



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

In reply, please refer to:
File:

House Committee on Judiciary

H.B. 236, Relating to Rights of Victims

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

Thursday, January 31, 2013, 2:05 p.m.

1 **Department's Position:** The Department of Health (DOH) appreciates the intent of this bill, but
2 recommends several changes to reduce redundancy and improve clarity.

3 **Fiscal Implications:** Significant but unquantified additional work hours will be required which cannot
4 be absorbed at the current staffing levels, if the bill is enacted as written.

5 **Purpose and Justification:** The intent of this bill, to improve the timeliness and effectiveness of
6 notification to victims or relatives of victims of crimes charged against persons ordered to the care and
7 custody of the Director, is consistent with the Department's goal of improving community safety. The
8 Department empathizes with victims and takes steps, through outreach, treatment, and prevention
9 services, to address recovery from the effects of trauma which victims experience. This is part of the
10 primary goal of the Adult Mental Health Division. Our concerns come from sections of the bill that
11 appear to create redundancy and ambiguity, and may not be effective in achieving the desired outcome
12 of more efficient and timely notifications.

13 This bill amends the rights of victims and witnesses in criminal proceedings to include
14 notification of changes in case status when a person, charged with a felony, is found unfit to stand trial
15 and is committed to the custody of the Director of Health following a verdict of not guilty by reason of

1 insanity ('acquit and commit'), or when placed in an alternative or outpatient psychiatric facility
2 following a commitment to the irector. This bill also requires the DOH to give notice to the
3 Prosecutor's Office when a patient has an unauthorized absence from the Hawaii State Hospital (HSH)
4 or is released from the HSH following an involuntary civil commitment

5 We agree that if there is an unauthorized absence (for example, escape) from HSH, the DOH
6 should have the responsibility to notify the Prosecutor's Office of this fact, in a timely manner (as
7 specified on page 4 of the bill, lines 1-6). Although, we provide a courtesy notice to the Prosecutor's
8 Office of any unauthorized absence, we support this portion of the bill.

9 There are two portions of the bill which we do not support.

10 First, HRS §334-60.7 already requires the DOH to give notice to the Prosecutor's Office when a
11 patient is discharged from an involuntary civil commitment (as specified on page 4 lines 7 – 11 of the
12 proposed bill). HRS §334-60.7 provides:

13 When the administrator of a psychiatric facility contemplates discharge of an involuntary patient because of
14 expiration of the court order for commitment or because the patient is no longer a proper subject for
15 commitment, as determined by the criteria for involuntary hospitalization in section 334-60.2 the
16 administrator shall provide notice of intent to discharge, or if the patient voluntarily agrees to further
17 hospitalization, the administrator shall provide notice of the patient's admission to voluntary inpatient
18 treatment. The notice shall be filed with the court and served personally or by certified mail on those
19 persons whom the order of commitment specifies as entitled to receive notice. If no objection is filed within
20 three days of service, the administrator of the psychiatric facility shall discharge or accept the patient for
21 voluntary inpatient treatment. . . .

22 Prosecutors are present at most, if not all, hearings under chapter 704 and 706 and thus, have
23 notice of the results of these hearings. However, once a defendant has been civilly committed to the
24 hospital, a court order is not required prior to the hospital discharging the patient. Therefore, HRS
25 §334-60.7 requires notice to the relevant parties, which include the prosecutor's office and defense
26 counsel. They are both routinely notified by the Department of the Attorney General, on behalf of the

1 DOH and HSH, of the intent to discharge from the civil commitment categories listed. It is unnecessary
2 and redundant to require DOH personnel to inform the Prosecutor's Office of these situations, twice.

3 Second, it is our understanding of HRS §334-5, and chapters 704 and 706, that when a defendant
4 is committed to the "custody of the DOH, to be placed in an appropriate institution for detention, care,
5 and treatment," the defendant can only be committed to a locked licensed psychiatric hospital or
6 psychiatric unit within a licensed hospital. Therefore, the additions to section 801D-2 (page 9 lines 6 –
7 13 of the proposed bill), specifically (B)(ii) and (B)(iii), have no clear meaning or operational
8 significance. We recommend the removal of these provisions.

