

JAN 22 2016

A BILL FOR AN ACT

RELATING TO BILL OF RIGHTS FOR VICTIMS AND WITNESSES.

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

1 SECTION 1. The legislature finds that the bill of rights of
2 crime victims and witnesses in chapter 801D, Hawaii Revised
3 Statutes, does not adequately address the needs of victims and
4 witnesses harmed by a defendant who is found unfit to stand
5 trial or acquitted on grounds of physical or mental disease,
6 disorder or defect. A crime victim of a defendant in such
7 circumstances should be entitled to the same protection as that
8 of any other crime victim. The purpose of this Act is to ensure
9 that crime victims and witnesses of crime are kept apprised and
10 receive timely notice of changes in custodial status and major
11 developments even after a defendant is civilly committed to the
12 custody of the department of health for placement in an
13 appropriate institution for detention, care and treatment.

14 SECTION 2. Section 801D-2, Hawaii Revised Statutes, is
15 amended by amending the definition of "major developments" to
16 read as follows:



1 "Major developments" means arrest or release of the
2 suspect by the police, case deferral by the police, referral to
3 the prosecutor by the police, rejection of the case by the
4 prosecutor, preliminary hearing date, grand jury date, trial and
5 sentencing dates, finding of unfitness to stand trial or
6 acquittal due to physical or mental disease, disorder or defect,
7 [and] the disposition of the case[-], civil commitment of the
8 suspect to the custody of the department of health for placement
9 in an appropriate mental institution, and changes in custodial
10 status of the suspect once placed in an appropriate mental
11 institution."

12 SECTION 3. Section 801D-4, Hawaii Revised Statutes, has
13 been amended to read as follows:

14 "**§801D-4 Basic bill of rights for victims and witnesses.**

15 (a) [~~Upon written request, v]~~Victims and surviving immediate
16 family members of crime shall have the following rights:

17 (1) To be informed by the police and the prosecuting
18 attorney of the final disposition of the case. If the
19 crime charged is a felony, the victim or a surviving
20 immediate family member shall be notified of major
21 developments in the case and whenever the defendant or



1 perpetrator is released from custody. The victim or a
2 surviving immediate family member shall also be
3 consulted and advised about plea bargaining by the
4 prosecuting attorney;

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

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

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

15 (5) To be provided by the court, whenever possible, with a
16 secure waiting area during court proceedings that does
17 not require them to be in close proximity to
18 defendants and families and friends of defendants;

19 (6) To have any stolen or other personal property
20 expeditiously returned by law enforcement agencies
21 when the property is no longer needed as evidence. If



1 feasible, all the property, except weapons, currency,
2 contraband, property subject to evidentiary analysis,
3 and property, the ownership of which is disputed,
4 shall be returned to the person within ten days of
5 being taken; and

6 (7) To be informed by the department of public safety of
7 changes planned by the department in the custodial
8 status of the offender that allows or results in the
9 release of the offender into the community, including
10 escape, furlough, work release, placement on
11 supervised release, release on parole, release on bail
12 bond, release on appeal bond, and final discharge at
13 the end of the prison term.

14 (b) Upon written request, the victim or the parent or
15 guardian of a minor or incapacitated victim of an offense under
16 section 707-730, 707-731, or 707-732(1)(a) shall have the right
17 to be informed of the human immunodeficiency virus (HIV) status
18 of the person who has been convicted or a juvenile who has been
19 adjudicated under that section and to receive counseling
20 regarding HIV. The testing shall be performed according to the
21 protocols set forth in section 325-17. Upon request of the



1 victim, or the parent or guardian of a minor or incapacitated
2 victim, the department of health shall provide counseling.

3 (c) Pursuant to sections 334-60.7, 334-76, and 334-82,
4 victims, surviving immediate family members, or witnesses of a
5 crime shall have the right to be notified of the custodial
6 status of a patient who has been committed pursuant to section
7 704-406, 704-411, or 706-607.

8 [~~e~~](d) Notwithstanding any law to the contrary, the
9 department of public safety, the Hawaii paroling authority, the
10 judiciary probation divisions and branches, and the department
11 of the attorney general shall make good faith efforts to notify
12 the victim of a crime, or surviving immediate family members of
13 a victim, of income received by a person imprisoned for that
14 crime when the imprisoned person has received a civil judgment
15 that exceeds \$10,000, a civil settlement that exceeds \$10,000,
16 or any income that exceeds \$10,000 in one fiscal year, whenever
17 the income is known to the agency, and, in addition, the
18 department of public safety shall make good faith efforts to
19 notify the victim of a crime or surviving immediate family
20 members of a victim, whenever it is known to the agency that a
21 person imprisoned for that crime has a financial account, of



1 which the department of public safety is aware, of a value
2 exceeding \$10,000.

