

ACT 119

S.B. NO. 1067

A Bill for an Act Relating to Probation.

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

SECTION 1. The legislature finds that Hawaii law is silent on the disclosure of information by the judiciary of criminal risk information post-intake to treatment agencies.

The legislature further finds that risk information from the Hawaii probation office is critical to treatment agencies because it is used to design the individualized treatment plan. While the judiciary is allowed to share risk information regarding the offender after admission of the offender to a treatment service program, treatment service providers should have this information prior to the admission of the offender into a treatment program. Without this information, the offender may be admitted to a treatment program that is not the best suited to the offender's treatment needs or the offender may receive a substandard or inappropriate treatment plan.

All information, whether received during admission or after admission, is protected under federal confidentiality laws including the federal Health Insurance Portability and Accountability Act of 1996, and Title 42 Code of Federal Regulations Part 2, relating to confidentiality of alcohol and drug abuse. These federal laws and regulations apply whether or not the offender is admitted into a treatment program.

The purpose of this Act is to allow certain adult probation records, including those relevant to a defendant's risk assessment and past treatment, to be provided to certain case management, assessment, or treatment service providers for use as part of the determination of whether the defendant should be accepted or admitted into a treatment program.

SECTION 2. Section 806-73, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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;
  - (6) Notwithstanding paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services; 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~~ the information shall be given only upon the screening for admission, acceptance, or admittance of the defendant into a ~~treatment~~ program;
    - (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;
  - (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
  - (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 the person's official duties shall be fined no more than \$500."

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, 2011, and shall be repealed on July 1, 2016; provided that section 806-73(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 14, 2011.)