



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Public Safety & Military Affairs

Representative Henry J.C. Aquino, Chair

Representative Ty Cullen, Vice Chair

Thursday, March 24, 2011, 10:30 a.m.

State Capitol, Conference Room 309

by

Janice Yamada

Deputy Chief Court Administrator, First Circuit

WRITTEN TESTIMONY ONLY

Measure No. and Title: House Concurrent Resolution No. 140, Urging the Criminal Justice System to Provide Additional Rights to Victims of, Surviving Immediate Family Members of, and Witnesses to a Crime

Judiciary's Position:

While the Judiciary acknowledges the importance of victim rights and the role victims can and do play in the adjudication of cases, it is unable to support a resolution that would be in conflict with existing statute. Chapter 806-73(b)(3), relating to the duties and responsibilities of a probation officer, defines to whom a probation officer is to provide copies of the presentence report. The victim, surviving immediate family members, and witnesses are not identified in this section.

Additionally, the proposed amendments do not address the requirements of 42 Code of Federal Regulations, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2), and the Health Insurance Portability and Accountability Act (HIPAA). 42 CFR, Part 2 states that the records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided under subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b). It further states that any information disclosed to a second entity automatically binds the second entity to the same confidentiality standards. Crime victims, surviving immediate family members, and



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witnesses do not fall into any of the exceptions provided for under this Code. Likewise, HIPAA, generally, provides for the privacy of medical information. It is conceivable that a presentence report may contain medical information and/or information about substance abuse treatment activities, and to disclose this information would violate either or both 42 CFR and HIPAA.

A final concern is that the proposed resolution is silent as to how the information from a presentence report would be used if it were shared with crime victims, surviving immediate family members, and witnesses, and which entity would be responsible for oversight of its use.

Thank you for the opportunity to testify on House Concurrent Resolution No. 140.

Honorable Henry Aquino
Chair, House Committee on Public Safety and Military Affairs

Honorable Members
House Committee on Public Safety and Military Affairs
IN SUPPORT OF HR 122 and HCR 140

My son was murdered by a vicious criminal randomly. My son was at the wrong place at the wrong time. My family has lost a son, nephew, cousin, uncle, friend. As such, I know firsthand what it is like to be a part of the criminal justice system as a part of the victims family.

My name is Remedios Balanon and I am writing in strong support of HR 122 and HCR 140 to the bill of rights for victims. This resolution would allow fair treatment and restitution of victims and to allow pre-sentencing reports relating to the crime when they are available to the defendant.

Victims should be allowed at post-conviction proceedings when release is being considered since the crime and violation of the convicted person affects the lives of the person that they hurt or murdered.

I have personally gone through this particular circuit in the criminal justice system and have felt out of the loop. Allowing the victim, or surviving spouse/family member to be apprised and allowed to have a say in these proceedings will help bring justice and peace to the family and those affected.

As someone who's family member was murdered and have been through the process, I am asking you to please vote in favor of HR 122 and HCR 140

Thank you,
Remedios Balanon