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

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

MARI MCCAIG
Chair

L. DEW KANESHIRO
Commissioner

TOM WATTS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 236
RELATING TO THE RIGHTS OF VICTIMS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, January 31, 2013; 2:05 PM
State Capitol, Conference Room 325

Good afternoon Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of House Bill 236. House Bill 236 amends section 334-2.5, and sections of Chapter 801D, Hawai'i Revised Statutes, by providing crime victims and surviving immediate family members with the right to be notified of an offender's fitness to proceed, transfer to the state hospital or psychiatric facility, or unauthorized absence from a facility.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one, if compensation were not available.

The Legislature enacted Chapter 801D in 1988 to ensure "that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the

protections afforded criminal defendants.” The legislature, in order to ensure that the intent of Chapter 801D was fulfilled, included provisions in Chapter 801D-4, requiring that the victim and surviving family members be notified, upon written request, of the major developments in their case, including whenever the offender is released from custody. The proposed legislation clarifies that the right to be notified of major developments includes the right to be notified about the offender’s fitness to proceed; acquittal by reason of physical or mental disease, disorder, or defect; transfer to the state hospital or other psychiatric facility; or regaining of fitness to proceed.

The attached article illustrates the impact on surviving family members when they were not notified that the state hospital released the mentally ill offender who murdered their mother, Janice Carter. The offender was released three (3) years after he was involuntarily committed to the state hospital. Family members and the Department of the Prosecuting Attorney found out that the offender had been released only after he assaulted another woman in Florida. In the article, Ms. Carter’s son wondered why he and his sister were not notified when the offender was released. They were shocked, angry, frustrated, disappointed and dismayed when they learned that the offender had been released. In particular, they were “disappointed with the state, because it’s under the state’s jurisdiction.” They lost the sense of justice they originally felt when the offender was committed to the state hospital, where they believed he would remain because of the danger he represented to the community. At the time the article was written, Mr. Carter and his sister “were still too upset about the murder to ever return to Hawai`i, where they both were born and raised.”

The notification provisions in section 334-2.5 and Chapter 801D, are essential to helping victims understand and participate in the criminal justice system. Victims have a legitimate interest in being notified of any proceeding regarding whether the offender may be released from custody. Such notification allows victims an opportunity to emotionally prepare for the offender’s release and to take precautions, if necessary, to ensure their own safety. Providing victims with information about the custody status of the offender also gives victims a sense of control that may have been shattered by the crime, and such information can empower victims to make informed decisions about their involvement in the criminal justice process.

Thank you for providing the Commission with an opportunity to testify in favor of this important measure. The Commission urges the Committee to pass House Bill 236.

Thursday, November 18, 1999



By Ken Sakamoto, Star-Bulletin

David Carter ties a flower arrangement to the bus stop sign under a mango tree in Punchbowl where his mother was stabbed to death in 1993.

Murder aftermath: Suspect free, family says system failed

**Ruled mentally unfit to stand
trial, he was freed after 3 years,**

attacked again and is on the loose

By Pat Omandam
Star-Bulletin



David Carter trusted that his home state of Hawaii would keep tabs on the man who allegedly stabbed his mother to death at a Punchbowl bus stop in 1993.

Doctors declared murder suspect John A. Truth unfit to stand trial. So Carter said he and his sister took solace in knowing that Truth -- who previously was committed involuntarily at least twice to mental institutions -- would probably never be freed because he was a danger to the community.

"So I came out of this whole exercise feeling that, 'OK, in some ways justice is done. This is as good as we're going to get,'" said Carter, who now lives in Vancouver, British Columbia. "'He's going to be permanently put into a mental hospital until who knows how long.' And that was it. That was the last I heard."

Until Nov. 4, when a deputy city prosecutor and a victims/survivors counselor who handled the Janice M. Carter murder case told David Carter that Truth had been released from a mental hospital three years ago.

Adding to the family's shock and dismay, Truth reportedly attacked another woman in Florida a few months after his 1996 discharge.

No one knows where Truth is today.



Courtesy of David Carter
David Carter's mother, Janice Carter, with her brother.

Carter now wants to know why no one notified the victim's family or the prosecutor about

Truth's release, given that he is a danger to the community -- and why a loophole in state law allows someone to go from murder suspect to free man without standing trial.

"We're angry, we're frustrated, but I guess most of all we're disappointed," Carter said. "And in particular, we're disappointed with the state, because it's under the state's jurisdiction.

"It is a pure coincidence that I'm here (in Hawaii) during the Xerox Hawaii thing," he said. "It is sort of a wake-up call to all of us who think that the system will work, and you wonder whether it really does work."

