



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**Senate Committee on Health**

**SB 82, Relating to the Rights of Victims**

**Testimony of Loretta J. Fuddy, ACSW, M.P.H.  
Acting Director of Health**

**Friday, January 28, 2011, 2:45 p.m.**

1 **Department's Position:** The Department of Health (DOH) appreciates the intent of this bill, but  
2 respectfully opposes it as currently drafted.

3 **Fiscal Implications:** Significant but unquantified additional work hours will be required which cannot  
4 be absorbed with current staffing levels.

5 **Purpose and Justification:** This bill amends the definition of the term 'major developments' in the  
6 basic bill of rights for crime victims and witnesses in Section 801D-2, Hawaii Revised Statutes, and  
7 gives victims the choice of whether to receive notification if an individual charged with an offense is  
8 found unfit to stand trial or acquitted by reason of physical or mental disease, disorder, or defect; is  
9 transferred to the state hospital or other psychiatric facility; or regains fitness to proceed with trial. The  
10 bill also modifies Section 334-2.5, requiring the Director of Health to notify victims and witnesses if the  
11 individual charged with an offense has unauthorized absences from a facility.

12 At the present time, the prosecutor's office is represented each time an individual in the care and  
13 custody of the Director of Health experiences an event as defined in Section 801D-2, and therefore the  
14 Department of Health asserts that the prosecutor's office is positioned to make any required  
15 notifications, and placing the additional requirement for the Department of Health to make a notification

1 to victims and witnesses will result in an unnecessary redundancy of effort, with an increase of time and  
2 funds, with little incremental benefit achieved. The prosecutor's office is uniquely positioned, being  
3 both present in the court for each major development that occurs in a case as well as being the office  
4 which maintains the Victim Witness Kokua program, and can make efficient and effective  
5 communication notifications to any affected parties. We do not believe delegating the notification to the  
6 Department of Health increases efficiency or effectiveness of communication and it adds an additional  
7 layer of bureaucracy to the proceeding.

8 Also, all individuals in the care and custody of the Director of Health and who experience a  
9 'major development' in a case are, by definition, 'patients' and not 'prisoners', and the provisions of  
10 Section 334-5 of the Hawaii Revised Statutes, on the Confidentiality of Records, is relevant. The  
11 provisions of Section 334-5 require signed consent for any information to be released about a consumer  
12 to any party. Any information released without signed consent of the consumer involved would be  
13 subject to being considered a breach of confidentiality under Section 334-5.

14 The Department of Health has already begun discussions about this bill with the Honolulu Prosecutor's  
15 Office, and we appear to be making progress.

16 Thank you for the opportunity to testify on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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THE HONORABLE JOSH GREEN, CHAIR  
SENATE HEALTH COMMITTEE  
Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai'i

January 28, 2011

RE: S.B. 1019; RELATING TO THE RIGHTS OF VICTIMS.

Chair Green, Vice Chair Nishihara, and members of the Senate Committee on Health, the Department of the Prosecuting Attorney submits the following testimony supporting the intent of S.B. 82, however, we prefer the language in H.B. 244 and S.B. 1019, which is in the department's 2011 legislative package. These bills are attached to our testimony.

The purpose of S.B. 82 and the Department of the Prosecuting Attorney's H.B. 244 and S.B. 1019 is to support crime victims and surviving immediate family members by expanding their rights regarding notification of an offender's unfitness to stand trial, transfer to the state hospital or other psychiatric facility, or regaining fitness to proceed. The legislation also requires the Department of Health to give notice to each crime victim or surviving immediate family member of any unauthorized absence of a hospitalized offender.

For almost fifteen years, crime victims and, when the victims have suffered death, their surviving immediate family members have benefited from the notification requirements of Chapter 801D, Hawaii Revised Statutes. One limitation on the benefits for crime victims and their survivors is the disconnect that occurs when the defendant escapes the criminal justice system due to an acquittal or determination of unfitness to proceed, based on a physical or mental condition.

It is already difficult for a person to move on and regain their sense of security, once he or she has been victimized by a crime. It can be even more emotionally draining when he or she has no idea about the status of the perpetrator. In cases where the crime victim has died, surviving immediate family members face equally difficult and emotional challenges. Therefore, providing notice to the crime victim and immediate family members on the status of the offender will provide them some level of comfort.

Although this department does agree with the policy goal of S.B. 82, the language presented in H.B. 244 and S.B. 1019 is more clearly defined and better addresses the issues.

First, in lines 6-8 of S.B. 82, it is not necessary to have language for a victim, surviving immediate family member, or witness to waive their basic bill of rights under section 801D-4, Hawaii Revised Statutes. A crime victim or surviving immediate family member must make the initiative to exercise their basic bill of rights through a written request. Our department would like to ensure that crime victims and surviving immediate family members have their rights available without the possibility of it being taken away. Thus, our bill contains no such language where a crime victim or surviving immediate family member can waive their basic bill of rights. Also, this section applies to crime victims and surviving immediate family members only, not to any other witnesses.

Second, in lines 10-15 of S.B. 82, the written request should be initiated by the crime victim or surviving immediate family member, not by any other witness. H.B. 244 and S.B. 1019 limits the written request to be done by the crime victim or surviving immediate family member. Moreover, in our bill, the written request is to be done by the department of the prosecuting attorney in the county where the crime was committed on behalf of the crime victim or surviving immediate family member. In contrast, S.B. 82 does not include the department of the prosecuting attorney offices in this process. Further, H.B. 244 and S.B. 1019 defines the process by which a person is hospitalized under Hawaii Revised Statutes Chapter 704, Penal Responsibility and Fitness to Proceed and Chapter 706, Disposition of Convicted Defendants. In S.B. 82, only a general description of the hospitalization process is used: "any person placed in a facility or services contracted by or operated by the director" that is not as narrowly defined as H.B. 244 and S.B. 1019.

Third, S.B. 82 does not amend section 334-5, Hawaii Revised Statutes to allow crime victims or surviving immediate family members to receive disclosure of confidential records regarding the custodial status of the offender. This section prohibits disclosure of confidential records in the Department of Health unless it is listed as an exemption. In H.B. 244 and S.B. 1019, we created a subsection in section 334-5, Hawaii Revised Statutes that allows confidential records regarding the custodial status of the offender to be given to any crime victim or surviving immediate family upon request.

Finally, in lines 12-16 of S.B. 82, section 801D-4(a)(8), Hawaii Revised Statutes was amended to require the Department of Health, upon written request, to notify crime victims and surviving immediate family members of changes in the custodial status of the offender. In contrast, H.B. 244 and S.B. 1019 require the Department of Health to notify the department of the prosecuting attorney where the crime was committed since these departments are representing the victims and surviving immediate family members of crime.

For all the reasons mentioned, we request the language H.B. 244 and S.B. 1019, which is in the Department of the Prosecuting Attorney's 2011 legislative package to be inserted in S.B. 82 as a Senate Draft 1. Thank you for this opportunity to testify.

JAN 21 2011

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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 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; [ex]



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,



diagnosis, treatment, or rehabilitation of  
that person; or

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

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

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

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

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

(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.

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

