, taking no responsibility what so ever.

I was released from the hospital and approximately a week later I was on the phone trying to find out what is happening with the drunk driver who hit me. I called the prosecutor's office on Maui and the Victim Advocates office about a week after the crash, but was told to call back because they had no information on the accident from the police. When I called them back approximately a week later I was told there was an arraignment set for December 18, 2014 but was told it wasn't necessary for me to be there. It would be a quick 5 minute deal and no need for me to go. I called again and was told there was a pre-trial date set for January 14, 2015. Again I called the Victim Advocate's office after I got off work that morning to find out where and what time. I was told again that I did not need to attend, a rep from their office would go and give me a call to update me as to what is happening. But I wanted to go to see for myself exactly how this is being handled and to meet the prosecutor in person, I wanted them to know my face and know that I was serious and wanted justice for what he did to me. A representative from the Victim's Advocate office did meet me up on the floor and sat with me and explained what was going on. I would find out at that pre-trial that there would be another pre-trial set for February 11<sup>th</sup>. It is very frustrating that I have had to call and find out this information instead of being regularly updated on the status of the case. I feel the defendant is recognized and acknowledged but I am not.

Ultimately, in my case, due to issues with inadequate accident reconstruction by the police department, the defendant was offered a plea deal in which he would plead guilty to DUI with guaranteed jail time of 30 days. The bodily injury charges were dropped as part of the plea deal but I was given the opportunity to share a victim impact statement during sentencing. As part of the victim impact statement, I was able to share photographs of my vehicle with the court. The judge was obviously impacted by these photographs as he commented on the severity of the crash and the strength of my impact statement. The judge spoke at length to the defendant after I completed the statement and commented how fortunate the defendant was to not be facing more serious charges. The judge offered that the defendant would likely not be this fortunate if he were charged again with similar offenses. The judge's reaction to the victim impact statement and his



subsequent comments to the defendant helped to validate my feelings and made me feel as if I actually mattered in this case.

The opportunity to present my impact statement was very empowering as a victim of a violent crime and offered some sense of closure. That fact that my voice was actually heard meant a great deal to me.

The victims of crime need to have the rights, we should be recognized and acknowledge and informed every step of the way. Our rights should be guaranteed by the State Constitution. I urge the committee to support HB 1144 and SBs 679 and 3034.

Thank you for the opportunity to submit testimony.

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

**LATE TESTIMONY**

FROM: Diane Krieger

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

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

Thank you for the opportunity to submit testimony in strong support of SB 679/SB 3034. My name is Diane Krieger and I wish to share with you my experiences as a victim and going through the court system.

The following victim's testimony involves an incident which happened to my dog Pua and myself, on November 29, 2011. My court experience ensued and it took 3 years to resolve. My case involved requesting reimbursement for veterinarian and medical expenses from the owner of an aggressive dog who attacked my dog and to have him contain his dog in the future so this would not happen to anyone else.

The resulting injuries to my innocent dog and myself were due to a negligent owner of a free roaming dangerous dog. This extremely vicious dog charged and then repeatedly attacked my 20 lb, 12 year old dog, for no reason. It was totally unprovoked. Both my dog, who was in my arms, and myself were injured as I tried to protect her from his terrifying attack. This experience was extremely traumatizing, but far worse, my dog had to undergo 2 surgeries and subsequent medications for her injuries. Within a few months, she went from being absolutely healthy and youthful to developing all kinds of problems related to her injuries and medications stemming from this incident and my beautiful girl ended up dying.

I came to find out, this same dog had a history of attacking other dogs and had killed his neighbor's dog. This same dog actually attacked 2 other dogs while the court proceedings were under way. All of these events, including our own, would not have occurred had the owner been accountable for the actions of his dog and kept the dog contained and leashed in public.

I had prepared a victims statement for the court, which included photographs showing my dog and her injuries and a photo of the attacking dog. These photographs were an essential part of my statement. When the statement was presented to the judge, the photographs were not there. They had been removed.

Fortunately, the prosecutor was present and had copies of the photographs and was able to present them to the judge. The Judge's face clearly reflected the impact these photos had on her understanding of the magnitude of what had happened.

Unlike the defendant, I was present for nearly every court date for over 3 years and missed work to do so, because this case was very important to me. I did not want to see this happen to anyone else.

Also while court proceedings were underway, the defendant literally went out of his way to taunt and intimidate me and my neighbors, by walking his aggressive dog in front of my house and began using the beach path nearest my house, which he had never done before. There were incidents on the path with the neighbors little dogs being charged and I had to always be on guard when walking anywhere.

I asked the police if I could stop him from doing this and was wrongly told I could not get a restraining order to keep him away. But was instead told I had no right to keep him off any public property.

I strongly urge your Committee to pass SB 679/SB 3034 so victims like myself and my family can feel as though we are being heard through every phase of the judiciary system.

Thank you for your time.

Diane Krieger  
PO Box 208  
Hanalei, HI 96714  
2/1/16





## LATE TESTIMONY

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

Numbers and statistics tell a powerful story.

I have been a victim more times than I can count on one hand. At 9 years old, I didn't have a voice in family court, I did not get the professional help my sisters and I so desperately needed. We were 3 of the 2,300 children in Hawaii who were abused in 1993. In 2014, these numbers climbed to 3,500 children in Hawaii according to The Department of Human Services. Statistically, we should have repeated or stayed in the cycle of violence...and we did.

When my sister was beaten in a parking lot by a boyfriend, he went to jail; for 1 night. Unfortunately she never got to testify because he found a way to threaten her. My own violent relationship never saw a day in court because he threatened to go to my daughter's kindergarten classroom to get rid of her. 38% of us feel this way and never report these events for fear of retaliation or getting him into trouble according to the Department of Justice.

Dozens of medical appointments, hundreds of therapy sessions, thousands of dollars wasted to mend my body and mind. And when I could not work, the thousands of tax dollars spent while I was on Quest, SNAP, WIC, and other state funded programs to get my life back together again.

8 years in college, 2 Education degrees, a lifetime full of experience, and I still cannot comprehend why current statutory laws for victims are trumped by the constitutional rights of the accused.

32, the number of states who have constitutional provisions protecting victims' rights, Hawaii is not one of those states.

By voting to pass this amendment you would be supporting a victims' right, my right, to

- to be treated with courtesy, fairness, and respect throughout the criminal justice proceedings
- to receive information about the rights and services available to victims of crimes
- to be heard at plea or sentencing proceedings
- the right to restitution

I leave you with two more numbers: 12 and 3; the ages of my children who deserve to have a mother who is happy, healthy, and able to end the cycle of violence and abuse. But I need your help to not allow my children to become statistics. Thank You.

Mai Hall

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