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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 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~~



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[-]i

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 [ex];  
13       information related to the defendant's past treatment  
14       and assessments, with the prior written consent of the  
15       defendant for information from a treatment service  
16       provider; provided that for any substance abuse  
17       records such release shall be subject to Title 42 Code  
18       of Federal Regulations Part 2, relating to the  
19       confidentiality of alcohol and drug abuse patient  
20       records; and information that has therapeutic or  
21       rehabilitative benefit, may be provided to:



1 (A) A case management, assessment or treatment  
2 service provider assigned by adult probation to  
3 service the defendant; provided that such  
4 information shall be given only upon the  
5 acceptance or admittance of the defendant into a  
6 treatment program;

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

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

12 (7) Probation drug test results may be released with prior  
13 written consent of a defendant to the defendant's  
14 treating physician when test results indicate  
15 substance use which may be compromising the  
16 defendant's medical care or treatment;

17 [-6+] (8) Any person, agency, or entity receiving records,  
18 or contents of records, pursuant to this subsection  
19 shall be subject to the same restrictions on  
20 disclosure of the records as Hawaii state adult  
21 probation offices[-]; and



1        [~~(7)~~] (9) Any person who uses the information covered by  
2                    this subsection for purposes inconsistent with the  
3                    intent of this subsection or outside of the scope of  
4                    [~~their~~] the person's official duties shall be fined no  
5                    more than \$500."

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

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 Statutory material to be repealed is bracketed  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

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

12



**Report Title:**

Adult Probation Records; Disclosure

**Description:**

Authorizes disclosure of probation drug test results to defendant's doctor when the results indicate substance abuse that may compromise medical care or treatment. Effective July 1, 2010. (CD1)

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

