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# A BILL FOR AN ACT

RELATING TO THE RIGHTS OF VICTIMS.

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

1           SECTION 1. The legislature finds that under the basic bill  
2 of rights of crime victims and witnesses in chapter 801D, Hawaii  
3 Revised Statutes, victims and surviving immediate family members  
4 of crime, upon their written request, must be notified of "major  
5 developments" in the case and whenever the defendant or  
6 perpetrator is released from custody; provided that the crime  
7 charged is a felony. This right of crime victims and their  
8 surviving immediate family members does not depend on whether  
9 the person has actually been convicted of that crime, since the  
10 term "crime" is defined in that chapter as an act or omission  
11 committed by an adult or juvenile that would constitute an  
12 offense against the person under the Hawaii penal code.

13           However, the definition of "major developments" in that  
14 chapter is vague with respect to whether that term includes such  
15 events as a finding that the perpetrator is deemed unfit to  
16 stand trial, has been transferred to the state hospital or other  
17 psychiatric institution, or has been rehabilitated and

1 transferred back to the jurisdiction of the county for  
2 resumption of penal proceedings upon regaining fitness to  
3 proceed. While the definition of that term includes "the  
4 disposition of the case", this phrase arguably does not include  
5 these other developments.

6 Consequently, a victim or surviving immediate family member  
7 of a felony conceivably may not be notified if a defendant or  
8 perpetrator is found unfit to proceed, acquitted, or transferred  
9 to the state hospital or other facility, since these events are  
10 not specifically included in the definition of "major  
11 developments". The legislature finds that these crime victims  
12 and their families should be notified under these circumstances,  
13 and should be further notified of the date of the resumption of  
14 penal proceedings, should the defendant or perpetrator be  
15 subsequently deemed fit to proceed.

16 Accordingly, the purpose of this Act is to amend the  
17 definition of "major developments" to include unfitness to stand  
18 trial or acquittal by reason of physical or mental disease,  
19 disorder, or defect; transfer to the state hospital or other  
20 psychiatric facility; or regaining fitness to proceed.

21 SECTION 2. Section 334-2.5, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:

SB2162 SD1.DOC

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1           "(b) The department may operate or contract for a secure  
2 psychiatric rehabilitation program for individuals who require  
3 intensive therapeutic treatment and rehabilitation in a secure  
4 setting. The services authorized by this section shall be for  
5 persons:

6           (1) Involuntarily hospitalized under this chapter for whom  
7 the services cannot be reimbursed, covered, or  
8 provided by an insurer, plan, or other person;

9           (2) Committed to the custody of the director under chapter  
10 704; and

11           (3) Appropriately hospitalized under chapter 704 or 706.

12           The director shall be responsible for the appropriate  
13 placement of all persons placed in facilities or services  
14 contracted for or operated by the director under paragraphs (1)  
15 through (3).

16           Any such person placed in a facility or services contracted  
17 for or operated by the director who leaves or remains away from  
18 the facility or services, without permission, may be apprehended  
19 and returned to the facility or services by any employee of the  
20 department or by any police officer without any warrant or  
21 further proceeding.

1       Upon the unauthorized absence of any such person, the  
2 director shall notify the victim witness assistance division of  
3 the applicable county department of the prosecuting attorney  
4 within one hour of ascertaining that person's absence. Upon  
5 written request, the victim witness assistance division of the  
6 applicable county department of the prosecuting attorney shall  
7 give notice by the most reasonable and expedient means available  
8 to each victim, or surviving immediate family member of any  
9 unauthorized absence of any person placed in a facility or  
10 services contracted by or operated by the director.

11       No failure of any state officer or employee to carry out  
12 the requirements of this subsection shall subject the State or  
13 any employee to liability in any civil action; provided that the  
14 failure may provide a basis for disciplinary action as may be  
15 deemed appropriate by competent authority."

16       SECTION 3. Section 801D-2, Hawaii Revised Statutes, is  
17 amended by amending the definition of "major developments" to  
18 read as follows:

19       "Major developments" means arrest or release of the suspect  
20 by the police, case deferral by the police, referral to the  
21 prosecutor by the police, rejection of the case by the

1 prosecutor, preliminary hearing date, grand jury date, trial and  
2 sentencing dates, and the disposition of the case.

