

JAN 18 2013

S.B. NO. 417

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 that chapter 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 that
16 chapter is vague with respect to whether that term includes
17 events such as a finding that the perpetrator is deemed unfit to
18 stand trial, has been transferred to the state hospital or other



1 psychiatric institution, 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 "major developments" includes
5 "the disposition of the case", this phrase arguably does not
6 include these other developments.

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

18 Accordingly, the purpose of this Act is to amend the
19 definition of "major developments" to include unfitness to stand
20 trial or acquittal by reason of physical or mental disease,
21 disorder, or defect; transfer to the state hospital or other
22 psychiatric 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 contracted
19 for or operated by the director who leaves or remains away from
20 the facility or services, without permission, may be apprehended
21 and returned to the facility or services by any employee of the
22 department or by any police officer without any warrant or



1 further proceeding. Upon written request, the director, or the
2 director's designee, shall give notice to the department of the
3 prosecuting attorney in the county where the crime was
4 committed, of the unauthorized absence of any person who has, in
5 the course of or resulting from a penal proceeding, been
6 hospitalized and placed in a facility for services contracted or
7 operated by the director, or of the release of any person who
8 has, in the course of or resulting from a penal proceeding, been
9 committed to a facility pursuant to section 704-406, 704-407,
10 704-411, or 706-607, and placed in a facility for services
11 contracted by or operated by the director, by the most
12 reasonable and expedient means available. The department of the
13 prosecuting attorney shall then give notice to each victim or
14 surviving immediate family member, as defined in section 801D-2,
15 of the unauthorized absence or release of the person who
16 committed the crime against the victim, pursuant to section
17 801D-4. No failure of any state officer or employee to carry
18 out the requirements of this subsection shall subject the State
19 or any employee to liability in any civil action; provided that
20 the failure may provide a basis for disciplinary action as may
21 be deemed appropriate by competent authority."



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

3 "§334-5 Confidentiality of records. All certificates,
4 applications, records, and reports made for the purposes of this
5 chapter and directly or indirectly identifying a person subject
6 hereto shall be kept confidential and shall not be disclosed by
7 any person except so far as:

- 8 (1) The person identified, or the person's legal guardian,
9 consents;
- 10 (2) Disclosure may be deemed necessary by the director of
11 health or by the administrator of a private
12 psychiatric or special treatment facility to carry out
13 this chapter;
- 14 (3) A court may direct upon its determination that
15 disclosure is necessary for the conduct of proceedings
16 before it and that failure to make the disclosure
17 would be contrary to the public interest;
- 18 (4) Disclosure may be deemed necessary under the federal
19 Protection and Advocacy for Mentally Ill Individuals
20 Act of 1986, Public Law 99-319, to protect and
21 advocate the rights of persons with mental illness who
22 reside in facilities providing treatment or care;



- 1 (5) Disclosure of a person's treatment summary from a
2 previous five-year period from one health care
3 provider to another may be deemed necessary for the
4 purpose of continued care and treatment of the person,
5 or for health care operations; provided that the
6 health care provider seeking disclosure makes
7 reasonable efforts to obtain advance consent from the
8 person; [~~or~~]
- 9 (6) Disclosures are made between the person's health care
10 provider and payor to obtain reimbursement for
11 services rendered to the person; provided that
12 disclosure shall be made only if the provider informs
13 the person that a reimbursement claim will be made to
14 the person's payor, the person is afforded an
15 opportunity to pay the reimbursement directly, and the
16 person does not pay[~~-~~]; or
- 17 (7) Disclosure is requested by the department of the
18 prosecuting attorney in the county where the crime was
19 committed, of the identity of any person who has, in
20 the course of or resulting from a penal proceeding,
21 been hospitalized and placed in a facility for
22 services contracted by or operated by the director and



1 has an unauthorized absence, or of the identity of any
2 person who has, in the course of or resulting from a
3 penal proceeding, been committed pursuant to section
4 704-406, 704-407, 704-411, or 706-607, and placed in a
5 facility for services contracted by or operated by the
6 director and is released. The department of the
7 prosecuting attorney may then give notice to each
8 victim or surviving immediate family member, as
9 defined in section 801D-2, of the unauthorized absence
10 or release of the person who committed the crime
11 against the victim, pursuant to section 801D-4.

