
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. 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).



1 Any such person placed in a facility or services contracted
2 for or operated by the director who leaves or remains away from
3 the facility or services, without permission, may be apprehended
4 and returned to the facility or services by any employee of the
5 department or by any police officer without any warrant or
6 further proceeding. Upon written request, the director, or the
7 director's designee, shall give notice to the department of the
8 prosecuting attorney in the county where the crime was alleged
9 to have occurred, of the unauthorized absence of any person who
10 has, in the course of or resulting from a penal proceeding, been
11 hospitalized and placed in a facility for services contracted or
12 operated by the director, by the most reasonable and expedient
13 means available. The department of the prosecuting attorney
14 shall then give notice to each victim or surviving immediate
15 family member, as defined in section 801D-2, of the unauthorized
16 absence of the person who was alleged to have committed the
17 crime against the victim, pursuant to section 801D-4. No
18 failure of any state officer or employee to carry out the
19 requirements of this subsection shall subject the State or any
20 employee to liability in any civil action; provided that the
21 failure may provide a basis for disciplinary action as may be
22 deemed appropriate by competent authority."



1 SECTION 2. 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 alleged to have occurred, of the identity of any
20 person who has, in the course of or resulting from a
21 penal proceeding, been hospitalized and placed in a
22 facility for services contracted by or operated by the



1 director and has an unauthorized absence. The
2 department of the prosecuting attorney may then give
3 notice to each victim or surviving immediate family
4 member, as defined in section 801D-2, of the
5 unauthorized absence of the person who was alleged to
6 have committed the crime against the victim, pursuant
7 to section 801D-4.

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

16 Nothing in this section shall preclude disclosure, upon
17 proper inquiry, of any information relating to a particular
18 patient and not clearly adverse to the interests of the patient,
19 to the patient, the patient's family, legal guardian, or
20 relatives, nor, except as provided above, affect the application
21 of any other rule or statute of confidentiality. The use of the

1 information disclosed shall be limited to the purpose for which
2 the information was furnished."

3 SECTION 3. Section 334-60.4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§334-60.4 Notice; waiver of notice; hearing on petition;
6 waiver of hearing on petition for involuntary hospitalization.**

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



1 petition pursuant to this section follows a commitment pursuant
2 to section 704-406, 704-407, or 706-607, notice of the hearing
3 shall also be served on the office of the prosecuting attorney
4 of the county where the previous commitment orders were filed,
5 and that department of the prosecuting attorney shall be
6 considered a party entitled to receive notice, for purposes of
7 section 334-60.7. The department of the prosecuting attorney
8 may give notice to each victim or surviving immediate family
9 member, as defined in section 801D-2, pursuant to section 801D-
10 4. If the subject of the petition is a minor, notice of the
11 hearing shall also be served upon the person who has had the
12 principal care and custody of the minor during the sixty days
13 preceding the date of the petition if such person can be found
14 within the State. Notice shall also be given to such other
15 persons as the court may designate.

- 16 (b) The notice shall include the following:
- 17 (1) The date, time, place of hearing, a clear statement of
18 the purpose of the proceedings and of possible
19 consequences to the subject; and a statement of the
20 legal standard upon which commitment is authorized;
- 21 (2) A copy of the petition;



- 1 (3) A written notice, in plain and simple language, that
- 2 the subject may waive such a hearing by voluntarily
- 3 agreeing to hospitalization, or with the approval of
- 4 the court, to some other form of treatment;
- 5 (4) A filled-out form indicating such waiver;
- 6 (5) A written notice, in plain and simple language, that
- 7 the subject or the subject's guardian or
- 8 representative may apply at any time for a hearing on
- 9 the issue of the subject's need for hospitalization,
- 10 if the subject has previously waived such a hearing;
- 11 (6) Notice that the subject is entitled to the assistance
- 12 of an attorney and that the public defender has been
- 13 notified of these proceedings;
- 14 (7) Notice that if the subject does not want to be
- 15 represented by the public defender the subject may
- 16 contact the subject's own attorney;
- 17 (8) Notice, if such be the case, that the petitioner
- 18 intends to adduce evidence to show that the subject of
- 19 the petition is an incapacitated or protected person,
- 20 or both, under article V of chapter 560, and whether
- 21 or not appointment of a guardian is sought at the
- 22 hearing. If appointment of a guardian is to be

1 recommended, and a nominee is known at the time the
2 petition is filed, the identity of the nominee shall
3 be disclosed.

4 (c) If the subject executes and files a waiver of the
5 hearing, upon acceptance by the court following a court
6 determination that the person understands the person's rights
7 and is competent to waive them, the court shall order the
8 subject to be committed to a facility that has agreed to admit
9 the subject as an involuntary patient or, if the subject is at
10 such a facility, that the subject be retained there."

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

14 "Major developments" means arrest or release of the
15 suspect by the police, case deferral by the police, referral to
16 the prosecutor by the police, rejection of the case by the
17 prosecutor, preliminary hearing date, grand jury date, trial and
18 sentencing dates, and the disposition of the case.

19 The term "major developments" includes the following
20 events:



- 1 (1) The offender is found unfit to proceed or acquitted on
- 2 the grounds of physical or mental disease, disorder,
- 3 or defect under chapter 704;
- 4 (2) Following a finding of unfitness to proceed or
- 5 acquittal under paragraph (1), the offender is
- 6 subsequently:
- 7 (A) Released or otherwise discharged from custody; or
- 8 (B) Committed to the custody of the director of
- 9 health for placement in an appropriate public or
- 10 private institution, including state facilities
- 11 established under chapter 334 or a psychiatric
- 12 facility as the term is defined under section
- 13 334-1."

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

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

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



- 1 ~~or perpetrator]~~ offender is released from custody.
- 2 The victim or a surviving immediate family member
- 3 shall also be consulted and advised about plea
- 4 bargaining by the 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~~] offenders and families and friends of
- 19 [~~defendants,~~] offenders;
- 20 (6) To have any stolen or other personal property
- 21 expeditiously returned by law enforcement agencies
- 22 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[-]; and

14 (8) To be informed by the department of health, through
15 the department of the prosecuting attorney in the
16 county where the crime was alleged to have been
17 committed, of changes in the custodial status of the
18 offender that allow or result in the release of the
19 offender into the community, including but not limited
20 to escape and final discharge."

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



1 "~~§~~801D-6~~§~~ Intergovernmental cooperation. The county
2 prosecutor, the department of health, the police, local social
3 service agencies, the courts, and all other agencies involved in
4 the criminal justice system shall all cooperate with each other
5 to ensure that victims and witnesses of crime receive the rights
6 and services to which they are entitled under this chapter."

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

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



Report Title:

Victims' Rights; Department of Health; Prosecuting Attorney

Description:

Requires that crime victims, or their immediate surviving family members, receive notice of a determination that an offender is unfit to stand trial and any subsequent discharge or commitment, and the offender's unauthorized absences. (HB236 HD1)

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

