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## 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 for crime victims and witnesses in section 801D-4,  
3 Hawaii Revised Statutes, victims and surviving immediate family  
4 members, upon their written request, must be notified of, among  
5 other things, major developments in the case and release of the  
6 defendant or perpetrator 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 section 801D-2 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 in section 801D-2 of the term  
14 "major developments" is vague with respect to whether major  
15 developments include a finding that the perpetrator has been:  
16 deemed unfit to stand trial; transferred to the state hospital  
17 or other psychiatric institution; or rehabilitated and



1 transferred back to the jurisdiction of the county for  
2 resumption of penal proceedings upon regaining fitness to  
3 proceed. While major developments expressly include "the  
4 disposition of the case", the term arguably does not include the  
5 other developments specified above.

6 Consequently, a victim or surviving immediate family member  
7 of a felony conceivably may not be notified that 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 the term "major  
11 developments". The legislature finds that crime victims and  
12 their immediate family members should be notified not only of  
13 these circumstances, but also 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 a finding of unfitness to stand trial or  
19 acquittal by reason of physical or mental disease,  
20 disorder, or defect; a transfer to the state hospital  
21 or other psychiatric facility; or subsequent regaining  
22 of fitness to proceed; and



1           (2) Give victims the choice of whether to receive  
2           notification of these events or circumstances.

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. A victim, surviving  
7 immediate family member, or witness may waive rights under  
8 section 801D-4 by providing written notice to police and the  
9 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. Upon the written request of each victim,  
11 witness, or surviving immediate family member, as defined in  
12 section 801D-2, the director shall give notice of any  
13 unauthorized absence of any person placed in a facility or  
14 services contracted by or operated by the director, by the most  
15 reasonable and expedient means available.

16           The failure of any state officer or employee to carry out  
17 the requirements of this subsection shall not subject the State  
18 or any employee to liability in any civil action; provided that  
19 the failure may provide a basis for disciplinary action as may  
20 be 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 includes the following events:

10 (1) A determination that the offender is unfit to proceed  
11 or acquitted on the grounds of physical or mental  
12 disease, disorder, or defect under chapter 704;

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

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

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

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



- 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





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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.

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INTRODUCED BY: *Mike F. Pittman*

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*On 9/2*

JAN 21 2011



**Report Title:**

Victims' Rights; Department of Health Notification

**Description:**

Amends the crime victims' bill of rights law 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.

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