12 Nothing in this section shall preclude the application of more
13 restrictive rules of confidentiality set forth for records
14 covered by Title 42, Part 2, Code of Federal Regulations,
15 relating to the confidentiality of alcohol and drug abuse
16 patient records. For the purposes of this section, "facilities"
17 shall include but not be limited to hospitals, nursing homes,
18 community facilities for mentally ill individuals, boarding
19 homes, and care homes.

20 Nothing in this section shall preclude disclosure, upon
21 proper inquiry, of any information relating to a particular
22 patient and not clearly adverse to the interests of the patient,



1 to the patient, the patient's family, legal guardian, or
 2 relatives, nor, except as provided above, affect the application
 3 of any other rule or statute of confidentiality. The use of the
 4 information disclosed shall be limited to the purpose for which
 5 the information was furnished."

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

9 "Major developments" means arrest or release of the
 10 suspect by the police, case deferral by the police, referral to
 11 the prosecutor by the police, rejection of the case by the
 12 prosecutor, preliminary hearing date, grand jury date, trial and
 13 sentencing dates, and the disposition of the case.

14 The term "major developments" includes the following
 15 events:

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

19 (2) Following a finding of unfitness to proceed or
 20 acquittal under paragraph (1), the offender is
 21 subsequently:

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



1 (B) Committed to the custody of the director of
2 health for placement in an appropriate public or
3 private institution, including:

4 (i) State facilities established under chapter
5 334;

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

9 (iii) Any other public or private facility or
10 institution, whether on an inpatient or
11 outpatient basis, for the care, custody,
12 diagnosis, treatment, or rehabilitation of
13 that person; or

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

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

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

21 (1) To be informed by the police and the prosecuting
22 attorney of the final disposition of the case. If the



1 crime charged is a felony, the victim or a surviving
2 immediate family member shall be notified of major
3 developments in the case and whenever the [~~defendant~~
4 ~~or perpetrator~~] offender is released from custody.

5 The victim or a surviving immediate family member
6 shall also be consulted and advised about plea
7 bargaining by the prosecuting attorney;

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

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

12 (4) To be informed by the police, victim/witness
13 counselor, or other criminal justice personnel, of
14 financial assistance and other social services
15 available as a result of being a witness to or a
16 victim of crime, including information on how to apply
17 for the assistance and services;

18 (5) To be provided by the court, whenever possible, with a
19 secure waiting area during court proceedings that does
20 not require them to be in close proximity to

21 [~~defendants~~] offenders and families and friends of

22 [~~defendants;~~] offenders;



- 1 (6) To have any stolen or other personal property
2 expeditiously returned by law enforcement agencies
3 when the property is no longer needed as evidence. If
4 feasible, all the property, except weapons, currency,
5 contraband, property subject to evidentiary analysis,
6 and property, the ownership of which is disputed,
7 shall be returned to the person within ten days of
8 being taken; [~~and~~]
- 9 (7) To be informed by the department of public safety of
10 changes planned by the department in the custodial
11 status of the offender that allows or results in the
12 release of the offender into the community, including
13 escape, furlough, work release, placement on
14 supervised release, release on parole, release on bail
15 bond, release on appeal bond, and final discharge at
16 the end of the prison term[~~-~~]; and
- 17 (8) To be informed by the department of health, through
18 the department of the prosecuting attorney in the
19 county where the crime was committed, of changes in
20 the custodial status of the offender that allow or
21 result in the release of the offender into the



1 community, including but not limited to escape and
2 final discharge."

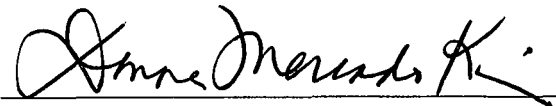
3 SECTION 6. Section 801D-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§801D-6[+] **Intergovernmental cooperation.** The county
6 prosecutor, the department of health, the police, local social
7 service agencies, the courts, and all other agencies involved in
8 the criminal justice system shall all cooperate with each other
9 to ensure that victims and witnesses of crime receive the rights
10 and services to which they are entitled under this chapter."

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14 INTRODUCED BY:



By Request



S.B. NO. 417

Report Title:

Honolulu Prosecutor Package; Victims' Rights; Department of Health Notification

Description:

Amends crime victims' bill of rights to include 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 an offender's unauthorized absences to the department of 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.

