

SB 230

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Senator Ige, Chair and Senator Green, Vice Chair Committee on Health

From: Carol Lee, Executive Director

Re: SB 230 Relating to the Rights of Victims

Good morning Senator Ige, Senator Green, and Committee members. The Hawaii State Coalition Against Domestic Violence appreciates the opportunity to submit testimony in support of 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.

Hawaii has been witness to be several gruesome domestic violence related crimes over the years. While mental illness is not a causal factor for domestic violence there have some of the alleged batterers has been found unfit to stand trial. If the perpetrator were to be released the victim and their families could be in serious danger. Keeping victims notified of the whereabouts of the perpetrators of violence will enhance victim safety and will hopefully diminish the loss of precious lives.

We appreciate your consideration of our testimony.

Together we can do amazing things

LINDA LINGLE
GOVERNOR OF HAWAII



LATE

CHIYOME LEINAALA FUKINO, M.D.
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In reply, please refer to:
File:

Senate Committee on Health

S.B. 0230, RELATING TO THE RIGHTS OF VICTIMS

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

February 18, 2009, 3:15 p.m.

1 **Department's Position:** The Department of Health (DOH) appreciates the intent of this bill, but must
2 respectfully oppose it as currently drafted.

3 **Fiscal Implications:** Significant but unquantified additional work hours will be required which cannot
4 be absorbed at the current staffing levels.

5 **Purpose and Justification:** This bill amends the rights of victims and witnesses in criminal
6 proceedings to include notification of case status when a perpetrator is found unfit to stand trial, is
7 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 area of forensic mental health is most complicated, where medicine, law, and the clinical
11 treatment of individuals with mental illness are balanced with the need to treat the victim of a crime or
12 the individual's surviving immediate family members with dignity and respect. When an individual is
13 found to be not guilty of a crime by reason of physical or mental defect, disease, or disorder, it means
14 that the person was not responsible for their actions at the time for the crime. While this is often
15 difficult for the victim of the crime or the individual's surviving immediate family members, the focus

1 of intervention at this point then becomes one of rehabilitation and treatment. With that, a component of
2 rehabilitation is to restore the individual's abilities while providing treatment in the least restrictive
3 environments. Individuals with mental illness are provided community-based treatment, providing they
4 are not a danger to others. The reporting requirements of this bill compromise this approach to
5 treatment.

6 To expand reporting requirements is to implement significant policy changes in the area of
7 forensic mental health. The Department of Health strongly suggests that any significant policy changes
8 in this area should only occur after reasoned study by legal and mental health stakeholders.

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

LINDA LINGLE
GOVERNOR



LATE

LISA A. DUNN
Chair

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**CRIME VICTIM COMPENSATION
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TESTIMONY ON SENATE BILL 230
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

Wednesday, February 18, 2009; 3:15 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 230. Senate Bill 230 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.

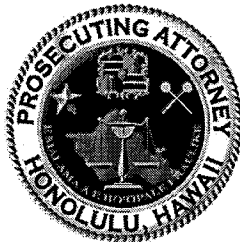
Thank you for providing the Commission with an opportunity to testify in favor of this important measure. The Commission urges the Committee to support Senate Bill 230.

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

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

February 18, 2009

RE: SENATE BILL 230; RELATING TO THE RIGHTS OF VICTIMS

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

We urge you to rectify this missing piece in our state's victims' rights laws and support the provisions of S.B. 230. 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.

 Starbulletin.com

Thursday, November 18, 1999



By Ken Sakamoto, Star-Bulletin

David Carter ties a flower arrangement to the bus stop sign under a mango tree in Punchbowl where his mother was stabbed to death in 1993.

Murder aftermath: Suspect free, family says system failed

**Ruled mentally unfit to stand
trial, he was freed after 3 years,
attacked again and is on the loose**

By Pat Omandam
Star-Bulletin Tapa

David Carter trusted that his home state of Hawaii would keep tabs on the man who allegedly stabbed his mother to death at a Punchbowl bus stop in 1993.

Doctors declared murder suspect John A. Truth unfit to stand trial. So Carter said he and his sister took solace in knowing that Truth -- who previously was committed involuntarily at least twice to mental institutions -- would probably never be freed because he was a danger to the community.

"So I came out of this whole exercise feeling that, 'OK, in some ways justice is done. This is as good as we're going to get,'" said Carter, who now lives in Vancouver, British Columbia. "He's going to be permanently put into a mental hospital until who knows how long.' And that was it. That was the last I heard."

Until Nov. 4, when a deputy city prosecutor and a victims/survivors counselor who handled the Janice M. Carter murder case told David Carter that Truth had been released from a mental hospital three years ago.

Adding to the family's shock and dismay, Truth reportedly attacked another woman in Florida a few months after his 1996 discharge.

No one knows where Truth is today.



Courtesy of David Carter
David Carter's mother, Janice Carter, with her brother.

Carter now wants to know why no one notified the victim's family or the prosecutor about Truth's release, given that he is a danger to the community -- and why a loophole in state law allows someone to go from murder suspect to free man without standing trial.

