

JAN 20 2010

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 subsections (a) and (b) to read as follows:
3 "(a) A probation officer shall investigate any case
4 referred to the probation officer for investigation by the court
5 in which the probation officer is serving and report thereon to
6 the court. The probation officer shall instruct each defendant
7 placed on probation under the probation officer's supervision of
8 the terms and conditions of the defendant's probation. The
9 probation officer shall keep informed concerning the conduct and
10 condition of the defendant and report thereon to the court, and
11 shall use all suitable methods to aid the defendant and bring
12 about an improvement in the defendant's conduct and condition.
13 The probation officer shall keep these records and perform other
14 duties as the court may direct. ~~[Upon written request, the~~
15 ~~victim, or the parent or guardian of a minor victim or~~
16 ~~incapacitated victim, of a defendant who has been placed on~~
17 ~~probation for an offense under sections 580-10(d)(1), [586-~~
18 ~~4(e)], 586-11(a), or 709-906, may be notified by the defendant's~~

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1 ~~probation officer when the probation officer has any information~~
2 ~~relating to the safety and welfare of the victim.]~~ No probation
3 officer shall be subject to civil liability or criminal
4 culpability for any disclosure or non-disclosure, under this
5 section, if the probation officer acts in good faith and upon
6 reasonable belief.

7 (b) All adult probation records shall be confidential and
8 shall not be deemed to be public records. As used in this
9 section, the term "records" includes, but is not limited to, all
10 records made by any adult probation officer in the course of
11 performing the probation officer's official duties. The
12 records, or the content of the records, shall be divulged only
13 as follows:

14 (1) A copy of any adult probation case record or of a
15 portion of it, or the case record itself, upon
16 request, may be provided to:

17 (A) An adult probation officer, court officer, social
18 worker of a Hawaii state adult probation unit, or
19 a family court officer who is preparing a report
20 for the courts; or

21 (B) A state or federal criminal justice agency, or
22 state or federal court program that:



1 (i) Is providing supervision of a defendant or
2 offender convicted and sentenced by the
3 courts of Hawaii; or

4 (ii) Is responsible for the preparation of a
5 report for a court;

6 (2) The residence address, work address, home telephone
7 number, or work telephone number of a current or
8 former defendant shall be provided only to:

9 (A) A law enforcement officer as defined in section
10 710-1000(13) to locate the probationer for the
11 purpose of serving a summons or bench warrant in
12 a civil, criminal, or deportation hearing, or for
13 the purpose of a criminal investigation; or

14 (B) A collection agency or licensed attorney
15 contracted by the judiciary to collect any
16 delinquent court-ordered penalties, fines,
17 restitution, sanctions, and court costs pursuant
18 to section 601-17.5[-];

19 (3) A copy of a presentence report or investigative report
20 shall be provided only to:

21 (A) The persons or entities named in section 706-604;

22 (B) The Hawaii paroling authority;



- 1 (C) Any psychiatrist, psychologist, or other
- 2 treatment practitioner who is treating the
- 3 defendant pursuant to a court order or parole
- 4 order for that treatment;
- 5 (D) The intake service centers;
- 6 (E) In accordance with applicable law, persons or
- 7 entities doing research; and
- 8 (F) Any Hawaii state adult probation officer or adult
- 9 probation officer of another state or federal
- 10 jurisdiction who:
 - 11 (i) Is engaged in the supervision of a defendant
 - 12 or offender convicted and sentenced in the
 - 13 courts of Hawaii; or
 - 14 (ii) Is engaged in the preparation of a report
 - 15 for a court regarding a defendant or
 - 16 offender convicted and sentenced in the
 - 17 courts of Hawaii;
- 18 (4) Access to adult probation records by a victim, as
- 19 defined in section 706-646 to enforce an order filed
- 20 pursuant to section 706-647, shall be limited to the
- 21 name and contact information of the defendant's adult
- 22 probation officer[-];



1 (5) Upon written request, the victim, or the parent or
2 guardian of a minor victim or incapacitated victim, of
3 a defendant who has been placed on probation for an
4 offense under section 580-10(d)(1), 586-4(e), 586
5 11(a), or 709-906, may be notified by the defendant's
6 probation officer when the probation officer has any
7 information relating to the safety and welfare of the
8 victim;

9 ~~[(5)]~~ (6) Notwithstanding [subsection (b)(3),] paragraph
10 (3) and upon notice to the defendant, records and
11 information relating to the defendant's risk
12 assessment and need for treatment services ~~[or]~~;
13 information related to the defendant's past treatment
14 and assessments, with prior written consent for
15 information coming from third party substance abuse
16 treatment sources; and information which has
17 therapeutic or rehabilitative benefit, may be provided
18 to:

19 (A) A case management, assessment or treatment
20 service provider assigned by adult probation to
21 service the defendant; provided that such
22 information shall be given only upon the



1 acceptance or admittance of the defendant into a
2 treatment program;

3 (B) The defendant's treating physician when probation
4 drug test results indicate illicit alcohol or
5 drug use that may compromise the defendant's
6 medical care or treatment;

7 ~~[(B)]~~ (C) Correctional case manager, correctional unit
8 manager, and parole officers involved with the
9 defendant's treatment or supervision; and

10 ~~[(C)]~~ (D) In accordance with applicable law, persons
11 or entities doing research[-];

12 (7) A copy of any adult probation case record or part
13 thereof, or the contents of any record, may be
14 provided by an adult probation officer to any county,
15 state, or federal law enforcement officer to report a
16 crime, provide information of possible criminal
17 activity, or provide information that the adult
18 probation officer believes is relevant to a criminal
19 investigation or law enforcement effort;

20 ~~[(6)]~~ (8) Any person, agency, or entity receiving records,
21 or contents of records, pursuant to this subsection
22 shall be subject to the same restrictions on



1 disclosure of the records as Hawaii state adult
 2 probation offices ~~[-]~~; provided that this paragraph
 3 shall not apply to any law enforcement officer who
 4 receives any records or information under paragraph
 5 (7); and.

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

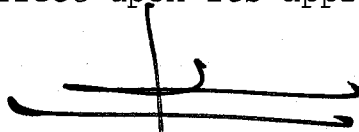
11 SECTION 2. This Act does not affect rights and duties that
 12 matured, penalties that were incurred, and proceedings that were
 13 begun before its effective date.

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

16 SECTION 4. This Act shall take effect upon its approval.

17

INTRODUCED BY:



 BY REQUEST



Report Title:

Adult Probation Records; Disclosure

Description:

Authorizes disclosure of adult probation records to a defendant's doctor when substance use may compromise medical treatment and to law enforcement to report a crime or crime-related information.

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

