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TESTIMONY ON SENATE BILL 230 SD1
RELATING TO THE RIGHTS OF VICTIMS

by

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Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Thursday, February 26, 2009; 9:00 AM
State Capitol, Conference Room 016

Good afternoon Senator Taniguchi, Senator Takamine, and Members of the Senate Committee on Judiciary and Government Operations. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of Senate Bill 230 SD1. Senate Bill 230 SD1 amends Chapter 801D, the victim rights provisions, by providing 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 unreimbursed 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 the 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 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 230 SD1.

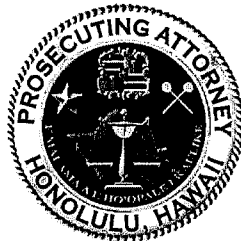
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SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS**

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009**

February 26, 2009

RE: SENATE BILL 230, 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. 230, S.D.1, 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 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.

In response to some concerns expressed regarding the scope of responsibilities of this bill we propose amending the measure to eliminate the requirement that witnesses be notified since notification to witnesses is not included anywhere else in Chapter 801D, despite the inclusion in the Chapter's title. We also would suggest that insertion of language that would allow for notification may 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.

We urge you to rectify this missing piece in our state's victims' rights laws **and support the provisions of S.B. 230, S.D. 1, with our proposed amendments.** We can hopefully learn an important lesson from the shocking and unnecessary experiences of the Carter family and other crime victim like them. Thank you for your time and consideration.