"We're angry, we're frustrated, but I guess most of all we're disappointed," Carter said. "And in particular, we're disappointed with the state, because it's under the state's jurisdiction.

"It is a pure coincidence that I'm here (in Hawaii) during the Xerox Hawaii thing," he said. "It is sort of a wake-up call to all of us who think that the system will work, and you wonder whether it really does work."

Sudden death

About 11 a.m. on Aug. 19, 1993, Janice M. Carter, 72, left her South Kuakini Street apartment and walked to Lusitana Street, where she waited at a bus stop under a large mango tree. Police said Truth, 30 at the time and considered a nuisance by neighbors, walked up to Carter and without a word fatally stabbed her in the neck with a steak knife.

Truth was charged with second-degree murder. A Circuit Court judge in September 1993 appointed a three-member panel of doctors to determine whether Truth was mentally competent to stand trial, and whether he had a mental illness that would preclude him from facing criminal charges.

His public defender said Truth had been hearing voices "throughout the years." Truth also had a mental history that included two involuntary commitments to mental hospitals, in San Francisco and in Elgin, Ill.



Courtesy of David Carter
Janice M. Carter completes one of the seven
Honolulu Marathons she entered. Carter
walked 40-50 miles a week.

According to documents obtained by the Star-Bulletin, Truth was interviewed separately by the three doctors in the summer of 1994. All reported him unfit to stand trial and recommended that he be committed to the state hospital for treatment.

They all agreed Truth was a danger to the community.

Dr. David Stein, in his July 17, 1994, report to Circuit Judge James Aiona, concluded that Truth's mental illness impaired his ability to recognize that he needed medication to get better. Psychiatrist Daniel F. Reed reported that Truth presented a high risk of danger to others and should be committed. The third panelist concurred.

"He believes that others are actively out to get him, and may act on what he construes as self-defense," said the report by psychological consultant Carlan M. Robinson.

"It is this examiner's opinion that the defendant should be committed to the authority of the director of health in in-custody treatment," Robinson said.

Charge was dismissed

A year and a half after the doctors declared Truth unfit to stand trial, the courts dismissed the murder charge against him. Once the criminal charges were dropped, the matter became a civil case that was transferred to the jurisdiction of the state attorney general's office, said city Deputy Prosecutor Kevin K. Takata.

Once the case was transferred, the prosecutor's office no longer was in line for automatic notification about Truth's status.

Takata, who was to prosecute the murder case, wrote to the attorney general's office in May 1995, asking that it keep him informed. Takata wanted to track him because he felt that Truth was dangerous.

Takata renewed his request in September 1997 after he received a call from the Fort Lauderdale district attorney's office informing him that a John A. Truth had assaulted a woman there.

The woman was not seriously harmed, but the incident showed that Truth was dangerous, Takata said.

"Just given the nature of the offense, in my opinion (Truth) represents a clear danger to the community," Takata said. "He attacked David's mother and that was an unprovoked attack. And the motive he gave was that she was standing under a tree that he favored. He definitely has mental problems."

What the law allows

Nevertheless, the state by law cannot disclose information to anyone about those involuntarily committed to a mental hospital, including when and why a patient was released and the status of the individual, said state Deputy Attorney General Ann Andreas.

State law governing involuntary hospitalization does require notification of a patient's family and the public defender when a patient has been put on notice for discharge. But neither the prosecutor in the case nor victims and witnesses are told.

Others with an interest in a patient can petition the family court to be notified when the individual is up for discharge, said Andreas, who represents the Department of Health. In this case, Takata asked the attorney general's office for an update but did not petition the family court for notification.

State Deputy Public Defender Dean Yamashiro confirmed through records that Truth's criminal case was dismissed and that he was involuntarily committed to the Hawaii State Hospital. But since involuntary commitment is temporary, Truth could have petitioned the state for his release, he said.

By law the state can involuntarily commit patients for a maximum of 360 days. A notice of discharge must be filed with Family Court before the patient's release. If there are no objections to the release, the patient is freed or can voluntarily remain for further treatment.

Carter said it is that loophole in state law that allows a murder suspect to avoid trial and eventually disappear.

He wonders what kind of public outcry there would have been if Truth had remained in Hawaii and committed another crime.

"Obviously, there is something that has happened in this whole sequence of events that allows a person like John Truth to get free. Somebody dropped the ball along the way," he said.

State Sen. Sam Slom (R, Hawaii Kai) said a bill he plans to introduce in January will deal with disclosure of information so that people like Truth are not set free without everyone familiar with the case knowing about it. And Slom is researching to see if there is a way to prosecute people who were deemed unfit to stand trial but were later released from a mental hospital.

'For our mom'

Slom has more than a passing interest in the case. Janice Carter was his mother-in-law when he was married to her daughter, Jonquil, from 1962 to 1970. Jonquil M. Armstrong now lives in New York,

"We don't know much about this guy," Slom said.

"We don't know where he is now. So it is our responsibility, if he does in fact turn up somewhere else and does harm to someone, that this state has got to take responsibility for that."

Carter said his sister is still too upset about the murder to ever return to Hawaii, where they both were born and raised. But she agreed with him it must be made public so others know of their experience.