3 [~~(d)~~] (e) Notwithstanding any law to the contrary, payment
4 of restitution and judgments to victims, or surviving immediate
5 family members of a victim, shall be a precondition for release
6 on parole for any imprisoned person whom the Hawaii paroling
7 authority determines has the financial ability to make complete
8 or partial restitution payments or complete or partial judgment
9 payments to the victim of the person's crime, or to the
10 surviving immediate family members of a victim.

11 [~~(e)~~] (f) Notwithstanding any law to the contrary, the
12 State of Hawaii, any political subdivision of the State of
13 Hawaii, any department or agency of the State, any officer of
14 the State, and any employee of the State shall be immune from
15 damages in any lawsuit based on noncompliance with subsection
16 (b), (c) or (d). Nothing in this subsection shall be construed
17 to prevent disciplinary action against any employee of the State
18 who intentionally fails to comply with subsection (b), (c) or
19 (d) after being warned that compliance is required."

20 SECTION 4. Section 334-60.4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§334-60.4 Notice; waiver of notice; hearing on petition;
2 waiver of hearing on petition for involuntary hospitalization.

3 (a) The court shall set a hearing on the petition and notice of
4 the time and place of such hearing shall be served in accordance
5 with, and to those persons specified in, a current order of
6 commitment. If there is no current order of commitment, notice
7 of the hearing shall be served personally on the subject of the
8 petition and served personally or by certified or registered
9 mail, return receipt requested, deliverable to the addressee
10 only, on the subject's spouse or reciprocal beneficiary, legal
11 parents, adult children, and legal guardian, if one has been
12 appointed. If the subject of the petition has no living spouse
13 or reciprocal beneficiary, legal parent and adult children, or
14 if none can be found, notice of the hearing shall be served on
15 at least one of the subject's closest adult relatives if any can
16 be found. Notice of the hearing shall also be served on the
17 public defender, attorney for the subject of the petition, or
18 other court-appointed attorney as the case may be. If the
19 subject of the petition was committed pursuant to sections 704-
20 406, 704-411, or 706-607 notice shall also be served on the
21 county department, agency or office responsible for the



1 enforcement of rights under section 801D-4, on behalf of any
2 victim, surviving immediate family member, or witness. If the
3 subject of the petition is a minor, notice of the hearing shall
4 also be served upon the person who has had the principal care
5 and custody of the minor during the sixty days preceding the
6 date of the petition if such person can be found within the
7 State. Notice shall also be given to such other persons as the
8 court may designate.

9 (b) The notice shall include the following:

- 10 (1) The date, time, place of hearing, a clear statement of
11 the purpose of the proceedings and of possible
12 consequences to the subject; and a statement of the
13 legal standard upon which commitment is authorized;
- 14 (2) A copy of the petition;
- 15 (3) A written notice, in plain and simple language, that
16 the subject may waive such a hearing by voluntarily
17 agreeing to hospitalization, or with the approval of
18 the court, to some other form of treatment;
- 19 (4) A filled-out form indicating such waiver;
- 20 (5) A written notice, in plain and simple language, that
21 the subject or the subject's guardian or



1 representative may apply at any time for a hearing on
2 the issue of the subject's need for hospitalization,
3 if the subject has previously waived such a hearing;

4 (6) Notice that the subject is entitled to the assistance
5 of an attorney and that the public defender has been
6 notified of these proceedings;

7 (7) Notice that if the subject does not want to be
8 represented by the public defender the subject may
9 contact the subject's own attorney;

10 (8) Notice, if such be the case, that the petitioner
11 intends to adduce evidence to show that the subject of
12 the petition is an incapacitated or protected person,
13 or both, under article V of chapter 560, and whether
14 or not appointment of a guardian is sought at the
15 hearing. If appointment of a guardian is to be
16 recommended, and a nominee is known at the time the
17 petition is filed, the identity of the nominee shall
18 be disclosed.

