

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 of crime victims and witnesses in chapter 801D, Hawaii
3 Revised Statutes, victims and surviving immediate family members
4 of crime, upon written request through the department of the
5 prosecuting attorney in the county where the crime was
6 committed, must be notified of major developments in the case
7 and whenever the defendant or perpetrator is released from
8 custody; provided that the crime charged is a felony. This
9 right of crime victims and their surviving immediate family
10 members does not depend on whether the person has actually been
11 convicted of that crime, since the term "crime" is defined in
12 chapter 801D as an act or omission committed by an adult or
13 juvenile that would constitute an offense against the person
14 under the Hawaii penal code.

15 However, the definition of "major developments" in chapter
16 801D is vague with respect to whether that term includes events
17 such as a finding that the perpetrator is deemed unfit to stand
18 trial, has been transferred to the state hospital or other



1 mental health facility, or has been rehabilitated and
2 transferred back to the jurisdiction of the county for
3 resumption of penal proceedings upon regaining fitness to
4 proceed. While the definition of that term includes "the
5 disposition of the case," this phrase arguably does not include
6 these other developments.

7 Consequently, a victim or surviving immediate family member
8 of a felony conceivably may not be notified if a defendant or
9 perpetrator is found unfit to proceed, acquitted, or transferred
10 to the state hospital or other facility, since these events are
11 not specifically included in the definition of "major
12 developments." The legislature finds that crime victims and
13 their families should be notified under these circumstances, and
14 should be further notified of the date of the resumption of
15 penal proceedings, should the defendant or perpetrator be
16 subsequently deemed fit to proceed.

17 Accordingly, the purpose of this Act is to amend the
18 definition of "major developments" to include unfitness to stand
19 trial or acquittal by reason of physical or mental disease,
20 disorder, or defect; transfer to the state hospital or other
21 mental health facility; or regaining fitness to proceed.



1 SECTION 2. Section 334-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The department may operate or contract for a secure
4 psychiatric rehabilitation program for individuals who require
5 intensive therapeutic treatment and rehabilitation in a secure
6 setting. The services authorized by this section shall be for
7 persons:

- 8 (1) Involuntarily hospitalized under this chapter for whom
9 the services cannot be reimbursed, covered, or
10 provided by an insurer, plan, or other person;
11 (2) Committed to the custody of the director under chapter
12 704; and
13 (3) Appropriately hospitalized under chapter 704 or 706.

14 The director shall be responsible for the appropriate
15 placement of all persons placed in facilities or services
16 contracted for or operated by the director under paragraphs (1)
17 through (3).

18 Any [such] person placed in a facility or services
19 contracted for or operated by the director who leaves or remains
20 away from the facility or services, without permission, may be
21 apprehended and returned to the facility or services by any
22 employee of the department or by any police officer without any



1 warrant or further proceeding. The director, upon written
2 request, shall give notice to each victim or surviving immediate
3 family member, as defined in section 801D-2, through the
4 department of the prosecuting attorney in the county where the
5 crime was committed, of any unauthorized absence of any person
6 who has been hospitalized under chapter 704 or 706 and placed in
7 a facility or services contracted by or operated by the
8 director, by the most reasonable and expedient means available.

9 No failure of any state officer or employee to carry out
10 the requirements of this subsection shall subject the State or
11 any employee to liability in any civil action; provided that the
12 failure may provide a basis for disciplinary action as may be
13 deemed appropriate by competent authority."

14 SECTION 3. Section 334-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§334-5 Confidentiality of records. All certificates,
17 applications, records, and reports made for the purposes of this
18 chapter and directly or indirectly identifying a person subject
19 hereto shall be kept confidential and shall not be disclosed by
20 any person except so far as:

21 (1) The person identified, or the person's legal guardian,
22 consents;



- 1 (2) Disclosure may be deemed necessary by the director of
2 health or by the administrator of a private
3 psychiatric or special treatment facility to carry out
4 this chapter;
- 5 (3) A court may direct upon its determination that
6 disclosure is necessary for the conduct of proceedings
7 before it and that failure to make the disclosure
8 would be contrary to the public interest;
- 9 (4) Disclosure may be deemed necessary under the federal
10 Protection and Advocacy for Mentally Ill Individuals
11 Act of 1986, Public Law 99-319, to protect and
12 advocate the rights of persons with mental illness who
13 reside in facilities providing treatment or care;
- 14 (5) Disclosure of a person's treatment summary from a
15 previous five-year period from one health care
16 provider to another may be deemed necessary for the
17 purpose of continued care and treatment of the person,
18 or for health care operations; provided that the
19 health care provider seeking disclosure makes
20 reasonable efforts to obtain advance consent from the
21 person; [e]



1 (6) Disclosures are made between the person's health care
2 provider and payor to obtain reimbursement for
3 services rendered to the person; provided that
4 disclosure shall be made only if the provider informs
5 the person that a reimbursement claim will be made to
6 the person's payor, the person is afforded an
7 opportunity to pay the reimbursement directly, and the
8 person does not pay[-]; or

9 (7) Disclosure requested through written request to the
10 director, by any victim or surviving immediate family
11 member, as defined in section 801D-2, through the
12 department of the prosecuting attorney in the county
13 where the crime was committed, provided that the
14 disclosure shall be limited to the unauthorized
15 absence of any person who has been hospitalized under
16 chapter 704 or 706 and placed in a facility or
17 services contracted by or operated by the director,
18 and to changes in the custodial status of the offender
19 that allow or result in the release of the offender
20 into the community, including but not limited to
21 escape and final discharge.



