

LATE

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**THE HONORABLE RYAN I YAMANE, CHAIR
THE HONORABLE SCOTT Y. NISHIMOTO, VICE CHAIR
HOUSE COMMITTEE ON HEALTH**

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009**

March 13, 2009

RE: SENATE BILL 230, S.D. 1; RELATING TO THE RIGHTS OF VICTIMS

Good morning Chair Yamane and members of the House Committee on Health, the Department of Prosecuting Attorney provides the following testimony **in support of S.B. 230, S.D.1, with amendments**, which proposes to amend H.R.S. Chapter 801D by expanding the current victims' notification procedures to require that the Director of the Department of Health notify crime victims and surviving immediate family members, who have submitted a written request, of specified information about a criminal defendant or perpetrator who has been committed to the custody of the Director of Health under H.R.S. Chapter 704 give notice to each victim or surviving immediate family member, as defined in section 801D-2, of any unauthorized absence of any person placed in a facility or services contracted by or operated by the director, by the most reasonable and expedient means available.

For almost fifteen years, crime victims, and when the victims have suffered death, their surviving immediate family members in Hawaii have benefited from the notification requirements of H.R.S. Chapter 801D. One limitation on the receipt of these benefits for victims and their survivors is the illogical disconnect that occurs when the defendant escapes the grasp of the criminal justice system due to an acquittal or determination of unfitness to proceed due to a mental or physical condition. For victims, extreme frustration often accompanies the news that a defendant will not face responsibility for their actions, due to their perceived mental condition. This emotional experience is further exacerbated by the realization that the reassuring flow of information that victims have a right to receive terminates upon a determination of mental unfitness. The safety, emotional, and justice needs of victims that predicate the victims' rights to notification are just as compelling when an offender is confined in a mental health facility as they are when a convict is incarcerated in a penal facility.

The proposed amendments to H.R.S. Chapter 801D in S.B. 230, S.D. 1 would assure that a victim whose criminal perpetrator is acquitted due to physical or mental disease, disorder, or defect, or found unfit to proceed under H.R.S. Chapter 704 would still maintain their notification rights. As defined in the bill, a victim or surviving immediate family member would be entitled to notification of the name and location of any institution, or subsequent institutions where a defendant or perpetrator is detained. Similarly, notification requirements would apply when an unauthorized absence, including an escape occurs, including the requirement that the notification be by the most expedient means, including telephonic communication. The victim or surviving immediate family members would also be entitled to timely notice of motions, applications, hearings or court orders known to the Department of Health that involve the fitness of the defendant or perpetrator to proceed or resume penal proceedings or that involve the discharge, release, or conditional release of the defendant or perpetrator.

Prompt notification of when releases will actually occur is essential. Arguably the most important justification for notifying victims about a defendant's or perpetrator's custody status is the need for victims to conduct safety planning that can enhance their physical, psychological, and emotional health. Without prompt notification of a pending release a victim can easily be exposed to unexpected and unnecessary trauma. This can easily compound the initial effects of the crime, as illustrated in the example cited in our testimony below.

While the science behind the mental evaluations conducted on criminal defendants is far from exact, the right for victims to learn the outcomes of such assessments should be seen as a moral and legal certainty. The outcomes of the criminal justice process are as critically important for victims as they are for the accused. Situations such as those depicted in the attached article about John A. Truth, who brutally murdered Janice Carter cannot be allowed to recur. The family of Janice Carter should not have to endure the unnecessary suffering that happened when Truth was released from custody within three years without them ever being notified. The fact that Truth has reportedly assaulted another woman and now remains at large adds insult to the family's fear and injury.

In response to some concerns expressed regarding the scope of responsibilities of this bill we propose amending the measure to eliminate the requirement that witnesses be notified since notification to witnesses is not included anywhere else in Chapter 801D, despite the inclusion in the Chapter's title. We also would suggest that insertion of language that would allow for notification may provided to the County Victim Witness Assistance Program in lieu of direct notice to the victims. This would simplify the procedure and presumably relieve the Department of Health of the necessity of maintaining contact information for victims, as the County Victim Witness Assistance Programs already have these records on file for other types of notification. Furthermore, we note that current provisions of Chapter 801D limit notification to those submitting requests in writing, which typically reduces the population of potential recipients of notification to a manageable number. Victim Witness Assistance Programs have successfully managed similar notification procedures for defendants and inmates housed within facilities operated under the Department of Public Safety since 1983. On O'ahu notification is successfully coordinated with Public Safety on a 24/7 basis and similar arrangements can be made with

the Department of Health. There is no reason to believe that the same successful programs that operate to notify victims of penal inmates cannot be successfully replicated for victims of DOH mental health patients.

While there is no question that the analysis of the need for the changes proposed in S.B. 230, S.D. 1 involve a delicate balancing act between the privacy and confidentiality rights of mental patients and the safety needs of crime victims, the Legislature has weighed the very same type of issues regarding the HIV status of offenders and the health and safety needs of victims and come down on the side of crime victims. This perceived clash of values we believe is analogous to the HIV status dilemma. Recent history locally and nationally is replete with examples of offenders with histories of mental health problems that have targeted previous victims for further harm. For us to ignore the clear need for a process to provide crime victims with information critical to their safety would be reckless and foolhardy. Changes, as proposed in this bill (and suggested amendments), as well as any necessary amendments to H.R.S. Chapter 334, are urgently needed.

We urge you to rectify this missing piece in our state's victims' rights laws **and support the provisions of S.B. 230, S.D. 1, with our proposed amendments.** We can hopefully learn an important lesson from the shocking and unnecessary experiences of the Carter family and other crime victims like them. Thank you for your time and consideration.