19 (c) If the subject executes and files a waiver of the
20 hearing, upon acceptance by the court following a court
21 determination that the person understands the person's rights



1 and is competent to waive them, the court shall order the
2 subject to be committed to a facility that has agreed to admit
3 the subject as an involuntary patient or, if the subject is at
4 such a facility, that the subject be retained there."

5 SECTION 5. Section 334-60.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§334-60.5 Hearing on petition.** (a) The court may
8 adjourn or continue a hearing for failure to timely notify a
9 spouse or reciprocal beneficiary, guardian, relative, or other
10 person determined by the court to be entitled to notice, or for
11 failure by the subject to contact an attorney as provided in
12 section 334-60.4(b)(7) if the court determines the interests of
13 justice so require.

14 (b) The time and form of the procedure incident to hearing
15 the issues in the petition shall be provided by court rule.
16 Unless the hearing is waived, the judge shall hear the petition
17 as soon as possible and no later than ten days after the date
18 the petition is filed unless a reasonable delay is sought for
19 good cause shown by the subject of the petition, the subject's
20 attorney, or those persons entitled to receive notice of the
21 hearing under section 334-60.4.



1 (c) The subject of the petition shall be present at all
2 hearings unless the subject waives the right to be present, is
3 unable to attend, or creates conditions which make it impossible
4 to conduct the hearing in a reasonable manner as determined by
5 the judge. A waiver is valid only upon acceptance by the court
6 following a judicial determination that the subject understands
7 the subject's rights and is competent to waive them, or is
8 unable to participate. If the subject is unable to participate,
9 the judge shall appoint a guardian ad litem or a temporary
10 guardian as provided in article V of chapter 560, to represent
11 the subject throughout the proceedings.

12 (d) *[Repeal and reenactment on July 1, 2020. L 2013, c*
13 *221, §24.]* Hearings may be held at any convenient place within
14 the circuit. The subject of the petition, any interested party,
15 or the court on its own motion may request a hearing in another
16 circuit because of convenience to the parties, witnesses, or the
17 court or because of the individual's mental or physical
18 condition.

19 (e) The attorney general, the attorney general's deputy,
20 special deputy, or appointee shall present the case for hearings
21 convened under this chapter, except that the attorney general,



1 the attorney general's deputy, special deputy, or appointee need
2 not participate in or be present at a hearing whenever a
3 petitioner or some other appropriate person has retained private
4 counsel who will be present in court and will present to the
5 court the case for involuntary hospitalization.

6 (f) Counsel for the subject of the petition shall be
7 allowed adequate time for investigation of the matters at issue
8 and for preparation, and shall be permitted to present the
9 evidence that the counsel believes necessary to a proper
10 disposition of the proceedings, including evidence as to
11 alternatives to inpatient hospitalization.

12 (g) No individual may be found to require treatment in a
13 psychiatric facility unless at least one physician, advanced
14 practice registered nurse, or psychologist who has personally
15 examined the individual testifies in person at the hearing.
16 This testimony may be waived by the subject of the petition. If
17 the subject of the petition has refused to be examined by a
18 licensed physician, advanced practice registered nurse, or
19 psychologist, the subject may be examined by a court-appointed
20 licensed physician, advanced practice registered nurse, or
21 psychologist. If the subject refuses and there is sufficient



1 evidence to believe that the allegations of the petition are
2 true, the court may make a temporary order committing the
3 subject to a psychiatric facility for a period of not more than
4 five days for the purpose of a diagnostic examination and
5 evaluation. The subject's refusal shall be treated as a denial
6 that the subject is mentally ill or suffering from substance
7 abuse. Nothing in this section, however, shall limit the
8 individual's privilege against self-incrimination.

9 (h) The subject of the petition in a hearing under this
10 section has the right to secure an independent medical or
11 psychological evaluation and present evidence thereon.

12 (i) *[Repeal and reenactment on July 1, 2020. L 2013, c*
13 *221, §24.]* If after hearing all relevant evidence, including
14 the result of any diagnostic examination ordered by the court,
15 the court finds that an individual is not a person requiring
16 medical, psychiatric, psychological, or other rehabilitative
17 treatment or supervision, the court shall order that the
18 individual be discharged if the individual has been hospitalized
19 prior to the hearing.