1 Nothing in this section shall preclude the application of more
2 restrictive rules of confidentiality set forth for records
3 covered by Title 42, Part 2, Code of Federal Regulations,
4 relating to the confidentiality of alcohol and drug abuse
5 patient records. For the purposes of this section, "facilities"
6 shall include but not be limited to hospitals, nursing homes,
7 community facilities for mentally ill individuals, boarding
8 homes, and care homes.

9 Nothing in this section shall preclude disclosure, upon
10 proper inquiry, of any information relating to a particular
11 patient and not clearly adverse to the interests of the patient,
12 to the patient, the patient's family, legal guardian, or
13 relatives, nor, except as provided above, affect the application
14 of any other rule or statute of confidentiality. The use of the
15 information disclosed shall be limited to the purpose for which
16 the information was furnished."

17 SECTION 4. Section 801D-2, Hawaii Revised Statutes, is
18 amended by amending the definition of "major developments" to
19 read as follows:

20 "Major developments" means events such as arrest or
21 release of the suspect by the police, case deferral by the
22 police, referral to the prosecutor by the police, rejection of



1 the case by the prosecutor, preliminary hearing date, grand jury
2 date, trial and sentencing dates, and the disposition of the
3 case. "Major developments" include the following:

4 (1) The offender is found unfit to proceed or acquitted on
5 the grounds of physical or mental disease, disorder,
6 or defect under chapter 704;

7 (2) Following a finding of unfitness to proceed or
8 acquittal under paragraph (1), the offender is
9 subsequently:

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

11 (B) Committed to the custody of the director of
12 health for placement in an appropriate public or
13 private institution, including:

14 (i) State facilities established under chapter
15 334;

16 (ii) A psychiatric facility, special treatment
17 facility, or therapeutic living program, as
18 those terms are defined in section 334-1; or

19 (iii) Any other public or private facility or
20 institution, whether on an inpatient or
21 outpatient basis, for the care, custody,



1 diagnosis, treatment, or rehabilitation of
2 that person; or

3 (3) The offender has regained fitness to proceed pursuant
4 to section 704-406(2), including the date on which the
5 penal proceedings are to be resumed."

6 SECTION 5. Section 801D-4, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Upon written request, victims and surviving immediate
9 family members of crime shall have the following rights:

10 (1) To be informed by the police and the prosecuting
11 attorney of the final disposition of the case. If the
12 crime charged is a felony, the victim or a surviving
13 immediate family member shall be notified of major
14 developments in the case and whenever the [~~defendant~~
15 ~~or perpetrator~~] offender is released from custody.
16 The victim or a surviving immediate family member
17 shall also be consulted and advised about plea
18 bargaining by the prosecuting attorney;

19 (2) To be notified by the prosecuting attorney if a court
20 proceeding to which they have been subpoenaed will not
21 proceed as scheduled;

22 (3) To receive protection from threats or harm;

- 1 (4) To be informed by the police, victim/witness
2 counselor, or other criminal justice personnel, of
3 financial assistance and other social services
4 available as a result of being a witness to or a
5 victim of crime, including information on how to apply
6 for the assistance and services;
- 7 (5) To be provided by the court, whenever possible, with a
8 secure waiting area during court proceedings that does
9 not require them to be in close proximity to
10 [defendants] offenders and families and friends of
11 [~~defendants,~~] offenders;
- 12 (6) To have any stolen or other personal property
13 expeditiously returned by law enforcement agencies
14 when the property is no longer needed as evidence. If
15 feasible, all the property, except weapons, currency,
16 contraband, property subject to evidentiary analysis,
17 and property, the ownership of which is disputed,
18 shall be returned to the person within ten days of
19 being taken; [and]
- 20 (7) To be informed by the department of public safety of
21 changes planned by the department in the custodial
22 status of the offender that allows or results in the



1 release of the offender into the community, including
2 escape, furlough, work release, placement on
3 supervised release, release on parole, release on bail
4 bond, release on appeal bond, and final discharge at
5 the end of the prison term[-]; and

6 (8) To be informed by the department of health through the
7 department of the prosecuting attorney in the county
8 where the crime was committed, of changes in the
9 custodial status of the offender that allow or result
10 in the release of the offender into the community,
11 including but not limited to escape and final
12 discharge."

13 SECTION 6. Section 801D-6, Hawaii Revised Statutes, is
14 amended to read as follows:

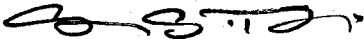
15 "[+]§801D-6[+] Intergovernmental cooperation. The county
16 prosecutor, the department of health, the police, local social
17 service agencies, the courts, and all other agencies involved in
18 the criminal justice system shall all cooperate with each other
19 to ensure that victims and witnesses of crime receive the rights
20 and services to which they are entitled under this chapter."

21 SECTION 7. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: 
By Request



Report Title:

Victims Rights; Department of Health Notification

Description:

Amends crime victims' bill of rights to include notice of offender's unfitness to stand trial, transfer to the state hospital or other psychiatric facility, or regaining fitness to proceed. Requires DOH to provide notice of an offender's unauthorized absences to the prosecuting attorney in the county where the crime was committed.

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