

**SB2162**

**SD1**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
THE HONORABLE DWIGHT Y. TAKAMINE, VICE CHAIR  
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**

**TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2010**

February 23, 2010

**RE: SENATE BILL 2162, S.D. 1; RELATING TO THE RIGHTS OF VICTIMS**

Good morning Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, the Department of Prosecuting Attorney provides the following testimony **in support of S.B. 2162, S.D. 1**, which proposes to amend *H.R.S. Chapter 801D* by expanding the current victims' notification procedures to require that the Director of the Department of Health notify crime victims and surviving immediate family members, who have submitted a written request, of specified information about a criminal defendant or perpetrator who has been committed to the custody of the Director of Health under *H.R.S. Chapter 704* give notice to each victim or surviving immediate family member, as defined in section 801D-2, of any unauthorized absence of any person placed in a facility or services contracted by or operated by the director, by the most reasonable and expedient means available.

For almost fifteen years, crime victims, and when the victims have suffered death, their surviving immediate family members in Hawaii have benefited from the notification requirements of *H.R.S. Chapter 801D*. One limitation on the receipt of these benefits for victims and their survivors is the illogical disconnect that occurs when the defendant escapes the grasp of the criminal justice system due to an acquittal or determination of unfitness to proceed due to a mental or physical condition. For victims, extreme frustration often accompanies the news that a defendant will not face responsibility for their actions, due to their perceived mental condition. This emotional experience is further exacerbated by the realization that the reassuring flow of information that victims have a right to receive terminates upon a determination of mental unfitness. The safety, emotional, and justice needs of victims that predicate the victims' rights to notification are just as compelling when an offender is confined in a mental health facility as they are when a convict is incarcerated in a penal facility.

The proposed amendments to H.R.S. Chapter 801D in S.B. 2162, S.D. 1 would assure that a victim whose criminal perpetrator is acquitted due to physical or mental disease, disorder, or defect, or found unfit to proceed under H.R.S. Chapter 704 would still maintain their notification rights. As defined in the bill, a victim or surviving immediate family member would be entitled to notification of the name and location of any institution, or subsequent institutions where a defendant or perpetrator is detained. Similarly, notification requirements would apply when an unauthorized absence, including an escape occurs, including the requirement that the notification be by the most expedient means, including telephonic communication. The victim or surviving immediate family members would also be entitled to timely notice of motions, applications, hearings or court orders known to the Department of Health that involve the fitness of the defendant or perpetrator to proceed or resume penal proceedings or that involve the discharge, release, or conditional release of the defendant or perpetrator.

Prompt notification of when releases will actually occur is essential. Arguably the most important justification for notifying victims about a defendant's or perpetrator's custody status is the need for victims to conduct safety planning that can enhance their physical, psychological, and emotional health. Without prompt notification of a pending release a victim can easily be exposed to unexpected and unnecessary trauma. This can easily compound the initial effects of the crime, as illustrated in the example cited in our testimony below.

While the science behind the mental evaluations conducted on criminal defendants is far from exact, the right for victims to learn the outcomes of such assessments should be seen as a moral and legal certainty. The outcomes of the criminal justice process are as critically important for victims as they are for the accused. Situations such as those depicted in the attached article about John A. Truth, who brutally murdered Janice Carter cannot be allowed to recur. The family of Janice Carter should not have had to endure the unnecessary suffering that happened when Truth was released from custody within three years without them ever being notified. The fact that Truth has reportedly assaulted another woman and now remains at large adds insult to the family's fear and injury.

We commend and concur with the insertion of language that would permit that notification may be provided to the County Victim Witness Assistance Program in lieu of direct notice to the victims that is incorporated in Senate Draft 1. This would simplify the procedure and presumably relieve the Department of Health of the necessity of maintaining contact information for victims, as the County Victim Witness Assistance Programs already have these records on file for other types of notification. Furthermore, we note that current provisions of Chapter 801D limit notification to those submitting requests in writing, which typically reduces the population of potential recipients of notification to a manageable number. Victim Witness Assistance Programs have successfully managed similar notification procedures for defendants and inmates housed within facilities operated under the Department of Public Safety since 1983. On O'ahu notification is successfully coordinated with Public Safety on a 24/7 basis and similar arrangements can be made with the Department of Health. There is no reason to believe that the same successful programs that operate to notify victims of penal inmates cannot be successfully replicated for victims of DOH mental health patients.

