

Goodmorning Maui County Council Members. I appreciate the time you are taking to address the issue of Victims Rights today.

My name is Kimberlyn Scott. I am not a lawyer, a politician, or a lobbyist. I have only one credential that both allows and compels me to speak to the issue of victims rights- the murder of my daughter, Charli Scott and her unborn son Joshua. That horrible event has brought me into close contact with many others like myself in our state. I am speaking for many of us today.

Nothing that I am about to say is pleasant. I wont waste your time with platitudes. My purpose is to bring clarity to an ignored and misunderstood issue that is past due a reckoning.

I know there is a lot going on out there in the world- missiles, hurricanes, fires, health care problems, hunger, homelessness, poisons in our air food and water, an environment that is suffering, armed children fight adult wars, and we mustn't forget a wall meant to keep out the same people who are our ancestors.

As I said, a LOT is going on. I would be lying if I did not admit that I questioned my own right to take up precious time with an issue so personal to me, but I do not suffer alone, and I believe that if your own house is not in order, you cannot make order of anyone elses home.

That said, I am here to prove that Victims Rights are an important issue that deserves to be dealt with aggressively.

More aggressively even than the Bill you are presented with today, though I am grateful in the extreme that the subject of Victims Rights has been brought to the table by Elle Cochran and her amazing crew. In explanation of my opinion, I will repeat what Nonohe Bohtello, once a victims advocate for Oahu, now the mother of a murder victim, said so well that I will say it in no other way. She said with regards to this Bill, "It is not specific enough Kim. The teeth are in the specifics."

I agree with her as do the other members of this exclusive and expensive club no one wants to be a part of.

I understand that today Elle Cochran has given us all an opportunity- an opportunity to make victims rights a priority and commit to establishing a Constitutional Law enshrining victims rights here in Hawaii.

We are currently one of 18 states without Constitutional rights for victims.

I'd like to talk some numbers quickly so we can grasp the scope of those affected by crime first. In the interest of time I am going to address only violent crime rates today and have not included other crimes such as property loss or destruction, which is not meant to detract from the severity of those crimes or their affect upon victims.

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(Kim Scott)

According to the Crime Prevention & Justice Assistance Division Research & Statistics Branch published by the Attorney General of Hawaii State in August of this year, there were 3,452 violent Crimes reported statewide in 2016, so that's about 241 violent offenses per 100,000 residents. It is suggested by researchers that each victim of a violent crime has 7 to 10 close relatives, in addition to friends, neighbors, and co-workers who are also adversely affected. We'll estimate low and multiply the 3,452 victims of violent crimes in this state by 7. We get 24,164 people per year affected by violent crime. Let's be positive and say that the violent crime rate does not go up in the next five years and we keep our rate of 3,452 violent crimes per year, and extrapolate again. That gives us 120,820 people affected by violent crime. One more time to underscore the count. In ten years that is 241,640 people. We could keep going but I am hoping the point is made.

That is not a minority in a state of 1.429 million people. IF I did my math correctly, that is 16.9% of the total population of the state of Hawaii.

This is our purview then.

You have before you a draft for a Bill. The intention behind this Bill is what?

To grant legal protection to victims. But, victims are only one of the characters in the judicial system. Am I asking you to treat victims differently or better than the others involved?

No.

The list of roles employed in the courtroom includes but is not limited to- the Judge, Prosecutors, Defendant, Defense, Jury, Court Reporter, Witnesses and Victim. The majority of the members of this cast have a voice in the courtroom. They have legal protection, power and or responsibility afforded them. The only cast member unacknowledged in the courtroom and in the constitution is the victim.

A witness can employ the protection offered by the Fifth Amendment.

Prosecutors have many privileges granted them. For example, they cannot be sued, and decide not only whether to charge a case, but what to charge.

Of the twenty three rights mentioned in the first eight amendments to the Constitution, twelve concern criminal procedure and apply to defendants.

Judges command respect AND the legal system, and can fine and or jail not only the accused upon conviction, but can use the same penalties against witnesses and victims.

Jury's are protected from harassment by the public as well as the press, and attorney's on both sides of the law. The defense has the right to call witnesses, specialists, argue their point, request "side bars" and is allowed to know about the Prosecutions case before trial.

Reporters have the right to be present during trials. With permission they can record video or sound.

And Court Reporters?- They have their own Bill of Rights.

[http://ncra.files.cmsplus.com/GovernmentRelations/Court Reporter Bill of Rights.pdf](http://ncra.files.cmsplus.com/GovernmentRelations/Court_Reporter_Bill_of_Rights.pdf)

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Why do victims need protection? Because criminal justice personnel-the police, prosecutors, defense attorneys, judges, probation officers, parole boards, corrections administrators- systematically overlook or neglect the legitimate needs of crime victims in spite of the fact that without victims, the need for criminal courts would not exist.

Victims remained ignored by the United States judicial system until the 1970's when the phrase "Victims Rights" was coined. In response to the cry for victims rights, the state of Hawaii created the Victims Bill of Rights and Statute 801d.

Under Legislative Intent, statute 801 explains that, "In recognition of the civic and moral duty of victims and witnesses of crimes to cooperate fully and voluntarily with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this State, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crimes are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner **no less vigorous than the protections afforded criminal defendants...**"

So why are we here today if victims have legal protection already?

