



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Judiciary

The Honorable S.C. Keith-Agaran, Chair

The Honorable Karl Rhoads, Vice Chair

Thursday, February 3, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by

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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 820, Relating to Bill of Rights for Victims

Purpose: Amends chapter 801D, providing for additional rights to crime victims, surviving immediate family members, and witnesses.

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 bill that, with the proposed amendments, 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 copies of the presentence report shall be provided to. 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



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victims, surviving immediate family members, and 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 amendment 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 Bill No. 820.