While there is no question that the analysis of the need for the changes proposed in S.B. 2162, S.D. 1 involve a delicate balancing act between the privacy and confidentiality rights of mental patients and the safety needs of crime victims, the Legislature has weighed in on the very same type of issues regarding the HIV status of offenders and the health and safety needs of victims and come down on the side of crime victims. This perceived clash of values we believe is analogous to the HIV status dilemma. Recent history locally and nationally is replete with examples of offenders with histories of mental health problems that have targeted previous victims for further harm. For us to ignore the clear need for a process to provide crime victims with information critical to their safety would be reckless and foolhardy. Changes, as proposed in this bill (and suggested amendments), as well as any necessary amendments to H.R.S. Chapter 334, that the Department may deem necessary, are urgently needed.

We urge you to rectify this glaring omission in our state's victims' rights laws **and support the provisions of S.B. 2162, S.D. 1.** We can hopefully learn an important lesson from the shocking and unnecessary experiences of the Carter family and other crime victims like them. Thank you for your time and consideration.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

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DATE: February 23, 2010

TO: The Honorable Brian T. Taniguchi, Chair  
The Honorable Dwight Y. Takamine, Vice Chair  
Committee on Judiciary and Government Operations

FROM: Adriana Ramelli, Executive Director  
The Sex Abuse Treatment Center

RE: Support for SB2162 SD1  
To amend the Crime Victim's Bill Rights

Good morning Senators Taniguchi and Takamine and members of the Committee on Judiciary and Government Operations. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC supports SB 2162 SD1 which would amend HRS Chapter 801D to include notice or waiver of notice as to an offender's unfitness to stand trial or acquittal by reason of physical or mental disease, transfer to the state hospital or other psychiatric facility, or regaining fitness to proceed. The SATC also supports this bill's provision requiring notification regarding an offender's unauthorized absences from Department of Health facilities or services. This bill effectively expands and clarifies the events that victims and their immediate family members deserve to be notified about regarding the defendant or perpetrator in their case.

Our Center has served thousands of victims of sexual assault over the last 30 years and it is abundantly clear to us that victims can benefit greatly from a comprehensive victim notification system. Sexual assault and other violent crimes shatter lives and can lead to a profound sense of vulnerability and lack of control. Through an effective victim notification system, victims have the opportunity to reclaim some of the control they have lost by using the information they receive to protect and prepare themselves for changes in the disposition of the offender, particularly if it involves their release from custody. In addition, adequate notification provides victims the option of further involvement in the criminal justice system, an important choice for many victims.

I urge you to support SB2162 SD1. This important victim-centered bill will help strengthen the rights of those traumatized by sexual assault and other serious crimes.

Thank you for the opportunity to testify.

**Testimony in Support of SB 2162  
Relating to Rights of Victims**

**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
THE HONORABLE DWIGHT Y. TAKAMINE, VICE CHAIR  
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**

February 23, 2010  
10:00 a.m.  
Senate Conference Room 016

Submitted by Jay T. Kimura, Prosecuting Attorney  
Phyllis Shinno, Victim Assistance Unit Coordinator  
County of Hawai'i

**TO: Chair Taniguchi, Vice Chair Takamine, and Committee Members:**

**We support Senate Bill 2162 SD1 to provide notice to victims of changes in status of offenders committed to the Department of Health under chapter 704 or 706.**

When a crime involves an offender with psychiatric issues, the trauma to victims can be exacerbated by the involvement of mental health providers. Their concern for the privacy of their client is sometimes at the expense of the community's safety and in most cases, at the expense of the crime victim. There is a real danger posed by people who lack societal restraints. Victims that have been directly impacted by that lack of restraint should at least be informed of the status and location of the offender.

SB2162 seeks to amend several statutes to allow notice to certain crime victims upon written request. We believe that passage of this bill will provide victims of offenders with psychiatric issues some measure of security and safety.