

JAN 25 2006

S.B. NO. 2527

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# A BILL FOR AN ACT

RELATING TO BILL OF RIGHTS FOR VICTIMS.

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

1           SECTION 1. Section 801D-3, Hawaii Revised Statutes, is  
2 repealed.

3           ~~["§801D-3] Eligibility of victims. A victim has the~~  
4 ~~rights afforded by this chapter and is eligible for the services~~  
5 ~~under this chapter only if the victim reported the crime to~~  
6 ~~police within three months of its occurrence or discovery,~~  
7 ~~unless the victim had justification to do otherwise."]~~

8           SECTION 2. Section 801D-4, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§801D-4 Basic bill of rights for victims and witnesses.**

11 (a) Upon written request, ~~[victims and]~~ a victim, a surviving  
12 immediate family ~~[members of crime]~~ member, or, where  
13 specifically provided below, a witness shall have the following  
14 rights:

15           (1) To be informed of the rights set forth below that are  
16 applicable to a victim, surviving immediate family member, or  
17 witness.  
18



1        (2) To be treated with fairness, respect, and dignity, and  
2        to be free from intimidation, harassment, or abuse,  
3        throughout the criminal justice process.

4  
5        [~~1~~](3) To be informed by the police and the prosecuting  
6        attorney of the final disposition of the case. If the  
7        crime charged is a felony, the victim or a surviving  
8        immediate family member shall be notified of major  
9        developments in the case and whenever the defendant or  
10       perpetrator is released from custody. The victim or a  
11       surviving immediate family member shall also be  
12       consulted and advised about plea bargaining by the  
13       prosecuting attorney;

14       (4) To be present at and to be informed of all criminal  
15       proceedings where the defendant has the right to be  
16       present.

17       (5) To be heard at any proceeding involving a post-arrest  
18       release decision, a negotiated plea, and sentencing.

19       [~~2~~](6) To be notified by the prosecuting attorney if a  
20       court proceeding to which [~~they have~~] a victim,  
21       immediate surviving family member, or witness has been  
22       subpoenaed will not proceed as scheduled;



- 1        [~~3~~](7)     To receive protection from threats or harm;
- 2        [~~4~~](8)     To be informed by the police, victim/witness
- 3                counselor, or other criminal justice personnel, of
- 4                financial assistance and other social services
- 5                available as a result of being a witness to or a
- 6                victim of crime, including information on how to apply
- 7                for the assistance and services;
- 8        [~~5~~](9)     To be provided by the court, whenever possible,
- 9                with a secure waiting area during court proceedings
- 10               that does not require [~~them~~] a victim or surviving
- 11               immediate family member to be in close proximity to
- 12               defendants and families and friends of defendants;
- 13        [~~6~~](10)    To have any stolen or other personal property
- 14               expeditiously returned by law enforcement agencies
- 15               when the property is no longer needed as evidence. If
- 16               feasible, all the property, except weapons, currency,
- 17               contraband, property subject to evidentiary analysis,
- 18               and property[~~, the~~] whose ownership [~~of which~~] is
- 19               disputed, shall be returned to the person within ten
- 20               days of being taken; [~~and~~]
- 21        (11) To receive prompt restitution from the person or
- 22               persons convicted of the criminal conduct that caused



1           the victim's or surviving immediate family member's  
2           loss or injury.

3           (12) To have available pre-sentence reports relating to the  
4           crime when they are available to the defendant.

5           ~~(7)~~ (13) To be informed by the department of public safety  
6           of changes planned by the department in the custodial  
7           status of the offender that allows or results in the  
8           release of the offender into the community, including  
9           escape, furlough, work release, placement on  
10          supervised release, release on parole, release on bail  
11          bond, release on appeal bond, and final discharge at  
12          the end of the prison term.

13          (14) To be heard at any proceeding when any post-conviction  
14          release from confinement is being considered.

15          (b) Upon written request, the victim or the parent or  
16          guardian of a minor or incapacitated victim of an offense under  
17          section 707-730, 707-731, or 707-732(1)(a) shall have the right  
18          to be informed of the human immunodeficiency virus (HIV) status  
19          of the person who has been convicted or a juvenile who has been  
20          adjudicated under that section and to receive counseling  
21          regarding HIV. The testing shall be performed according to the  
22          protocols set forth in section 325-17. Upon request of the



1 victim, or the parent or guardian of a minor or incapacitated  
2 victim, the department of health shall provide counseling.

3 (c) Notwithstanding any law to the contrary, the  
4 department of public safety, the Hawaii paroling authority, the  
5 judiciary probation divisions and branches, and the department  
6 of the attorney general shall make good faith efforts to notify  
7 the victim of a crime, or surviving immediate family members of  
8 a victim, of income received by a person imprisoned for that  
9 crime when the imprisoned person has received a civil judgment  
10 that exceeds \$10,000, a civil settlement that exceeds \$10,000,  
11 or any income that exceeds \$10,000 in one fiscal year, whenever  
12 the income is known to the agency, and, in addition, the  
13 department of public safety shall make good faith efforts to  
14 notify the victim of a crime or surviving immediate family  
15 members of a victim, whenever it is known to the agency that a  
16 person imprisoned for that crime has a financial account, of  
17 which the department of public safety is aware, of a value  
18 exceeding \$10,000.

19 (d) Notwithstanding any law to the contrary, payment of  
20 restitution and judgments to [~~victims,~~] a victim or surviving  
21 immediate family [~~members of a victim,~~] member shall be a  
22 precondition for release on parole for any imprisoned person



1 whom the Hawaii paroling authority determines has the financial  
2 ability to make complete or partial restitution payments or  
3 complete or partial judgment payments to the victim [~~of the~~  
4 ~~person's crime,~~] or to the surviving immediate family [~~members~~  
5 ~~of a victim.~~] member.

6 (e) Notwithstanding any law to the contrary, the State of  
7 Hawaii, any political subdivision of the State of Hawaii, any  
8 department or agency of the State, any officer of the State, and  
9 any employee of the State shall be immune from damages in any  
10 lawsuit based on noncompliance with subsection (c) or (d).  
11 Nothing in this subsection shall be construed to prevent  
12 disciplinary action against any employee of the State who  
13 intentionally fails to comply with subsection (c) or (d) after  
14 being warned that compliance is required."

15 SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 3. If any provision of this Act, or the  
18 application thereof to any person or circumstance is held  
19 invalid, the invalidity does not affect other provisions or  
20 applications of the Act, which can be given effect without the  
21 invalid provision or application, and to this end the provisions  
22 of this Act are severable.



1 SECTION 5. This Act shall take effect on July 1, 2006.

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INTRODUCED BY: \_\_\_\_\_

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# SB. NO. 2527

**Report Title:**

Bill of Rights for Victims

**Description:**

Amends HRS 801D providing for additional rights to crime victims.

