



ORIGINAL

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

GOV. MSG. NO. 555

April 27, 2006

The Honorable Robert Bunda, President  
and Members of the Senate  
Twenty-Third State Legislature  
State Capitol, Room 003  
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 2602 SD1

On April 26, 2006, Senate Bill No. 2602, entitled "Relating to Adult Probation Records" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill adds persons and entities to the list of those who are allowed access to adult probation records to include court officers and designated social workers. The bill also allows the court to give contact information of current and former defendants to attorneys or collection agencies contracted to collect court penalties, fees, and judgments.

The statutory changes under Senate Bill No. 2602 have generally met the original intent of the bill to improve services to offenders, victims, and the community through selective release of information under collaborative relationships. The bill sought the release of information to selected individuals who facilitated the collection of delinquent monetary penalties and restitution. It also sought release of information to service providers to ensure offenders receive the proper substance abuse treatment.

The standard practice in substance abuse treatment is that the risk assessment and need for treatment services are obtained by a provider before placement decisions are made. Senate Bill No. 2602, however, states that the defendant's risk assessment and need for treatment services "shall be given only upon the acceptance or admittance of the defendant into a treatment program." Providing such information after the client is admitted is contrary to standard clinical practice, since a client should be admitted only if there is an assessed need for treatment.

Treatment providers, which are private nonprofit entities, objected to the above provision since it may result in admissions of clients who require specialized services that may be beyond a provider's program capacity or are inappropriate for the offender.

The Judiciary has indicated that despite these possible problems, they are willing to monitor the effects of the law and make suggested statutory changes to the 2007 Legislature.

Therefore, I allowed Senate Bill No. 2602 SD1 to become law as Act 36 effective April 26, 2006 without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle". The signature is fluid and cursive, with the first letter of the last name being a large, stylized "L".

LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO ADULT PROBATION RECORDS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

3 "(b) All adult probation records [~~of the Hawaii state~~  
4 ~~adult probation divisions~~] shall be confidential and shall not  
5 be deemed to be public records. As used in this section, the  
6 term "records" includes, but is not limited to, all records made  
7 by any adult probation officer in the course of performing the  
8 probation officer's official duties [~~;~~ ~~provided that the~~]. The  
9 records, or the content of the records, shall be divulged only  
10 as follows:

11 (1) A copy of any adult probation [~~division~~] case record  
12 or of a portion of it, or the case record itself, upon  
13 request, may be provided to [~~an~~]:

14 (A) An adult probation officer, court officer, social  
15 worker of a Hawaii state adult probation  
16 [~~division~~] unit, or a family court officer who  
17 is preparing a report for the courts [~~;~~]; or [~~a~~]

1           (B) A state or federal criminal justice agency, or  
2           state or federal court program that:

3           ~~[(A) Is]~~ (i) Is providing supervision of a defendant  
4           or offender convicted and sentenced by the  
5           courts of Hawaii; or

6           ~~[(B) Is]~~ (ii) Is responsible for the preparation of  
7           a report for a court;

8           (2) The ~~[contents of any adult probation division case~~  
9           ~~record relating to the]~~ residence address, work  
10           address, home telephone number, or work telephone  
11           number of a ~~[probationer]~~ current or former defendant  
12           shall be provided only to [a]:

13           (A) A law enforcement officer as defined in section  
14           710-1000(13) to locate the probationer for the  
15           purpose of serving a summons or bench warrant in  
16           a civil, criminal, or deportation hearing, or for  
17           the purpose of a criminal investigation; [and] or

18           (B) A collection agency or licensed attorney  
19           contracted by the judiciary to collect any  
20           delinquent court-ordered penalties, fines,  
21           restitution, sanctions, and court costs pursuant  
22           to section 601-17.5.



- 1           (3) A copy of a presentence report or investigative report
- 2                   shall be provided only to:
- 3                   (A) The persons or entities named in section 706-604;
- 4                   (B) The Hawaii paroling authority;
- 5                   (C) Any psychiatrist, psychologist, or other
- 6                           treatment practitioner who is treating the
- 7                           defendant pursuant to a court order or parole
- 8                           order for that treatment;
- 9                   (D) The intake service centers;
- 10                  (E) In accordance with applicable law, persons or
- 11                           entities doing research; and
- 12                  (F) Any Hawaii state adult probation officer or adult
- 13                           probation officer of another state or federal
- 14                           jurisdiction who:
- 15                           (i) Is engaged in the supervision of a defendant
- 16                                   or offender convicted and sentenced in the
- 17                                   courts of Hawaii; or
- 18                           (ii) Is engaged in the preparation of a report
- 19                                   for a court regarding a defendant or
- 20                                   offender convicted and sentenced in the
- 21                                   courts of Hawaii[+];



1       (4) Access to adult probation records by a victim, as  
2       defined in section 706-646 to enforce an order filed  
3       pursuant to section 706-647, shall be limited to the  
4       name and contact information of the defendant's adult  
5       probation officer.

6       (5) Notwithstanding subsection (b) (3), upon notice to the  
7       defendant, records and information relating to the  
8       defendant's risk assessment and need for treatment  
9       services or information related to the defendant's  
10      past treatment and assessments may be provided to:

11      (A) A case management, assessment or treatment  
12      service provider assigned by adult probation to  
13      service the defendant; provided that such  
14      information shall be given only upon the  
15      acceptance or admittance of the defendant into a  
16      treatment program;

17      (B) Correctional case manager, correctional unit  
18      manager, and parole officers involved with the  
19      defendant's treatment or supervision; and

20      (C) In accordance with applicable law, persons or  
21      entities doing research.

1       (6) Any person, agency, or entity receiving records, or  
2       contents of records, pursuant to this subsection shall  
3       be subject to the same restrictions on disclosure of  
4       the records as Hawaii state adult probation offices.

5       (7) Any person who uses the information covered by this  
6       subsection for purposes inconsistent with the intent  
7       of this subsection or outside of the scope of their  
8       official duties shall be fined no more than \$500."

9       SECTION 2. Statutory material to be repealed is bracketed  
10      and stricken. New statutory material is underscored.

11      SECTION 3. This Act shall take effect upon its approval.

GOVERNOR OF THE STATE OF HAWAII

Approved this day: \_\_\_\_\_

S.B. No. 2602, S.D. 1

**THE SENATE OF THE STATE OF HAWAII**

Date: February 21, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



President of the Senate



Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF HAWAII**

Date: April 6, 2006  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.



Speaker, House of Representatives



Clerk, House of Representatives