



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Judiciary

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair

Thursday, March 25, 2010, 3:45 p.m.

State Capitol, Conference Room 325

by

Janice Yamada

Probation Administrator, Adult Client Services

First Circuit

Bill No. and Title: Senate Bill No. 2154, S.D. 1, Relating Adult Probation Records

Purpose: The bill seeks to realign wording regarding the disclosure of information to victim(s), and probation officer liability and culpability in the disclosure or non-disclosure of information covered by § 806-73 (b) of the Hawaii Revised Statutes. It also seeks to expand the release of information on supervised adult offenders to treatment providers, when the information has therapeutic and rehabilitative benefit and will allow release of drug test results to treating physicians.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 2154, S.D. 1, which is part of the Judiciary's 2010 legislative package.

The Adult Client Services Branches (Adult Probation) are recommending a realignment of wording referencing the release of information to victims of domestic abuse to improve the flow of the section's content. In addition, under the legislative intent of § 706-605, Hawaii Revised Statutes, the Judiciary created the Interagency Council on Intermediate Sanctions to further its development of correctional options and to reduce offender recidivism. The Council's effort has focused on using evidence-based practices that maximize the collaborative relationship between probation officer, treatment vendors and other correctional staff. The proposed language will encourage timely communication amongst treating professionals and the probation officer.



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Probation officers are developing case plans which target criminogenic needs and common goals can be implemented more effectively with the client if information can be shared between the probation officer and the treatment provider. The criminal justice system is focusing efforts on behavior change through cognitive behavioral treatment and is working with treatment providers to apply this in programming. Change can be measured by an offender's response to various situations and feedback to the treatment provider regarding the officer's observations becomes important as the offender transitions through the stages of change.

Treatment providers have found it beneficial to enlist the support of the probation officer in moving the client toward treatment goals by using the influence of the courts. Current statute however restricts the kind of information the probation officer can release to the provider, even when the information being shared is therapeutically in the best interests of the offender. When the offender understands that there is a flow of information between the officer and the provider, there is less room for misrepresentation. Often times it allows the provider, the probation officer and the offender to establish common, meaningful, and individualized treatment goals.

There are similar situations with medical professionals, where probation officers through drug testing know that there is misuse of prescription medication or that the offender is combining illicit drug use with use of legally obtained medication. Currently, information, such as a laboratory confirmation cannot be shared with the offender's physician, even if the offender signs a consent form. This change will allow the probation officer to inform a doctor of the offender's use and misuse of drugs and substances to aid in the individual's rehabilitation.

We have made changes to the current draft of the bill and are submitting Senate Bill 2154, S.D. 1, H.D. 1 (attached) for consideration as we have added language referencing title 42 Code of Federal Regulations part 2 to insure compliance with federal law regarding substance abuse treatment and the release of alcohol and drug abuse patient records. Such wording was reviewed by the Legal Action Center and provided to the Judiciary for inclusion with this amendment by the Alcohol and Drug Abuse Division, State of Hawaii, Department of Health. It further addresses release of information concerns previously mentioned in substance abuse provider testimony.

Thank you for the opportunity to present testimony on this measure.

Report Title:

Adult Probation Records; Disclosure

Description:

Clarifies requirements for disclosure of assessment and treatment records, permits disclosure of information for therapeutic or rehabilitative purposes, and authorizes disclosure of drug test results when substance abuse may compromise medical care. **(Proposed HD1)**

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-~~

1 ~~4(c)], 586-11(a), or 709-906, may be notified by the defendant's~~
2 ~~probation officer when the probation officer has any information~~
3 ~~relating to the safety and welfare of the victim.] No probation~~
4 officer shall be subject to civil liability or criminal
5 culpability for any disclosure or non-disclosure, under this
6 section, if the probation officer acts in good faith and upon
7 reasonable belief.

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

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

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

- 1 (B) A state or federal criminal justice agency, or
2 state or federal court program that:
- 3 (i) Is providing supervision of a defendant or
4 offender convicted and sentenced by the
5 courts of Hawaii; or
- 6 (ii) Is responsible for the preparation of a
7 report for a court;
- 8 (2) The residence address, work address, home telephone
9 number, or work telephone number of a current or
10 former defendant shall be provided only to:
- 11 (A) A law enforcement officer as defined in section
12 710-1000(13) to locate the probationer for the
13 purpose of serving a summons or bench warrant in
14 a civil, criminal, or deportation hearing, or for
15 the purpose of a criminal investigation; or
- 16 (B) A collection agency or licensed attorney
17 contracted by the judiciary to collect any
18 delinquent court-ordered penalties, fines,
19 restitution, sanctions, and court costs pursuant
20 to section 601-17.5[~~7~~];
- 21 (3) A copy of a presentence report or investigative report
22 shall be provided only to:

- 1 (A) The persons or entities named in section 706-604;
- 2 (B) The Hawaii paroling authority;
- 3 (C) Any psychiatrist, psychologist, or other
4 treatment practitioner who is treating the
5 defendant pursuant to a court order or parole
6 order for that treatment;
- 7 (D) The intake service centers;
- 8 (E) In accordance with applicable law, persons or
9 entities doing research; and
- 10 (F) Any Hawaii state adult probation officer or adult
11 probation officer of another state or federal
12 jurisdiction who:
- 13 (i) Is engaged in the supervision of a defendant
14 or offender convicted and sentenced in the
15 courts of Hawaii; or
- 16 (ii) Is engaged in the preparation of a report
17 for a court regarding a defendant or
18 offender convicted and sentenced in the
19 courts of Hawaii;
- 20 (4) Access to adult probation records by a victim, as
21 defined in section 706-646 to enforce an order filed
22 pursuant to section 706-647, shall be limited to the