20 (j) *[Repeal and reenactment on July 1, 2020. L 2013, c*
21 *221, §24.]* If the court finds that the criteria for involuntary



1 hospitalization under section 334-60.2(1) has been met beyond a
2 reasonable doubt and that the criteria under sections 334-
3 60.2(2) and 334-60.2(3) have been met by clear and convincing
4 evidence, the court may issue an order to any law enforcement
5 officer to deliver the subject to a facility that has agreed to
6 admit the subject as an involuntary patient, or if the subject
7 is already a patient in a psychiatric facility, authorize the
8 facility to retain the patient for treatment for a period of
9 ninety days unless sooner discharged. The court may also
10 authorize the involuntary administration of medication, where
11 the subject has an existing order for assisted community
12 treatment, issued pursuant to part VIII of this chapter,
13 relating to assisted community treatment, and in accordance with
14 the treatment prescribed by that prior order. An order of
15 commitment shall specify which of those persons served with
16 notice pursuant to section 334-60.4, together with such other
17 persons as the court may designate, shall be entitled to receive
18 any subsequent notice of intent to discharge, transfer, or
19 recommit. The order of commitment shall specify that notice
20 shall be provided to the county department, agency, or office
21 responsible for the enforcement of rights under section 801D-4,



1 on behalf of any victim, surviving immediate family member, or
2 witness where the subject of the petition was committed pursuant
3 to sections 704-406, 704-411, or 706-607. The director of
4 health shall be responsible for proper service of notice. The
5 court shall forward to the Hawaii criminal justice data center
6 all orders of involuntary civil commitment or information from
7 all orders of involuntary civil commitment, as requested by the
8 Hawaii criminal justice data center, which in turn shall forward
9 the information to the Federal Bureau of Investigation, or its
10 successor agency, for inclusion in the National Instant Criminal
11 Background Check System database. The orders or information
12 shall also be maintained by the Hawaii criminal justice data
13 center for disclosure to and use by law enforcement officials
14 for the purpose of firearms permitting or registration pursuant
15 to chapter 134. This subsection shall apply to all involuntary
16 civil commitments without regard to the date of the involuntary
17 civil commitment.

18 (k) *[Repeal and reenactment on July 1, 2020. L 2013, c*
19 *221, §24.]* The court may find that the subject of the petition
20 is an incapacitated or protected person, or both, under article
21 V of chapter 560, and may appoint a guardian or conservator, or



1 both, for the subject under the terms and conditions as the
2 court shall determine."

3 SECTION 6. Section 334-60.7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§334-60.7 Notice of intent to discharge[-] hearing.** (a)

6 For civil commitments that result directly from legal
7 proceedings under chapters 704 and 706, when the administrator
8 or attending physician of a psychiatric facility contemplates
9 discharge of an involuntary patient because of expiration of the
10 court order for commitment or because the patient is no longer a
11 proper subject for commitment, as determined by the criteria for
12 involuntary hospitalization in section 334-60.2, the
13 administrator or attending physician shall provide notice of
14 intent to discharge, or if the patient voluntarily agrees to
15 further hospitalization, the administrator shall provide notice
16 of the patient's admission to voluntary inpatient treatment.

17 The following requirements and procedures shall apply:

- 18 (1) The notice and a certificate of service shall be filed
19 with the family court and served on those persons whom
20 the order of commitment specifies as entitled to
21 receive notice, by mail at the person's last known



1 address. Notice shall also be sent to the prosecuting
2 attorney of the county from which the person was
3 originally committed, by facsimile or electronically,
4 for the sole purpose of victim notification;

5 (2) Notice shall also be sent to the county department,
6 agency, or office responsible for the enforcement of
7 rights under section 801D-4, on behalf of any victim,
8 surviving immediate family member, or witness in
9 accordance with section 801D-4. The administrator or
10 attending physician shall serve notice by personal
11 service or by certified mail.

12 [~~2~~](3) Any person specified as entitled to receive
13 notice may waive this right in writing with the
14 psychiatric facility;

15 [~~3~~](4) If no objection is filed within five calendar
16 days of mailing the notice, the administrator or
17 attending physician of the psychiatric facility shall
18 discharge the patient or accept the patient for
19 voluntary inpatient treatment;

20 [~~4~~](5) If any person specified as entitled to receive
21 notice files a written objection, with a certificate



1 of service, to the discharge or to the patient's
 2 admission to voluntary inpatient treatment on the
 3 grounds that the patient is a proper subject for
 4 commitment, the family court shall conduct a hearing
 5 as soon as possible, prior to the termination of the
 6 current commitment order, to determine if the patient
 7 still meets the criteria for involuntary
 8 hospitalization in section 334-60.2. The person
 9 filing the objection shall also notify the psychiatric
 10 facility by telephone on the date the objection is
 11 filed;

12 [~~5~~] (6) If the family court finds that the patient does
 13 not meet the criteria for involuntary hospitalization
 14 in section 334-60.2, the court shall issue an order of
 15 discharge from the commitment; and

16 [~~6~~] (7) If the family court finds that the patient does
 17 meet the criteria for involuntary hospitalization in
 18 section 334-60.2, the court shall issue an order
 19 denying discharge from the commitment.