Sudden death

About 11 a.m. on Aug. 19, 1993, Janice M. Carter, 72, left her South Kuakini Street apartment and walked to Lusitana Street, where she waited at a bus stop under a large mango tree. Police said Truth, 30 at the time and considered a nuisance by neighbors, walked up to Carter and without a word fatally stabbed her in the neck with a steak knife.

Truth was charged with second-degree murder. A Circuit Court judge in September 1993 appointed a three-member panel of doctors to determine whether Truth was mentally competent to stand trial, and whether he had a mental illness that would preclude him from facing criminal charges.

His public defender said Truth had been hearing voices "throughout the years." Truth also had a mental history that included two involuntary commitments to mental hospitals, in San Francisco and in Elgin, Ill.



Courtesy of David Carter

Janice M. Carter completes one of the seven Honolulu Marathons she entered. Carter walked 40-50 miles a week.

According to documents obtained by the Star-Bulletin, Truth was interviewed separately by the three doctors in the summer of 1994. All reported him unfit to stand trial and recommended that he be committed to the state hospital for treatment.

They all agreed Truth was a danger to the community.

Dr. David Stein, in his July 17, 1994, report to Circuit Judge James Aiona, concluded that Truth's mental illness impaired his ability to recognize that he needed medication to get better. Psychiatrist Daniel F. Reed reported that Truth presented a high risk of danger to others and should be committed. The third panelist concurred.

"He believes that others are actively out to get him, and may act on what he construes as self-defense," said the report by psychological consultant Carlan M. Robinson.

"It is this examiner's opinion that the defendant should be committed to the authority of the director of health in in-custody treatment," Robinson said.

Charge was dismissed

A year and a half after the doctors declared Truth unfit to stand trial, the courts dismissed the murder charge against him. Once the criminal charges were dropped, the matter became a civil case that was transferred to the jurisdiction of the state attorney general's office, said city Deputy Prosecutor Kevin K. Takata.

Once the case was transferred, the prosecutor's office no longer was in line for automatic notification about Truth's status.

Takata, who was to prosecute the murder case, wrote to the attorney general's office in May 1995, asking that it keep him informed. Takata wanted to track him because he felt that Truth was dangerous.

Takata renewed his request in September 1997 after he received a call from the Fort Lauderdale district attorney's office informing him that a John A. Truth had assaulted a woman there.

The woman was not seriously harmed, but the incident showed that Truth was dangerous, Takata said.

"Just given the nature of the offense, in my opinion (Truth) represents a clear danger to the community," Takata said. "He attacked David's mother and that was an unprovoked attack. And the motive he gave was that she was standing under a tree that he favored. He definitely has mental problems."

What the law allows

Nevertheless, the state by law cannot disclose information to anyone about those involuntarily committed to a mental hospital, including when and why a patient was released and the status of the individual, said state Deputy Attorney General Ann Andreas.

State law governing involuntary hospitalization does require notification of a patient's family and the public defender when a patient has been put on notice for discharge. But neither the prosecutor in the case nor victims and witnesses are told.

Others with an interest in a patient can petition the family court to be notified when the individual is up for discharge, said Andreas, who represents the Department of Health. In this case, Takata asked the attorney general's office for an update but did not petition the family court for notification.

State Deputy Public Defender Dean Yamashiro confirmed through records that Truth's criminal case was dismissed and that he was involuntarily committed to the Hawaii State Hospital. But since involuntary commitment is temporary, Truth could have petitioned the state for his release, he said.

By law the state can involuntarily commit patients for a maximum of 360 days. A notice of discharge must be filed with Family Court before the patient's release. If there are no objections to the release, the patient is freed or can voluntarily remain for further treatment.

Carter said it is that loophole in state law that allows a murder suspect to avoid trial and eventually disappear.

He wonders what kind of public outcry there would have been if Truth had remained in Hawaii and committed another crime.

"Obviously, there is something that has happened in this whole sequence of events that allows a person like John Truth to get free. Somebody dropped the ball along the way," he said.

State Sen. Sam Slom (R, Hawaii Kai) said a bill he plans to introduce in January will deal with disclosure of information so that people like Truth are not set free without everyone familiar with the case knowing about it. And Slom is researching to see if there is a way to prosecute people who were deemed unfit to stand trial but were later released from a mental hospital.

