

JAN 21 2011

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



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.

6

INTRODUCED BY:

Will Enger

Heather J.

Carol Fink

J.

[Signature]

Carrie A. Neish



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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

