

SB2162

WRITTEN TESTIMONY

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee Health

S.B. 2162, RELATING TO THE RIGHTS OF VICTIMS

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 5, 2010

1 **Department's Position:** The Department of Health (DOH) must respectfully oppose the bill as
2 currently drafted.

3 **Fiscal Implications:** The implications of passage of this bill include violation of patient privacy laws if
4 protected health information is released about an individual who leaves the Hawaii State Hospital.

5 **Purpose and Justification:** This bill amends the rights of victims and surviving family members in
6 criminal proceedings to include notification of case status when a perpetrator is found unfit to stand trial,
7 is committed following a verdict of not guilty by reason of insanity ('acquit and commit'), when a
8 perpetrator is placed following commitment to an alternative psychiatric facility, and when an individual
9 has unauthorized absences from a facility.

10 The rights of victims are important, and the intent of this bill is understandable. However, the
11 offending individuals who are the focus of this legislation are considered patients, not criminals, and as
12 such are afforded the same rights to privacy and security of protected health information as are all health
13 care recipients. The notification described in this legislation would compromise the patient's protected
14 health information if it were to be disclosed without proper consent.

1 The Department believes there are currently, under HRS 801D, adequate mechanisms by which
2 the victims and families of offenders are to be notified of major developments in the cases in which they
3 are involved, through the police and prosecutor's office. All of the major developments in the case of an
4 individual committed to the custody of the Director of Health, except elopement from the hospital, are
5 accomplished only by a formal court proceeding, at which the prosecutor's office is present. Therefore,
6 the prosecutor's office has knowledge of the major developments in all but a small fraction of the cases
7 involving mentally ill offenders in the custody of the Director of Health.

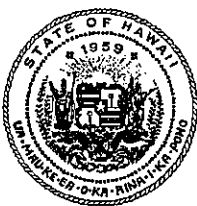
8 Also, for those individuals civilly committed to the Hawaii State Hospital following a forensic
9 admission, the Family Court is notified in advance and sends a notice of 'intent to discharge' to the
10 individuals they have on file in that case.

11 There is additional concern with some of the terms and language included in this bill, in that
12 Section 3 (2) (B), page 5, calls for a change in the definition of the term 'major developments' to include
13 the commitment of individuals committed to the custody of the director for placement in institutions
14 including special treatment facilities, therapeutic living programs, or any other public or private facility,
15 whether inpatient or outpatient, for care or rehabilitation. However, the director does not have the ability
16 to maintain custody of individuals anywhere except in an inpatient hospital, and therefore those
17 placements are not under the custodial control of the director. As the director's custodial jurisdiction
18 does not extend beyond the hospital, there does not seem to be grounds for notification to occur.

19 To expand reporting requirements is to implement significant policy changes in the area of
20 forensic mental health. The Department of Health understands the intent of this bill, but opposes the
21 language due to the issues raised in this testimony.

22 Thank you for the opportunity to testify on this bill.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawaii 96813
Telephone: 808 587-1143
FAX 808 587-1146

LISA A. DUNN
Chair

TOM WATTS
Commissioner

REBECCA S. WARD
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON SENATE BILL 2162
RELATING TO THE RIGHTS OF VICTIMS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Health
Senator David Y. Ige, Chair
Senator Josh Green, M.D., Vice Chair

Friday, February 5, 2010; 2:55 PM
State Capitol, Conference Room 016

Good afternoon Senator Ige, Senator Green, and Members of the Senate Committee on Health. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of Senate Bill 2162. Senate Bill 2162 amends section 334-2.5 and Chapter 801D, Hawaii Revised Statutes, by providing crime victims and surviving family members with the right to be notified of the offender's fitness to proceed, transfer to the state hospital or psychiatric facility, or unauthorized absence from a facility.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one, if compensation were not available.

The Legislature enacted Chapter 801D in 1988 to ensure "that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the

protections afforded criminal defendants.” The legislature, in order to ensure that the intent of Chapter 801D was fulfilled, included provisions in Chapter 801D-4, requiring that the victim and surviving family members be notified, upon written request, of the major developments in their case, including whenever the offender is released from custody. The proposed legislation clarifies that the right to be notified of major developments in their case, includes the right to be notified about the offender’s fitness to proceed, and any changes in custody related to the offender’s transfer to the state hospital or other psychiatric facility.

