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S.B. NO. 2154

A Bill for an Act Relating to Adult Probation Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 806-73, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A probation officer shall investigate any case referred to the probation officer for investigation by the court in which the probation officer is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer’s supervision of the terms and conditions of the defendant’s probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and report thereon to the court, and shall use all suitable methods to aid the defendant and bring about an improvement in the defendant’s conduct and condition. The probation officer shall keep these records and perform other duties as the court may direct. ~~[Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under sections 580-10(d)(1), [586-4(e)], 586-11(a), or 709-906, may be notified by the defendant’s probation officer when the probation officer has any information relating to the safety and welfare of the victim.]~~ No probation officer shall be subject to civil liability or criminal culpability for any disclosure or non-disclosure, under this section, if the probation officer acts in good faith and upon reasonable belief.

(b) All adult probation records shall be confidential and shall not be deemed to be public records. As used in this section, the term “records” includes, but is not limited to, all records made by any adult probation officer in the course of performing the probation officer’s official duties. The records, or the content of the records, shall be divulged only as follows:

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
 - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
 - (B) A state or federal criminal justice agency, or state or federal court program that:
 - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or

- (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
- (A) A law enforcement officer as defined in section 710-1000(13) to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or
- (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5[-];
- (3) A copy of a presentence report or investigative report shall be provided only to:
- (A) The persons or entities named in section 706-604;
- (B) The Hawaii paroling authority;
- (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
- (D) The intake service centers;
- (E) In accordance with applicable law, persons or entities doing research; and
- (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
- (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
- (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;
- (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the name and contact information of the defendant's adult probation officer[-];
- (5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
- ~~(5)~~ (6) Notwithstanding [subsection (b)(3);] paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services [or]-information related to the defendant's past treatment and assessments, with the prior written consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to Title 42 Code of Federal Regulations Part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, may be provided to:
- (A) A case management, assessment or treatment service provider assigned by adult probation to service the defendant; provided that such information shall be given only upon the acceptance or admittance of the defendant into a treatment program;

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- (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
- (C) In accordance with applicable law, persons or entities doing research[-];
- (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;
- ~~(6)~~ (8) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices[-]; and
- ~~(7)~~ (9) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of ~~their~~ the person's official duties shall be fined not more than \$500."

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

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

SECTION 4. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)