

Section

- 801D-1 Legislative intent
- 801D-2 Definitions
- 801D-3 Eligibility of victims
- 801D-4 Basic bill of rights for victims and witnesses
- 801D-5 Responsibility for rights and services
- 801D-6 Intergovernmental cooperation
- 801D-7 Televised testimony

[§801D-1] Legislative intent. In recognition of the civic and moral duty of victims and witnesses of crimes to cooperate fully and voluntarily with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this State, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crimes 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. [L 1988, c 261, pt of §1]

§801D-2 Definitions. In this chapter:

"Crime" means an act or omission committed by an adult or juvenile that would constitute an offense against the person under the Penal Code of this State.

"Homicide victim" means a person whose death was caused by another person under part II of chapter 707.

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

"Surviving immediate family members" means surviving grandparents, parents, siblings, spouse, reciprocal beneficiary, children, and any legal guardian of the homicide victim.

"Victim" means a person against whom a crime has been committed by either an adult or a juvenile.

"Witness" means a person whose testimony or knowledge is desired in any proceeding or investigation by a grand jury or in a criminal investigation, action, prosecution, or proceeding. [L 1988, c 261, pt of §1; am L 1997, c 383, §71]

[§801D-3] Eligibility of victims. A victim has the rights afforded by this chapter and is eligible for the services under this chapter only if the victim reported the crime to police within three months of its occurrence or discovery, unless the victim had justification to do otherwise. [L 1988, c 261, pt of §1; gen ch 1992]

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(Councilmember Cochran)

§801D-4 Basic bill of rights for victims and witnesses. (a) Upon written request, victims and surviving immediate family members of crime shall have the following rights:

- (1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney;
- (2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled;
- (3) To receive protection from threats or harm;
- (4) To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness to or a victim of crime, including information on how to apply for the assistance and services;
- (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
- (6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when the property is no longer needed as evidence. If feasible, all the property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken; and
- (7) To be informed by the department of public safety of changes planned by the department in the custodial status of the offender that allows or results in the release of the offender into the community, including escape, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term.

(b) Upon written request, the victim or the parent or guardian of a minor or incapacitated victim of an offense under section 707-730, 707-731, or 707-732(1)(a) shall have the right to be informed of the human immunodeficiency virus (HIV) status of the person who has been convicted or a juvenile who has been adjudicated under that section and to receive counseling regarding HIV. The testing shall be

performed according to the protocols set forth in section 325-17. Upon request of the victim, or the parent or guardian of a minor or incapacitated victim, the department of health shall provide counseling.

(c) Notwithstanding any law to the contrary, the department of public safety, the Hawaii paroling authority, the judiciary probation divisions and branches, and the department of the attorney general shall make good faith efforts to notify the victim of a crime, or surviving immediate family members of a victim, of income received by a person imprisoned for that crime when the imprisoned person has received a civil judgment that exceeds \$10,000, a civil settlement that exceeds \$10,000, or any income that exceeds \$10,000 in one fiscal year, whenever the income is known to the agency, and, in addition, the department of public safety shall make good faith efforts to notify the victim of a crime or surviving immediate family members of a victim, whenever it is known to the agency that a person imprisoned for that crime has a financial account, of which the department of public safety is aware, of a value exceeding \$10,000.

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

(e) Notwithstanding any law to the contrary, the State of Hawaii, any political subdivision of the State of Hawaii, any department or agency of the State, any officer of the State, and any employee of the State shall be immune from damages in any lawsuit based on noncompliance with subsection (c) or (d). Nothing in this subsection shall be construed to prevent disciplinary action against any employee of the State who intentionally fails to comply with subsection (c) or (d) after being warned that compliance is required. [L 1988, c 261, pt of §1; am L 1990, c 164, §29; am L 1991, c 84, §1; am L 1998, c 238, §5; am L 2002, c 201, §2]

Cross References

Counseling and testing of sexual assault victims; testing of charged or convicted person for human immunodeficiency virus status, see §325-16.5.

Notice of escape, see §706-673.

Registration of sex offenders and other covered offenders, see chapter 846E.

[§801D-5] Responsibility for rights and services. (a) Each county is responsible for the enforcement of rights under section 801D-4. The courts shall fashion all decisions and orders to enhance the recognition of these rights and the provision of these services, to

the extent that they will not conflict with the constitutional rights of the defendant.

(b) Neither the failure of any state or county officer or employee to carry out the requirements of this section nor compliance with it shall subject the state or county officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority. [L 1988, c 261, pt of §1]

[§801D-6] Intergovernmental cooperation. The county prosecutor, the police, local social service agencies, the courts, and all other agencies involved in the criminal justice system shall all cooperate with each other to ensure that victims and witnesses of crime receive the rights and services to which they are entitled under this chapter. [L 1988, c 261, pt of §1]

[§801D-7] Televised testimony. Victims and witnesses shall have the right to testify at trial by televised two-way closed circuit video to be viewed by the court, the accused, and the trier of fact. [L 1997, c 320, §2]