3 The term "major developments" includes the following  
4 events:

5 (1) The offender is found unfit to proceed or acquitted on  
6 the grounds of physical or mental disease, disorder,  
7 or defect under chapter 704;

8 (2) Following a finding of unfitness to proceed or  
9 acquittal under paragraph (1), the offender is  
10 subsequently:

11 (A) Released or otherwise discharged from custody; or

12 (B) Committed to the custody of the director of  
13 health for placement in an appropriate public or  
14 private institution, including:

15 (i) State facilities established under chapter  
16 334;

17 (ii) A psychiatric facility, special treatment  
18 facility, or therapeutic living program, as  
19 those terms are defined in section 334-1; or

20 (iii) Any other public or private facility or  
21 institution, whether on an inpatient or  
22 outpatient basis, for the care, custody,

1                   diagnosis, treatment, or rehabilitation of  
2                   that person; or

3       (3) The offender has regained fitness to proceed pursuant  
4       to section 704-406(2), including the date on which the  
5       penal proceedings are to be resumed."

6       SECTION 4. Section 801D-4, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8       "(a) Upon written request, victims and surviving immediate  
9 family members of crime shall have the following rights:

10       (1) To be informed by the police and the prosecuting  
11 attorney of the final disposition of the case. If the  
12 crime charged is a felony, the victim or a surviving  
13 immediate family member shall be notified of major  
14 developments in the case and whenever the [defendant  
15 or perpetrator] offender is released from custody;  
16 provided that if the offender is in the custody of the  
17 director of health, the director of health shall  
18 provide notification of major developments in an  
19 offender's case to the victim witness assistance  
20 division of the applicable county department of the  
21 prosecuting attorney, which shall directly notify the  
22 victim and surviving immediate family members. The

1 victim or a surviving immediate family member shall  
2 also be consulted and advised about plea bargaining by  
3 the prosecuting attorney;

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

7 (3) To receive protection from threats or harm;

8 (4) To be informed by the police, victim/witness  
9 counselor, or other criminal justice personnel, of  
10 financial assistance and other social services  
11 available as a result of being a witness to or a  
12 victim of crime, including information on how to apply  
13 for the assistance and services;

14 (5) To be provided by the court, whenever possible, with a  
15 secure waiting area during court proceedings that does  
16 not require them to be in close proximity to  
17 [~~defendants~~] offenders and families and friends of  
18 [~~defendants;~~] offenders;

19 (6) To have any stolen or other personal property  
20 expeditiously returned by law enforcement agencies  
21 when the property is no longer needed as evidence. If  
22 feasible, all the property, except weapons, currency,

1           contraband, property subject to evidentiary analysis,  
2           and property, the ownership of which is disputed,  
3           shall be returned to the person within ten days of  
4           being taken; [~~and~~]

5           (7) To be informed by the department of public safety of  
6           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[-]; and

13          (8) To be informed of changes planned by the department of  
14          health in the custodial status of the offender that  
15          allows or results in the release of the offender into  
16          the community, including escape and final discharge;  
17          provided that the director of health shall provide  
18          notification of the custodial changes planned by the  
19          department of health to the victim witness assistance  
20          division of the applicable county department of the  
21          prosecuting attorney, which shall directly notify the  
22          victim and surviving immediate family members."

1 SECTION 5. Section 801D-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~§~~801D-6~~§~~] **Intergovernmental cooperation.** The county  
4 prosecutor, the department of health, the police, local social  
5 service agencies, the courts, and all other agencies involved in  
6 the criminal justice system shall all cooperate with each other  
7 to ensure that victims and witnesses of crime receive the rights  
8 and services to which they are entitled under this chapter."

9 SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.

12

**Report Title:**

Victims Rights; Department of Health Notification

**Description:**

Amends crime victims' bill of rights to include notice or waiver of notice as to an offender's unfitness to stand trial, transfer to the state hospital or other psychiatric facility, or regaining fitness to proceed. Requires the department of health to provide notice of an offender's unauthorized absences to the county victim witness assistance divisions of the department of the prosecuting attorney. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*