'For our mom'

Slom has more than a passing interest in the case. Janice Carter was his mother-in-law when he was married to her daughter, Jonquil, from 1962 to 1970. Jonquil M. Armstrong now lives in New York,

"We don't know much about this guy," Slom said.

"We don't know where he is now. So it is our responsibility, if he does in fact turn up somewhere else and does harm to someone, that this state has got to take responsibility for that."

Carter said his sister is still too upset about the murder to ever return to Hawaii, where they both were born and raised. But she agreed with him it must be made public so others know of their experience.

"Most people here in Hawaii are like us. We actually trust the system. We believe the

system works. And now that we know there are parts of it that don't work, then we should try our hardest to see if we can repair it and get it to work," Carter said.

"And that's the most important thing we can do for our mom."

[E-mail to City Desk](#)

Text Site Directory:

[\[News\]](#) [\[Business\]](#) [\[Features\]](#) [\[Sports\]](#) [\[Editorial\]](#) [\[Do It Electric!\]](#)
[\[Classified Ads\]](#) [\[Search\]](#) [\[Subscribe\]](#) [\[Info\]](#) [\[Letter to Editor\]](#)
[\[Stylebook\]](#) [\[Feedback\]](#)

© 1999 Honolulu Star-Bulletin
<http://archives.starbulletin.com>

**Testimony of the Office of the Public Defender, State of Hawaii,
to the House Committee on Judiciary**

January 31, 2013

H.B. No. 236: RELATING TO THE RIGHTS OF VICTIMS

Chair Rhoads and Members of the Committee:

We have concerns about H.B. No. 236 to the extent that the bill contains no provisions for the protection of confidential medical information pursuant to the Health Insurance Portability and Accountability Act [“HIPAA”]. H.B. No. 236 provides for disclosure of information regarding a defendant who is committed mentally to a facility or to a facility which contracts with the state for services if that defendant is absent from the facility without authorization. HIPAA assures the confidentiality of all healthcare information. Service providers who operate within the legal system are not exempt for its provisions. HIPAA specifically includes “institutional” service providers such as hospitals. Hawaii State Hospital, Queen’s Health Systems, Kahi Mohala and other providers of mental health services would fall under the HIPAA provisions.

“Protected health information” under HIPAA includes “the individual’s past, present or future physical or mental health or condition.” Disclosure of such condition to a victim and also the lack of safeguards against further dissemination of the information would be in violation of HIPAA. Although page 7 of the bill states that “nothing in this section shall preclude the application of more restrictive rules of confidentiality. . . ,” we believe such a clause is not sufficient to safeguard information and that limits must be placed upon the type of information which can and cannot be disclosed.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i**

January 31, 2013

RE: H.B. 236; RELATING TO THE RIGHTS OF VICTIMS.

Chair Rhoads, Vice Chair Har, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 236.

Through this measure, which amends Chapter 334 of the Hawaii Revised Statutes (HRS), the Department of Health is required to give notice to the Department of the Prosecuting Attorney in the county where the crime was committed, of the unauthorized absence of any person who has, in the course of or resulting from a penal proceeding, been hospitalized and placed in a facility for services contracted or operated by the director, or of the release of any person who has, in the course of or resulting from a penal proceeding, been committed to a facility. The Department of the Prosecuting Attorney is then required to give notice to each victim or surviving immediate family member of the unauthorized absence or release of the person who committed the crime against the victim.

Further, H.B. 236 amends Chapter 801D, the Crime Victims' Bill of Rights to include notice as to an offender's unfitness to proceed or acquittal on the grounds of physical or mental disease, disorder, or defect under Chapter 704 of the HRS. Following a finding of the offender's unfitness to proceed or acquittal, the victim will also have the right to be informed of the offender's release or discharge from custody, or committal to the custody of the Director of Health for placement in an appropriate public or private institution.

Moreover, the amendments to the Crime Victims' Bill of Rights give the victim the right to know if the offender has regained fitness to proceed pursuant to section 704-406(3), HRS including the date on which the penal proceedings are to be resumed.

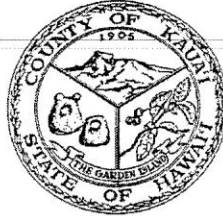
Lastly, the Crime Victims' Bill of Rights gives the victim the right to be informed by the Department of Health, through the Department of the Prosecuting Attorney in the county where the crime was committed, of changes in the custodial status of the offender that allow or result in

the release of the offender into the community, including but not limited to escape and final discharge.