Because the protections granted them by the Bill of Rights and Statute 801d are UNENFORCEABLE in part thanks to a final paragraph which reads,

"Neither the failure of any state or county officer or employee to carry out the requirements of this section nor compliance with it shall subject the state or county officer or employee to liability in any civil action. "

Because I believe the ineffectiveness of 801d must be driven home, I'd like to walk us thru the statute together-

"801D-4 Basic bill of rights for victims and witnesses. Upon written request, victims and surviving immediate family members of crime shall have the following rights:"

Upon written request to WHOM? I asked the Prosecutors office whom I should give my written request to, and they had no idea. Neither did the Victims Advocate.

Here are the "rights" granted me that I cannot enforce.

1. "To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a **felony**, 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. "

I call the victims advocate to remain informed regarding the "final disposition of the case" to this day because I have been uninformed of "major developments in the case" all along again without recourse.

"a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney; " I was told by the Prosecutor in my daughters

case that I could tell him what I wanted but that he, the Prosecutor, did not have to listen".

2 "To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled; "

If 40 minutes notice of a schedule change is being "notified", then I was notified.

3 "To receive protection from threats or harm;"

Personally I had a great deal of trouble establishing my family's safety even after the accused was put in jail because in spite of jail regulations, the accused got a hold of a cell phone while in jail and spoke to a witness. I reported this to the Prosecutors office but was told that they have no way of monitoring the accused in jail. I also discovered that though the MCCC website claims that all calls are recorded and or monitored, this is not true.

During the trial, the defendant refused to come to court one day. It was later explained to me that the accused had taken drugs while in jail. Some months later the defendant was caught receiving drugs from his Aunt during a visitation to the jail. Obviously, this was an ongoing exchange.

The fact that Prosecutors, upon whom my family and I relied for protection, had no way of monitoring the defendant while he was in jail and that the defendant had illegal access to phones meant that he could harm or harass my family even while jailed.

None of us feel safe anymore.

Well continue with 4. "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;"

I was not informed or provided with the form to apply for assistance and services until the last day I could turn the form in. I am grateful however, that the Victim Advocate drove the form to my home and turned it in the same day.

5 "To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;"

This was provided sometimes.

6 " To have any stolen or other **personal property** expeditiously returned by law enforcement agencies when the property is no longer needed as **evidence**. If feasible, all the property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken; "

As of today, this does not apply to myself or my family. We were told when we asked when we might have Charli's jawbone and other body parts for burial that there "probably wouldn't be enough left to bury." Which, though insensitively said, it might well be another sad fact we must bear.

I feel bound to mention here that another witness in my daughters case asked for his vehicle to be returned at trials end and was told "No" with no explanation. To date he has been offered no compensation for the loss of a vehicle worth about \$5000 dollars when offered as evidence by the owner, who was trying to help as any good person would. It has been almost four years now. I am certain we are all familiar with the decreasing value of a vehicle. The witness who stepped forward to do RIGHT, has been ignored, uninformed, and has lost a valuable possession not to thieves, but to his own state.

7 " 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....."

I have not reached this stage in the criminal justice system and I sincerely hope I never do. But I know those that have. For example, the survivor of eighteen stab wounds including a cut to his throat, and a broken neck, Nick Iwomoto, has lived for years not knowing where the man who did this to him is located. He still doesn't. Not because the man who attacked Nick was a complete stranger to Nick, though that is true. And not because the law does not know who his attacker is, **but** because his attacker was found insane and **has rights**. Nick on the other hand, has no enforceable rights though no one will argue that he was victimized. Nick was actually told, as was Alexis Felicilda when her mother went missing almost four years ago, that "**the accused has rights**" by law enforcement and the Prosecutors office.

The punches keep comin' though for Nick - because the man who attacked him was found insane, Nick is left to deal with thousands of dollars in medical bills through no fault of his own. The final kicker is that the day Nick was attacked he was beginning a workout regimen that was meant to help him achieve his goal of joining the military and going to school. Ironically, the man who almost killed Nick graduated from school while attending therapy for trying to murder a stranger. The state paid for **that**, but it wont pay Nicks medical bills.

To continue with the list of 'Victims Rights'- There is a right to be notified if HIV is a factor, which does not apply to us thankfully. Victims also have the right to be notified if the convicted has income of more than \$10,000. Also, **restitution** and judgments to victims, or surviving immediate family members of a victim, are a precondition for release on parole.

Those are the Rights of a Victim in the state of Hawaii currently.

What does it mean to be unacknowledged by a legal system you must obey?

Our forebearers called this, "taxation without representation".

Citizens have constitutional rights that are at odds when viewed through a victims eyes. For example, the fifth amendment says that no person shall ... "be deprived of life, liberty, or property, without due process of law;" and yet victims are deprived of liberty when kept from courtrooms without due process.

the first amendment explains that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. " And yet, Victims cannot petition their government for a redress of grievances because they are prevented from doing so by protections granted the judicial system.

The fourteenth amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

But here I am. I have been deprived of my rights as a Citizen of the United States and I have no recourse.

There is a saying, "You Can Easily Judge the Character of a Man by How He Treats Those Who Can Do Nothing for Him".

I can do nothing for You. How will you treat me?