

JAN 20 2010

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
18 transferred back to the jurisdiction of the county for



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

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

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

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



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. The director, upon written request, shall
22 give notice to each victim, or surviving immediate family



1 member, as defined in section 801D-2, of any unauthorized
 2 absence of any person placed in a facility or services
 3 contracted by or operated by the director, by the most
 4 reasonable and expedient means available.

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

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

13 ""Major developments" means arrest or release of the
 14 suspect by the police, case deferral by the police, referral to
 15 the prosecutor by the police, rejection of the case by the
 16 prosecutor, preliminary hearing date, grand jury date, trial and
 17 sentencing dates, and the disposition of the case.

18 The term "major developments" includes the following
 19 events:

- 20 (1) The offender is found unfit to proceed or acquitted on
 21 the grounds of physical or mental disease, disorder,
 22 or defect under chapter 704;



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

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

5 (B) Committed to the custody of the director of
6 health for placement in an appropriate public or,
7 private institution, including:

8 (i) State facilities established under chapter
9 334;

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

13 (iii) Any other public or private facility or
14 institution, whether on an inpatient or
15 outpatient basis, for the care, custody,
16 diagnosis, treatment, or rehabilitation of
17 that person; or

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

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



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

3 (1) To be informed by the police and the prosecuting
4 attorney of the final disposition of the case. If the
5 crime charged is a felony, the victim or a surviving
6 immediate family member shall be notified of major
7 developments in the case and whenever the [~~defendant~~
8 ~~or perpetrator~~] offender is released from custody.

9 The victim or a surviving immediate family member
10 shall also be consulted and advised about plea
11 bargaining by the prosecuting attorney;

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

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

16 (4) To be informed by the police, victim/witness
17 counselor, or other criminal justice personnel, of
18 financial assistance and other social services
19 available as a result of being a witness to or a
20 victim of crime, including information on how to apply
21 for the assistance and services;



- 1 (5) To be provided by the court, whenever possible, with a
2 secure waiting area during court proceedings that does
3 not require them to be in close proximity to
4 [~~defendants~~] offenders and families and friends of
5 [~~defendants~~;] offenders;
- 6 (6) To have any stolen or other personal property
7 expeditiously returned by law enforcement agencies
8 when the property is no longer needed as evidence. If
9 feasible, all the property, except weapons, currency,
10 contraband, property subject to evidentiary analysis,
11 and property, the ownership of which is disputed,
12 shall be returned to the person within ten days of
13 being taken; [~~and~~]
- 14 (7) To be informed by the department of public safety of
15 changes planned by the department in the custodial
16 status of the offender that allows or results in the
17 release of the offender into the community, including
18 escape, furlough, work release, placement on
19 supervised release, release on parole, release on bail
20 bond, release on appeal bond, and final discharge at
21 the end of the prison term[~~-~~]; and



1 (8) To be informed by the department of health of changes
 2 planned by the department in the custodial status of
 3 the offender that allows or results in the release of
 4 the offender into the community, including escape and
 5 final discharge."

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

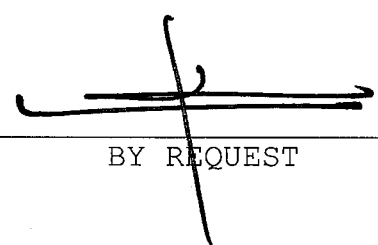
8 "[+]§801D-6[+] **Intergovernmental cooperation.** The county
 9 prosecutor, the department of health, the police, local social
 10 service agencies, the courts, and all other agencies involved in
 11 the criminal justice system shall all cooperate with each other
 12 to ensure that victims and witnesses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

14 SECTION 6. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

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

17

INTRODUCED BY:



 BY REQUEST



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.

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