20 (b) For civil commitments that do not result directly from
 21 legal proceedings under chapters 704 and 706, when the



1 administrator or attending physician of a psychiatric facility
2 contemplates discharge of an involuntary patient, the
3 administrator or attending physician may assess whether an
4 assisted community treatment plan is indicated pursuant to
5 section 334-123 and, if so indicated, may communicate with an
6 aftercare provider as part of discharge planning, as
7 appropriate."

8 SECTION 7. Section 334-76, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§334-76 Discharge from custody.** (a) Subject to any
11 special requirements of law as provided in sections 704-406,
12 704-411, and 706-607 or elsewhere, with respect to patients
13 committed on court order from a criminal proceeding, the
14 administrator of a psychiatric facility, pursuant to section
15 334-60.7, shall:

16 (1) Send a notice of intent to discharge or notice of the
17 patient's admission to voluntary inpatient treatment
18 to those persons specified in the order of commitment
19 as entitled to receive notice of intent to discharge,
20 by mail at their last known address; and



1 (2) Send a notice of intent to discharge or notice of the
2 patient's admission to voluntary inpatient treatment
3 to the prosecuting attorney of the county from which
4 the person was originally committed, by facsimile or
5 electronically.

6 (3) Send a notice of intent to discharge or notice of the
7 patient's admission to voluntary inpatient treatment
8 by personal service or by certified mail on the county
9 department, agency, or office responsible for the
10 enforcement of rights under section 801D-4, on behalf
11 of any victim, surviving immediate family member, or
12 witness in accordance with section 801D-4.

13 (b) The administrator or the deputy or the physician
14 assuming medical responsibility for the patient shall discharge
15 an involuntary patient when the patient is no longer a proper
16 subject for commitment, as determined by the criteria for
17 involuntary hospitalization in section 334-60.2.

18 (c) Nothing in this section shall preclude a facility from
19 accepting for voluntary inpatient treatment, in accordance with
20 the procedures in section 334-60.1, a patient for whom the
21 facility contemplates discharge pursuant to section 334-60.7 and

1 who voluntarily agrees to further hospitalization after the
2 period of commitment has expired or where the patient is no
3 longer a proper subject for commitment."

4 SECTION 8. Section 334-82, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§334-82 Order to show cause; guardian ad litem.**

7 Immediately upon receipt of a request, the court shall issue an
8 order to show cause directed to the administrator of the
9 facility and commanding the administrator to show cause at a
10 date and time certain, not later than five days thereafter, why
11 the patient should not be discharged forthwith. A copy of the
12 request shall be attached to the order to show cause. The form
13 of the order to show cause shall be prescribed and supplied free
14 of charge by the court. The order to show cause shall issue
15 without cost and may be served as any other civil process or by
16 any responsible person appointed by the court for that purpose.
17 At any stage of the proceedings, the court may appoint a
18 guardian ad litem for the patient. The guardian ad litem may be
19 a member of the bar of the court or any other responsible
20 person. Service on the administrator may be effected by leaving
21 certified copies of the order to show cause and request at the



1 facility with any person exercising authority. If the patient
 2 has been committed pursuant to sections 704-406, 704-411, or
 3 706-607, the request and the order to show cause also shall be
 4 served personally or by certified mail on the county department,
 5 agency, or office responsible for the enforcement of rights
 6 under section 801D-4, on behalf of any victim, surviving
 7 immediate family member, or witness in accordance with section
 8 801D-4."

9 SECTION 9. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act shall take effect upon approval.

12
 13

INTRODUCED BY:

[Handwritten signatures]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]



S.B. NO. 2697

Report Title:

Relating to Bill of Rights for Crime Victims and Witnesses

Description:

Amends definition of "major developments" to include finding of unfitness to stand trial or acquittal due to physical or mental disease, disorder or defect and civil commitment to a mental institution. Provides for notice of changes in custody to interested parties.

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