We would like to note that if there is non-compliance, there are no penalties – in fact, this bill includes an immunity clause for civil actions for any failure to carry out the requirements of the law. We simply want to work with the Department of Health to ensure victims are aware of the status of their offenders when they are committed to a health facility. If there is an authorized or unauthorized release of these offenders, some victims are at risk of being re-victimized by the offender, thus, this bill helps to address this safety concern.

For the reasons mentioned above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 236. Thank you for your time and consideration.

Justin F. Kollar
Prosecuting Attorney



Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT OF
H.B. NO. 236
A BILL FOR AN ACT RELATING TO THE RIGHTS OF VICTIMS**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary

Thursday, January 31, 2013
2:05 p.m., Room 325


Honorable Chair Rhoads, Vice-Chair Har, and Members of the House Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 236.

The purpose of House Bill No. 236 is to amend Sections 334-2.5, 334-5, 801D-2, 801D-4, and 801D-6 of the Hawai'i Revised Statutes as it relates to the following: crime victims' notice to an offenders unfitness to stand trial, transfer to state hospital or other psychiatric facility, regain of fitness to proceed, or release/discharge from custody; and requirement of the Department of Health (DOH) to provide notice to the department of prosecuting attorney regarding an offender's unauthorized absences.

The basis of House Bill No. 236 is to maintain that appropriate information is provided to the crime victims and their immediate family members not only to keep them abreast of the defendant's condition, but to allay any insecurities or query they may have regarding the defendant's whereabouts.

For this reason, we strongly support House Bill No. 236. Thank you for the opportunity to testify on this matter.

Respectfully,


Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

January 31, 2013

RE: H.B. 239; RELATING TO THE PAYMENT OF RESTITUTION BY MINORS.

Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of City and County of Honolulu, submits the following testimony in support of H.B. 239, and kindly requests the passage of our proposed H.D. 1. H.B. 239 is part of the 2013 Honolulu Prosecuting Attorney Legislative Package.

Our proposed H.D. 1 for H.B. 239 amends section 574-48, Hawaii Revised Statutes (HRS), to require the court to order restitution, upon request, to any victim, party or person who suffers loss as a result of actions taken by a minor adjudicated pursuant to section 571-11(1) HRS¹; such restitution shall be paid in whole or part by the minor, and payments shall continue even after the minor becomes an adult, as needed to satisfy the order; if the minor is ordered to pay only part of the restitution, the court shall order the parents of the adjudicated minor to pay the remainder of the restitution.

In our proposed H.D. 1, we removed language "When requested by the victim" to be simply "When requested" because requests can be made by an attorney representing the victim. Further, the proposed amendment states that restitution can be ordered to not just the victim, but a party or person who suffered losses as a result of actions taken by a minor adjudicated pursuant to section 571-11(1), thus, retaining language that is already in section 574-48, HRS. The other amendments in the proposed H.D. 1 are technical and non-substantive.

¹ The court shall have exclusive original jurisdiction in proceedings concerning any person who is alleged to have committed an act prior to achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.

The Department of the Prosecuting Attorney of City and County of Honolulu believes that minors must take responsibility for their criminal acts. With this bill, the court must order the minor to pay something for the losses they caused on others, even if it is a small amount. While the minor is working to pay the restitution, it is our hope that they learn from their wrongful actions.

It is for the reasons mentioned that we support our proposed H.D. 1 for H.B. 239. Thank for you the opportunity to testify on this matter.

Report Title:

Relating to the Payment of Restitution by Minors.

Description:

Amends section 574-48, Hawaii Revised Statutes, to require the court to order restitution, upon request, to any victim, party or person who suffers loss as a result of actions taken by a minor adjudicated pursuant to section 571-11(1); such restitution shall be paid in whole or part by the minor, and payments shall continue even after the minor becomes an adult, as needed to satisfy the order; if the minor is ordered to pay only part of the restitution, the court shall order the parents of the adjudicated minor to pay the remainder of the restitution.

