

JAN 27 2016

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## A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I OF CONSTITUTION OF THE STATE  
OF HAWAII TO ESTABLISH RIGHTS FOR VICTIMS OF CRIMES.

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

1           SECTION 1. The legislature finds that although those  
2 accused of crimes have various rights specified in article I,  
3 section 14, of the Constitution of the State of Hawaii, victims  
4 of crime and their survivors currently have few constitutional  
5 protections. The legislature further finds that victims of  
6 crime, whose injuries and losses provide the justification and  
7 responsibility of the State for criminal prosecution, should be  
8 treated with dignity, respect, and courtesy and their rights  
9 should be protected in a manner no less vigorous than those of  
10 the accused.

11           The legislature additionally finds that because Hawaii is  
12 one of eighteen states that do not have a victims' rights  
13 constitutional amendment, it should join the other states and  
14 amend its constitution to establish rights for victims of crime.  
15 The legislature notes that the proposed amendment does not  
16 diminish the rights of those accused or convicted. Rather, it



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1 offers a better balance between the rights of victims of crime  
2 and the rights of those accused or convicted.

3 The legislature therefore concludes that the Constitution  
4 of the State of Hawaii should be amended to guarantee that  
5 victims of crime and their surviving family members are afforded  
6 specific rights relating to information pertaining to and  
7 participation in the criminal justice system.

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

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

16 "RIGHTS OF VICTIMS OF CRIME"

17 SECTION . Victims of crime or their surviving family  
18 members shall have the following rights beginning at the time of  
19 their victimization:



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- 1        1. To be treated with courtesy, fairness and respect for  
2                    their dignity and privacy throughout the criminal  
3                    justice process;
- 4        2. To be reasonably protected from the accused and any  
5                    person acting on behalf of the accused;
- 6        3. To be notified of and refuse requests for any private,  
7                    privileged or confidential information or records;
- 8        4. To be informed of a victim's constitutional rights,  
9                    available financial assistance and other services  
10                   available for crime victims and witnesses;
- 11       5. To a speedy trial or disposition of the case;
- 12       6. To be notified in a reasonable, accurate and timely  
13                   manner of all proceedings related to the criminal  
14                   conduct, major developments in the case and final  
15                   disposition of the case;
- 16       7. To be present at all proceedings related to the  
17                   criminal conduct unless the court determines that the  
18                   victim's testimony would be materially altered if the  
19                   victim heard other testimony at that proceeding;
- 20       8. To be given reasonable, accurate and timely notice of  
21                   any plea negotiation and given the opportunity to



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1 provide input to the prosecuting attorney prior to the  
2 finalization of the plea agreement;

3 9. To be given reasonable, accurate and timely notice of  
4 and offered the opportunity to participate and be  
5 heard in any plea or sentencing of the accused or any  
6 court proceeding in which a right of the victim is at  
7 issue or that may result in a post-arrest release  
8 decision;

9 10. To be notified in a reasonable, accurate and timely  
10 manner and to be offered the opportunity to  
11 participate and be heard in any process or  
12 deliberation that may result in the offender's post-  
13 conviction release from confinement, including any  
14 type of release by the department of public safety;

15 11. To provide information regarding the impact of the  
16 offender's conduct on the victim and the victim's  
17 family to the individual responsible for conducting  
18 any presentencing investigation or compiling any  
19 presentence report, and to have any such information  
20 considered in any sentencing submitted to the court;



- 1        12. To be notified in a reasonable, accurate and timely  
2        manner and to be heard regarding any developments  
3        relating to the release, discharge, escape or  
4        commitment, or the unauthorized absence of the accused  
5        or offender who was committed or involuntarily  
6        hospitalized;
- 7        13. To be notified in a reasonable, accurate and timely  
8        manner of the conviction, sentence, place and time of  
9        incarceration or other disposition and any changes in  
10       the accused's or offender's custodial status,  
11       including transfer between facilities, escape,  
12       furlough, work release, placement on supervised  
13       release, release on parole, release on bail bond,  
14       release on appeal bond, any type of release by the  
15       department of public safety and final discharge at the  
16       end of the prison term;
- 17       14. To have property expeditiously returned by law  
18       enforcement agencies when the property is no longer  
19       needed as evidence;
- 20       15. To full and timely restitution from the person or  
21       person convicted; and





1       The legislature shall have the power to enact laws to  
2 further define, implement and preserve the rights established by  
3 this section.

4       As used in this section:

5       "Surviving family members" means any spouse, parent,  
6 grandparent, child, sibling, grandchild, guardian or any person  
7 who has a relationship with the victim that is substantially  
8 similar to the listed relationships.

9       "Victim" means any person who suffers direct, proximate or  
10 threatened physical, psychological or financial harm as a result  
11 of the commission or attempted commission of a crime or against  
12 whom the crime is committed. "Victim" also includes the lawful  
13 representative of a victim who is a minor, incompetent or  
14 physically or mentally incapacitated. "Victim" does not include  
15 the accused or a person who the court finds would not act in the  
16 best interests of a deceased, incompetent, minor or  
17 incapacitated victim."

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

20       "Shall victims of crime and their surviving family members  
21 be afforded rights, including courteous, fair and respectful



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1 treatment throughout the criminal justice process;  
 2 notification of critical proceedings, possible plea  
 3 agreements and case dispositions; a speedy trial; the  
 4 opportunity to be present at public proceedings; the  
 5 opportunity to speak at the sentencing hearing; financial  
 6 reimbursement from the offender; and notification of the  
 7 offender's release from custody?"

8 SECTION 4. New constitutional material is underscored.

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

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INTRODUCED BY: ~~SEN. D.C. [Signature]~~

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**Report Title:**

Crime Victim Rights; Marsy's Law; Constitutional Amendment

**Description:**

Proposes a constitutional amendment to guarantee rights to victims of crimes and their surviving family members.

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