

JAN 23 2009

---

# 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:

- 17 (1) Amend the definition of "major developments" to  
18 include unfitness to stand trial or acquittal by  
19 reason of physical or mental disease, disorder, or  
20 defect; transfer to the state hospital or other  
21 psychiatric facility; or regaining fitness to proceed;  
22 and



1           (2) Give victims the choice whether to receive  
2           notification.

3           SECTION 2. Chapter 801D, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6           "§801D- Notification not required. Victims, witnesses,  
7 and surviving immediate family members of crime victims may  
8 waive their rights under section 801D-4 by providing written  
9 notice to police and the prosecuting attorney."

10          SECTION 3. Section 334-2.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12          "(b) The department may operate or contract for a secure  
13 psychiatric rehabilitation program for individuals who require  
14 intensive therapeutic treatment and rehabilitation in a secure  
15 setting. The services authorized by this section shall be for  
16 persons:

- 17          (1) Involuntarily hospitalized under this chapter for whom  
18               the services cannot be reimbursed, covered, or  
19               provided by an insurer, plan, or other person;
- 20          (2) Committed to the custody of the director under chapter  
21               704; and
- 22          (3) Appropriately hospitalized under chapter 704 or 706.



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

5       Any such person placed in a facility or services contracted  
6 for or operated by the director who leaves or remains away from  
7 the facility or services, without permission, may be apprehended  
8 and returned to the facility or services by any employee of the  
9 department or by any police officer without any warrant or  
10 further proceeding. The director, upon written request, shall  
11 give notice to each victim, witness, or surviving immediate  
12 family member, as defined in section 801D-2, of any unauthorized  
13 absence of any person placed in a facility or services  
14 contracted by or operated by the director, by the most  
15 reasonable and expedient means available.

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



1 SECTION 4. Section 801D-2, Hawaii Revised Statutes, is  
2 amended by amending the definition of "major developments" to  
3 read as follows:

4 "Major developments" means arrest or release of the  
5 suspect by the police, case deferral by the police, referral to  
6 the prosecutor by the police, rejection of the case by the  
7 prosecutor, preliminary hearing date, grand jury date, trial and  
8 sentencing dates, and the disposition of the case.

9 The term "major developments" includes the following  
10 events:

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

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

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

18 (B) Committed to the custody of the director of  
19 health for placement in an appropriate public or  
20 private institution, including:

21 (i) State facilities established under chapter  
22 334;



1                   (ii) A psychiatric facility, special treatment  
2                                   facility, or therapeutic living program, as  
3                                   those terms are defined in section 334-1; or  
4                   (iii) Any other public or private facility or  
5                                   institution, whether on an inpatient or  
6                                   outpatient basis, for the care, custody,  
7                                   diagnosis, treatment, or rehabilitation of  
8                                   that person; or

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

12           SECTION 5. Section 801D-4, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

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

16           (1) To be informed by the police and the prosecuting  
17 attorney of the final disposition of the case. If the  
18 crime charged is a felony, the victim or a surviving  
19 immediate family member shall be notified of major  
20 developments in the case and whenever the [~~defendant~~  
21 ~~or perpetrator~~] offender is released from custody.

22           The victim or a surviving immediate family member



- 1 shall also be consulted and advised about plea  
2 bargaining by the prosecuting attorney;
- 3 (2) To be notified by the prosecuting attorney if a court  
4 proceeding to which they have been subpoenaed will not  
5 proceed as scheduled;
- 6 (3) To receive protection from threats or harm;
- 7 (4) To be informed by the police, victim/witness  
8 counselor, or other criminal justice personnel, of  
9 financial assistance and other social services  
10 available as a result of being a witness to or a  
11 victim of crime, including information on how to apply  
12 for the assistance and services;
- 13 (5) To be provided by the court, whenever possible, with a  
14 secure waiting area during court proceedings that does  
15 not require them to be in close proximity to  
16 [~~defendants~~] offenders and families and friends of  
17 [~~defendants;~~] offenders;
- 18 (6) To have any stolen or other personal property  
19 expeditiously returned by law enforcement agencies  
20 when the property is no longer needed as evidence. If  
21 feasible, all the property, except weapons, currency,  
22 contraband, property subject to evidentiary analysis,



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

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

12          (8) To be informed by the department of health of changes  
 13          planned by the department in the custodial status of  
 14          the offender that allows or results in the release of  
 15          the offender into the community, including escape and  
 16          final discharge."

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

19          "**[+]§801D-6[+]** **Intergovernmental cooperation.** The county  
 20          prosecutor, the department of health, the police, local social  
 21          service agencies, the courts, and all other agencies involved in  
 22          the criminal justice system shall all cooperate with each other





1 to ensure that victims and witnesses of crime receive the rights  
2 and services to which they are entitled under this chapter."

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.

6

INTRODUCED BY:

*Will Engert*  
*Nichelle N. Kidani*  
*Bob Bone*  
*Jack Henning*



**Report Title:**

Victims Rights; Department of Health Notification

**Description:**

Amends the 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 offender unauthorized absences.