A BILL FOR AN ACT

RELATING TO THE PAYMENT OF RESTITUTION BY MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 571-48, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§571-48 Decree, if informal adjustment or diversion to a**
4 **private or community agency or program has not been effected.**

5 When a minor is found by the court to come within section
6 571-11, the court shall so decree and in its decree shall make a
7 finding of the facts upon which the court exercises its
8 jurisdiction over the minor. Upon the decree the court, by
9 order duly entered, shall proceed as follows:

10 (1) As to a child adjudicated under section 571-11(1):

11 (A) The court may place the child on probation:

12 (i) In the child's own home; or

13 (ii) In the custody of a suitable person or

14 facility elsewhere, upon conditions determined

15 by the court.

16 When conditions of probation include custody in a

17 youth correctional facility, the custody shall be

1 for a term not to exceed one year, after which time
2 the person shall be allowed to reside in the
3 community subject to additional conditions as may
4 be imposed by the court;

5 (B) The court may vest legal custody of the child,
6 after prior consultation with the agency or
7 institution, in a Hawaii youth correctional
8 facility, in a local public agency or institution,
9 or in any private institution or agency authorized
10 by the court to care for children; or place the
11 child in a private home. If legal custody of the
12 child is vested in a private agency or institution
13 in another state, the court shall select one that
14 is approved by the family or juvenile court of the
15 other state or by that state's department of social
16 services or other appropriate department; or

17 (C) The court may fine the child for a violation which
18 would be theft in the third degree by shoplifting
19 if committed by an adult. The court may require
20 the child to perform public services in lieu of the
21 fine;

22 (2) As to a child adjudicated under section 571-11(2):

- 1 (A) The court may place the child under protective
2 supervision, as hereinabove defined, in the
3 child's own home, or in the custody of a suitable
4 person or agency elsewhere, upon conditions
5 determined by the court; or
- 6 (B) The court may vest legal custody of the child,
7 after prior consultation with the agency or
8 institution, in a local governmental agency or
9 institution licensed or approved by the State to
10 care for children, with the exception of an
11 institution authorized by the court to care for
12 children. If legal custody of the child is
13 vested in a private agency or institution in
14 another state, the court shall select one that is
15 approved by the family or juvenile court of the
16 other state or by that state's department of
17 social services or other appropriate department;
18 provided that the child may not be committed to a
19 public or private institution operated solely for
20 the treatment of law violators;
- 21 (3) An order vesting legal custody of a minor in an
22 individual, agency, or institution under section

1 571-11(2) shall be for an indeterminate period but
2 shall not remain in force or effect beyond three years
3 from the date entered, except that the individual,
4 institution, or agency may file with the court a
5 petition for renewal of the order and the court may
6 renew the order if it finds such renewal necessary to
7 safeguard the welfare of the child or the public
8 interest. The court, after notice to the parties, may
9 conduct a hearing on the petition. Renewal may be
10 periodic during minority, but no order shall have any
11 force or effect beyond the period authorized by
12 section 571-13. An agency granted legal custody shall
13 be subject to prior approval of the court in any case
14 in which the child is to reside without the
15 territorial jurisdiction of the court and may be
16 subject to prior approval in other cases. An
17 individual granted legal custody shall exercise the
18 rights and responsibilities personally unless
19 otherwise authorized by the court;

20 (4) Whenever the court commits a child to the care of the
21 director of human services or executive director of
22 the office of youth services, or vests legal custody

1 of a child in an institution or agency, it shall
2 transmit with the order copies of the clinical
3 reports, social study, and other information pertinent
4 to the care and treatment of the child, and the
5 institution or agency shall give to the court any
6 information concerning the child that the court may at
7 any time require. An institution or agency receiving
8 a child under this paragraph shall inform the court
9 whenever the status of the child is affected through
10 temporary or permanent release, discharge, or transfer
11 to other custody. An institution to which a child is
12 committed under section 571-11(1) or (2) shall not
13 transfer custody of the child to an institution for
14 the correction of adult offenders, except as
15 authorized in this chapter and under chapter 352;

16 (5) The court may order, for any child within its
17 jurisdiction, whatever care or treatment is authorized
18 by law;

19 (6) In placing a child under the guardianship or custody
20 of an individual or of a private agency or private
21 institution, the court shall give primary
22 consideration to the welfare of the child;

