

SB2154

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LINDA LINGLE
GOVERNOR OF HAWAII



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In reply, please refer to:
File: DOHADAD

Senate Committee on Judiciary and Government Operations

S.B. 2154, ADULT PROBATION RECORDS

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

February 10, 2010; 9:30 a.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 to treatment providers, the defendant's physician when drug test results indicate alcohol or drug
8 use that may affect medical care, and to county, state or federal law enforcement officers to
9 report a crime, provide information of possible criminal activity, or provide information that the
10 adult probation officer believes is relevant to a criminal investigation or law enforcement effort;
11 and to exempt law enforcement officers who receive records or information from disclosure
12 restrictions.
- 13 Enactment of this measure as introduced would provide statutory authority for the release
14 of information that is in the Judiciary's Adult Client Services (i.e., probation) records for a
15 defendant. Federal confidentiality provisions in Title 42 Code of Federal Regulations Part 2,
16 relating to the confidentiality of alcohol and drug abuse patient records, require a client's written

1 consent prior to the release of such information; subsequent releases also require a client's
2 written consent. To ensure that the proposed amendments in this measure adhere to federal
3 confidentiality provisions, we recommend the following changes to the measure:

4 Page 5, lines 9 through 18 should be amended to read as follows:

5 ~~[(5)]~~ (6) Notwithstanding [subsection (b)(3)], paragraph (3) and upon notice to the
6 defendant, records and information relating to the defendant's risk assessment and
7 need for treatment services [or]; information related to the defendant's past
8 treatment and assessments, with prior written consent of a defendant for
9 information from a substance abuse treatment provider; and information which
10 has therapeutic or rehabilitative benefit, may be provided to:

11 Page 6, lines 12 through 19 should be amended to read as follows:

12 (7) A copy of any adult probation case record or part thereof, or the contents of any
13 record, may be provided by an adult probation officer to any county, state, or
14 federal law enforcement officer to report a crime, provide information of possible
15 criminal activity, or provide information that the adult probation officer believes
16 is relevant to a criminal investigation or law enforcement effort, provided that for
17 any substance abuse records such release shall be subject to Title 42 Code of
18 Federal Regulations Part 2, relating to the confidentiality of alcohol and drug
19 abuse patient records;

20 We have conferred with the Judiciary, the Substance Abuse Treatment Providers
21 Coalition, and the Legal Action Center (a non-profit public interest law firm and policy
22 organization that specializes in protecting the rights of people with alcohol or drug problems,
23 HIV/AIDS or criminal records) to ensure that the proposed amendments conform with federal
24 confidentiality requirements.

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

4 Thank you for the opportunity to testify on this measure.

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