1 name and contact information of the defendant's adult
2 probation officer[-];

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

11 [~~5~~] (6) Notwithstanding [~~subsection (b)(3),~~] paragraph
12 (3), and upon notice to the defendant, [~~records and~~
13 information relating to the defendant's risk
14 assessment and need for treatment services or
15 ~~information related~~] to the defendant's past treatment
16 and assessments, or information necessary for
17 therapeutic or rehabilitative purposes 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) Correctional case manager, correctional unit
4 manager, and parole officers involved with the
5 defendant's treatment or supervision; and

6 (C) In accordance with applicable law, persons or
7 entities doing research~~[+]~~;
8 provided that information obtained from a treatment
9 service provider shall not be divulged without the
10 defendant's prior written consent; and provided
11 further that the disclosure of substance abuse records
12 shall be subject to title 42 Code of Federal
13 Regulations part 2, relating to the confidentiality of
14 alcohol and drug abuse patient records;

15 (7) Probation drug test results may be released to the
16 defendant's treating physician when there is an
17 indication that test results indicate substance use,
18 which may be compromising the defendant's medical care
19 or treatment;

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

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

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

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

March 25, 2010

S.B. No. 2154 SD1: RELATING TO ADULT PROBATION RECORDS

Chair Karamatsu and Members of the Committee:

We do not oppose passage of S.B. No. 2154 SD1. Our office has had an opportunity to meet with officials from the probation department to express concerns about previous versions of the bill. The provisions that were most objectionable to us were removed and we believe that the current version is a reasonable compromise. In not expressing opposition, we are not commenting on any state or federal statutory privacy provisions which might apply to the changes. We trust that the proponents of the bill have examined this issue and the current version of the bill is in compliance with such provisions.

Thank for the opportunity to comment on this measure.

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File: DOHIADAD

House Committee on Judiciary

S.B. 2154 SD1, ADULT PROBATION RECORDS

WRITTEN
TESTIMONY ONLY

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

March 25, 2010; 3:45 p.m.

- 1 **Department's Position:** The Department of Health (DOH) supports passage of this measure
2 with recommended amendments.
- 3 **Fiscal Implications:** Not applicable.
- 4 **Purpose and Justification:** The purpose of this measure is to amend Section 806-73, Hawaii
5 Revised Statutes (HRS), to: allow disclosure of information from the Judiciary's Adult Client
6 Services (i.e., probation) records to victims of domestic abuse; expand the release of information
7 from treatment providers; and allow release of drug test results to a defendant's treating
8 physician when results indicate substance use which may be compromising the defendant's
9 medical care or treatment.
- 10 Enactment of this measure would provide statutory authority for the release of
11 information that is in the Judiciary's Adult Client Services (i.e., probation) records for a
12 defendant. Federal confidentiality provisions in Title 42 Code of Federal Regulations Part 2,
13 relating to the confidentiality of alcohol and drug abuse patient records, require a client's written
14 consent prior to the release of such information; subsequent releases also require a client's
15 written consent. For the purpose of clarity and to ensure that the proposed amendments in this

1 measure adhere to federal confidentiality provisions, we recommend the following change to the
2 measure:

3 Page 5, lines 11 through 19 should be amended to read as follows:

4 ~~[(5)]~~ (6) Notwithstanding ~~[subsection (b)(3);]~~ paragraph (3) and upon notice to the
5 defendant, records and information relating to the defendant's risk assessment and
6 need for treatment services ~~[or];~~ information related to the defendant's past
7 treatment and assessments, with prior written consent of a defendant for
8 information from a treatment service provider, provided that for any substance
9 abuse records such release shall be subject to Title 42 Code of Federal
10 Regulations Part 2, relating to the confidentiality of alcohol and drug abuse
11 patient records; and information which has therapeutic or rehabilitative benefit,
12 may be provided to:

13 We have conferred with the Judiciary, the Public Defender, the Hawaii Substance Abuse
14 Coalition, and the Legal Action Center (a non-profit public interest law firm and policy
15 organization that specializes in protecting the rights of people with alcohol or drug problems,
16 HIV/AIDS or criminal records) to ensure that the proposed amendments conform with federal
17 confidentiality requirements.

18 We respectfully request that the Committee incorporate the recommended amendments to
19 ensure that the intent of this measure is accomplished pursuant to Title 42 Code of Federal
20 Regulations, Part 2.

21 Thank you for the opportunity to testify on this measure.
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SB 2154 SD1 Relating to Adult Probation Records 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.

COMMITTEE ON JUDICIARY: Representative Jon Riki Karamatsu, Chair;
Representative Ken Ito, Vice Chair

Thursday, March 25, 2010, 3:45 pm, Conference Room 325

HAWAII SUBSTANCE ABUSE COALITION

GOOD MORNING CHAIR TANIGUCHI, VICE CHAIR TAKAMINE AND DISTINGUISHED COMMITTEE MEMBERS:

My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of more than twenty non-profit treatment and prevention agencies.

HSAC SUPPORTS SB 2154 SD1 SUBJECT TO CHANGES:

We present testimony as previously recommended by the Legal Action Center.

PROPOSED CHANGES:

Page 6, Paragraph 8, lines 17 should be amended to read as follows:

~~[(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 subject to Title 42 Code of Federal Regulations Part 2, relating to the confidentiality of alcohol and drug abuse patient records**]; and

It is important that this is along the intent of federal confidentiality laws.

We appreciate the opportunity to testify today and are available for questions, if needed.