The attached article illustrates the impact on surviving family members when they were not notified that the state hospital released the mentally ill offender who murdered their mother, Janice Carter. The offender was released three (3) years after he was involuntarily committed to the state hospital. Family members and the department of the prosecuting attorney found out that the offender had been released only after he assaulted another woman in Florida. In the article, Ms. Carter’s son wondered why he and his sister were not notified when the offender was released. They were shocked, angry, frustrated, disappointed and dismayed when they learned that the offender had been released. In particular, they were “disappointed with the state, because it’s under the state’s jurisdiction.” They lost the sense of justice they originally felt when the offender was committed to the state hospital, where they believed he would remain because of the danger he represented to the community. At the time the article was written, Mr. Carter and his sister “were still too upset about the murder to ever return to Hawaii, where they both were born and raised.”

The notification provisions in section 334-2.5 and Chapter 801D, are essential to helping victims understand and participate in the criminal justice system. Victims have a legitimate interest in being notified of any proceeding regarding whether the offender may be released from custody. Such notification allows victims an opportunity to emotionally prepare for the offender’s release and to take precautions, if necessary, to ensure their own safety. Providing victims with information about the custody status of the offender also gives victims a sense of control that may have been shattered by the crime, and such information can empower victims to make informed decisions about their involvement in the criminal justice process.

Thank you for providing the Commission with an opportunity to testify in favor of this important measure. The Commission urges the Committee to support Senate Bill 2162.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY

DOUGLAS S. CHIN
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE DAVID Y. IGE, CHAIR
THE HONORABLE JOSH GREEN, M.D., VICE CHAIR
SENATE COMMITTEE ON HEALTH**

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

February 5, 2010

RE: SENATE BILL 2162; RELATING TO THE RIGHTS OF VICTIMS

Good morning Chair Ige and members of the Senate Committee on Health, the Department of Prosecuting Attorney provides the following testimony **in support of S.B. 2162, with amendments**, 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. 230, 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.

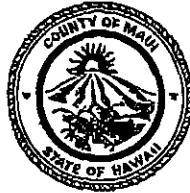
We would suggest that insertion of language that would permit that notification may be provided to the County Victim Witness Assistance Program in lieu of direct notice to the victims. This would simplify the procedure and presumably relieve the Department of Health of the necessity of maintaining contact 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 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 with our proposed amendments.** 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.

CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney

PETER A. HANANO
First Deputy Prosecuting Attorney

LENA LORENZO
Director

Counselors
PAULA HEISKELL
RUTH MORI
GERALD POBLETE
CINDY LEE
ANA MAKONI

**DEPARTMENT OF THE PROSECUTING ATTORNEY
VICTIM/WITNESS ASSISTANCE DIVISION
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7695 • FAX (808) 270-6188**

**THE HONORABLE DAVID Y. IGE, CHAIR
SENATE COMMITTEE ON HEALTH**

**THE HONORABLE JOSH GREEN, M.D., VICE-CHAIR
SENATE COMMITTEE ON HEALTH**

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

February 3, 2010

RE: SB 2162 Relating to the Rights of Victims

We are providing testimony in support of SB2162, Relating to the Rights of Victims, which proposes to amend HRS 801D to expand notification procedures by including the Department of Health to inform crime victims and surviving immediate family members, upon written request, of major developments about a criminal defendant who has been committed to the custody of the Director of Health.

Hawaii Revised Statute Chapter 801D is a landmark legislation which provided crime victims or surviving immediate family members, when the victims have suffered death, certain basic rights. Victims have benefitted from the notification of major developments of their case. As of last year, through the Hawaii Statewide Automated Victim Information and Notification(SAVIN), victims can now access the offender's information anytime by calling a number or going to the website at www.vinelink.com. Victims can also register to be notified automatically by phone or email when the offender is released, transferred or escapes.

The Victim/Witness Assistance Division staff, who have been providing services to crime victims since 1982, have received positive feedback about this notification process. Victims feel they are important part of the system and feel they have been treated with fairness, dignity and respect by keeping them in the know of the offender status. However, when an offender is acquitted due to physical or mental disease, disorder, or defect or found unfit to proceed the notification ceases. This creates more frustration on the victims who feel the offender did not take responsibility for the crime they committed. Additional shock and trauma on the victims also occur when out of the blue victims encounter the offender in public without prior notification that the offender is being released. Most importantly, timely notification to the victims will prepare them and their family for safety planning, as oftentimes, offenders who are found unfit to proceed commit violent crimes.

For all the reasons mentioned above, we urge you to rectify this missing piece in the victims' rights notification procedure by including the Department of Health to provide timely notification to crime victims and their families as proposed in SB 2162.

Thank you for your time and consideration.