From: The Mestizo Association [thirr33@gmail.com]
Sent: Thursday, March 12, 2009 5:54 PM
To: HLTtestimont@capitol.hawaii.gov
Cc: Rep. Ryan Yamane; Rep. Scott Nishimoto; HLTtestimony
Subject: Re: Alert: Public Hearing on SB 777 Realted to Comprehensive Sex Education 3/13/09 at 9:30 AM - PLEASE SUBMIT TESTIMONIES!!

"Late Testimony"

SB 230, SD 1

Chair Ryan Yamane
Vice Chair Scott Nishimoto
The Honorable Members of the House Health Committee

Aloha,

I am Arvid Tadao Youngquist & provide these testimonies in support.
Please excuse me for providing a late testimony as I just found out about the hearing after the fact.

SB 777 SD1 Relating to Comprehensive Sexuality Health Education will be heard by the House Committee on Health this Friday morning, March 13, 2009 at 9:30 AM. This bill ensures that when state funded sexual health education is comprehensive and medically accurate. Please show your support for this important bill! I support this bill most positively.

What: Public Hearing on SB 777 SD1, Relating to Comprehensive Sexuality
Health Education

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON HEALTH
Rep. Ryan I. Yamane, Chair
Rep. Scott Y. Nishimoto, Vice Chair

Rep. Della Au Belatti

Rep. John M. Mizuno

Rep. Joe Bertram, III

Rep. Maile S.L. Shimabukuro

Rep. Tom Brower

Rep. Lynn Finnegan

Rep. Mele Carroll

NOTICE OF HEARING

DATE:

Friday, March 13, 2009

TIME:

9:30 a.m.

PLACE:

Conference Room 329

State Capitol

415 South Beretania Street

A G E N D A

SB 53 <http://www.capitol.hawaii.gov/session2009/Bills/SB53_.pdf>

(SSCR517)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB53_SSCR517_.pdf

>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=53>

RELATING TO INSURANCE.

Amends Act 177, Session Laws of Hawaii 2008 (Life Settlements Model Act) by repealing the requirement that the insurance commissioner report

annually to the legislature on the implementation and effects of Act 177 and by making the Act permanent.

HLT, CPC/JUD

➤ SB 230, SD1 I support this measure most positively.

<http://www.capitol.hawaii.gov/session2009/Bills/SB230_SD1_.pdf>

(SSCR525)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB230_SD1_SSCR525_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=230>

RELATING TO THE RIGHTS OF VICTIMS.

Amends the crime victims' bill of rights to include notice or waiver of 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 offender unauthorized absences. (SD1)

HLT, JUD, FIN

SB 567 I support this measure most positively.

<http://www.capitol.hawaii.gov/session2009/Bills/SB567_.pdf>

(SSCR542)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB567_SSCR542_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=567>

RELATING TO HEALTH.

Lowers the minimum age requirement for blood donation to sixteen years old with parental consent.

HLT, JUD

SB 930 I support this bill most positively. <http://www.capitol.hawaii.gov/session2009/Bills/SB930_.pdf>

(SSCR532)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB930_SSCR532_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?bill>

type=SB&billnumber=930>

RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES.

Provides for medical expenses and immunity from liability for licensed medical personnel providing volunteer medical services on behalf of the State or a county.

HLT, JUD, FIN

SB 936 I support this measure most positively. <http://www.capitol.hawaii.gov/session2009/Bills/SB936_.pdf>

(SSCR541)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB936_SSCR541_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=936>

RELATING TO MENTAL HEALTH.

Clarifies that the provisions of section 704-412, Hawaii Revised Statutes, govern the timing and standards of decision for applications for conditional release or discharge from the custody of the Director of Health and includes a time frame for decisions on motions for conditional release or discharge.

HLT, JUD

SB 1142, SD1 I support this measure.

<http://www.capitol.hawaii.gov/session2009/Bills/SB1142_SD1_.pdf>

(SSCR534)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB1142_SD1_SSCR534_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=1142>

RELATING TO PHYSICIAN ASSISTANTS.

Authorizes physician assistants to sign certain documents; to provide emergency medical care without supervision; to administer immunizations; to prescribe medications for patients suffering from human immunodeficiency virus or acquired immune deficiency syndrome without preauthorization; limits liability of physician assistants under good Samaritan laws. (SD1)

HLT, CPC/JUD, FIN

SB 777, SD1 I support this measure.

<http://www.capitol.hawaii.gov/session2009/Bills/SB777_SD1_.pdf>

(SSCR436)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB777_SD1_SSCR436_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=777>

RELATING TO COMPREHENSIVE SEXUALITY HEALTH EDUCATION.

Requires any recipient of state funding to provide medically accurate sexuality education. (SD1)

HLT, EDN, FIN

SB 113 I support this measure.

<http://www.capitol.hawaii.gov/session2009/Bills/SB113_.pdf>

(SSCR444)

<http://www.capitol.hawaii.gov/session2009/CommReports/SB113_SSCR444_.pdf>

Status

<http://www.capitol.hawaii.gov/session2009/lists/measure_indiv.aspx?billtype=SB&billnumber=113>

type=SB&billnumber=426>

RELATING TO DENTISTRY. I support this measure.

Amends dental licensing laws so that a dentist enrolled in an American Dental Association Commission on Dental Accreditation accredited dental residency program can be granted a temporary license for the duration of the program.

HLT, CPC

Thank you for this opportunity to provide testimonies in support.

Arvid T. Youngquist

Women's Caucus (Male Representative)

SCC