- 1 (7) In support of any order or decree under section
2 571-11(1) or (2), the court may require the parents or
3 other persons having custody of the child, or any
4 other person who has been found by the court to be
5 encouraging, causing, or contributing to the acts or
6 conditions which bring the child within the purview of
7 this chapter and who are parties to the proceeding, to
8 do or to omit doing any acts required or forbidden by
9 law, when the judge deems this requirement necessary
10 for the welfare of the child. The court may also make
11 appropriate orders concerning the parents or other
12 persons having custody of the child and who are
13 parties to the proceeding. If such persons fail to
14 comply with the requirement or with the court order,
15 the court may proceed against them for contempt of
16 court;
- 17 (8) In support of any order or decree for custody or
18 support, the court may make an order of protection
19 setting forth reasonable conditions of behavior to be
20 observed for a specified time, binding upon both
21 parents or either of them. This order may require
22 either parent to stay away from the home or from the

1 other parent or children, may permit the other to
2 visit the children at stated periods, or may require a
3 parent to abstain from offensive conduct against the
4 children or each other;

5 (9) The court may dismiss the petition or otherwise
6 terminate its jurisdiction at any time;

7 (10) In any other case of which the court has jurisdiction,
8 the court may make any order or judgment authorized by
9 law;

10 (11) When requested, [F]the court [may] shall order [any
11 person adjudicated pursuant to section 571-11(1) to
12 make] restitution of money or services to any victim,
13 person, or party who suffers loss as a result of [the
14 child's action,] actions taken by a minor adjudicated
15 pursuant to section 571-11(1); such restitution shall
16 be paid in whole or part by the adjudicated minor, and
17 such payments shall continue even after the minor
18 becomes an adult, as needed to satisfy the order. If
19 the adjudicated minor is ordered to pay only part of
20 the restitution, the court shall specify the amount to
21 the paid by the minor, and shall order the parents of
22 the adjudicated minor to pay the remainder of the

1 restitution. The court may further order any minor
 2 adjudicated pursuant section 571-11(1) [or] to render
 3 community service; and

4 (12) The court may order any person adjudicated pursuant to
 5 section 571-11(2) to participate in community service
 6 [~~and~~].

7 [~~(13) The court may order the parents of an adjudicated~~
 8 ~~minor to make restitution of money or services to any~~
 9 ~~victim, person, or party who has incurred a loss or~~
 10 ~~damages as a result of the child's action.]"~~

11 SECTION 2. This Act does not affect rights and duties that
 12 matured, penalties that were incurred, and proceedings that were
 13 begun before its effective date.

14 SECTION 3. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2013.

INTRODUCED BY: _____

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

LM-NTK

OUR REFERENCE

January 31, 2013

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Bill No. 236, Relating to the Rights of Victims

I am Lisa Mann, Acting Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 236, Relating to the Rights of Victims.

Out of respect for the victim, he or she should be notified of the status and the whereabouts of an offender relating to incarceration or detention, especially for one who has been found unfit to stand trial. The Department of Health should be required to, at the very least, notify the Department of the Prosecuting Attorney.

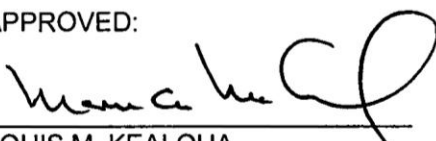
The Honolulu Police Department urges you to support House Bill No. 236, Relating to the Rights of Victims.

Thank you for the opportunity to testify.

Sincerely,


LISA MANN, Acting Captain
Criminal Investigation Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: HOUSE OF REPRESENTATIVES COMMITTEE ON JUDICIARY

From: Veronika Geronimo, Executive Director
Hawaii State Coalition Against Domestic Violence

Hearing Date and Time: January 31, 2013, 2:05 pm

Place: Conference Room 325

RE: HB236 - COMMENTS

Dear Chair Rhoads and Members of the Committee on Judiciary:

The Hawaii State Coalition Against Domestic Violence writes in support of H.B. 236, which 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.

Domestic violence survivors suffer a great deal of anxiety and uncertainty when their perpetrator's location is undetermined. Victim notification about the offender's unauthorized absences and unfitness to stand trial is a valuable tool for survivors, their family members and advocates can use to stay informed, plan for their safety, and take the steps that are taken.

Thank you for your consideration.

Hawaii State Coalition Against Domestic Violence
810 Richards Street, Suite 960
Honolulu, HI 96813
vgeronimo@hscadv.org | www.hscadv.org
Tel: 808-832-9316 ext. 104 | Fax: 808-841-6028