

SB 859

Measure Title:

RELATING TO PERSONS COMMITTED TO THE HAWAII YOUTH CORRECTIONAL FACILITIES OR TO THE CUSTODY OR CARE OF THE EXECUTIVE DIRECTOR OF THE OFFICE OF YOUTH SERVICES

Report Title:

Office of Youth Services; Hawaii Youth Correctional Facilities.

Description:

Allows the Hawaii Youth Correctional Facility to obtain necessary information on youth committed to the facility quickly when the youth are admitted, and to use the information for treatment and care within the facility.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 859, RELATING TO PERSONS COMMITTED TO THE HAWAII YOUTH CORRECTIONAL FACILITIES OR TO THE CUSTODY OR CARE OF THE EXECUTIVE DIRECTOR OF THE OFFICE OF YOUTH SERVICES.

BEFORE THE:

SENATE COMMITTEES ON PUBLIC SAFETY AND MILITARY AFFAIRS
AND ON HUMAN SERVICES

DATE: Thursday, February 19, 2009 **TIME:** 1:00 PM

LOCATION: State Capitol, Room 229

Deliver to: PSMTestimony@Capitol.hawaii.gov, Room N/A, 1 Copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lisa M. Ginoza, Deputy Attorney General

Chairs Espero and Chun Oakland and Members of the Committees:

The Department of the Attorney General strongly supports this bill.

This measure will allow the Hawaii Youth Correctional Facility (HYCF) to obtain necessary information quickly when youth are committed to the facility, and to use the information for treatment and care at HYCF.

Youth who are committed to HYCF need many types of services: medical services, mental health and substance abuse services, educational services, social services, and planning for transition back into the community. At times it has been difficult for HYCF to obtain all the records and information it needs to provide these services in a timely way. Much of the information is protected by confidentiality laws, so consents or court orders to release the information must be obtained before the information can be transmitted to personnel working with youth at HYCF. In those instances, staff may not be aware of all of a youth's medical or mental health needs or history for some time after a youth arrives, or may lack other important information that would allow immediate, comprehensive care.

This bill would allow otherwise confidential medical, mental health, and social services information to be disclosed to the Executive Director of the Office of Youth Services and to the people working with committed youth at the facility, and would permit its use in care and treatment. It does not affect the disclosure of information for whose release federal law requires consent or appropriate court orders, such as educational records or substance abuse treatment records.

The Department of Education has expressed concerns that the bill should conform clearly to the federal laws that govern the privacy of educational records, the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act. To address these concerns, we have attached a proposed S.D. 1 that makes explicit that educational records that are confidential under these federal laws will be disclosed to the youth correctional facilities only under the procedures that those laws require. Specifically, the reference to the Department of Education on page 1, line 14, has been deleted; a new subsection (b) that addresses these federal laws has been added after the sentence that ends on page 2, line 5; the sentence that begins on page 2, line 5, has been moved to a new subsection (c); and the contents of what was subsection (b) beginning on page 2, line 13, have been redesignated as subsection (d). The Department of Education has reviewed the proposed new version and finds it acceptable. The Executive Director of the Office of Youth Services has also approved it.

This bill is the result of collaboration among many of the state agencies serving youth committed to HYCF. Their work with these youth will be enhanced by this measure, and we urge you to pass it with the recommended amendments.

PROPOSED DRAFT
2-18-09

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 859,
S.D. 1

A BILL FOR AN ACT

RELATING TO PERSONS COMMITTED TO THE HAWAII YOUTH CORRECTIONAL FACILITIES OR TO THE CUSTODY OR CARE OF THE EXECUTIVE DIRECTOR OF THE OFFICE OF YOUTH SERVICES.

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

SECTION 1. The purpose of this bill is to allow the Hawaii youth correctional facilities and the executive director of the office of youth services to obtain necessary information on youth committed to the facilities quickly, and to use the information for treatment and care of the youth committed to the facilities or to the custody or care of the executive director.

SECTION 2. Chapter 352, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§352- Provision of confidential information to the Hawaii youth correctional facilities. (a) Notwithstanding any other law to the contrary, otherwise confidential information and documents, including information and documents in the

possession of the courts, the department of health, and the department of human services, concerning persons committed to the Hawaii youth correctional facilities or to the director's custody or care, shall, upon request by the director or director's designee, be furnished to the facilities and the director, including but not limited to health records and information (including HIV/AIDS records and information), mental health records and information, and social services records and information.

(b) With respect to information and records in the possession of the department of education that are confidential under federal law, that information and those records requested by the director or the director's designee shall be furnished to the director or director's designee upon, as required by federal law: (1) a court order allowing release and after the department of education's compliance with notice requirements regarding the release of confidential information and records; or (2) consent of the parent.

(c) The information and documents provided under this section may be used only by the director and those who work with youth while committed to the facilities or to the director's custody or care, including those employed by the department of human services, the department of health, and the department of education, and contractors retained to provide services to the

youth, who need the records or information in order to provide care, safety, treatment, and educational services for the youth.

(d) The documents and information may not be disclosed to others who are not providing services to youth who are at the facilities, except:

- (1) To providers contracted by the office of youth services, to the extent determined necessary by the director to provide care and services for the youth, including but not limited to social services, placement, health services, educational services, and mental health services;
- (2) To persons duly authorized by the State or the United States in connection with their official duties when such duties are directly connected to the care, treatment and safety of youth committed to the facilities or to the director's custody and care; or
- (3) As otherwise in accordance with state and federal law."

SECTION 3. New statutory material is underscored.

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

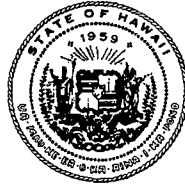
PROPOSED DRAFT
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Description:

Allows the Hawaii Youth Correctional Facility to obtain necessary information on youth committed to the facility quickly when the youth are admitted, and to use the information for treatment and care within the facility.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
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Honolulu, Hawaii 96813

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February 9, 2009

TO: The Honorable Will Espero, Chair
Senate Committee on Public Safety and Military Affairs

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Martha T. Torney, Executive Director

**SUBJECT: SB 859, RELATING TO PERSONS COMMITTED TO THE
HAWAII YOUTH CORRECTIONAL FACILITY OR TO THE
CUSTODY OR CARE OF THE EXECUTIVE DIRECTOR OF THE
OFFICE OF YOUTH SERVICES**

Hearing: Thursday, February 19, 2009; 1:00 p.m.
State Capitol, Conference Room 229

The Office of Youth Services (OYS) strongly supports SB 859, an Administration bill concerning youth committed to the custody or care of the OYS Executive Director, which allows the timely sharing of information regarding these youth to facilitate service delivery and promote rehabilitation. Too often, confidentiality laws impede the ability of Hawaii Youth Correctional Facility (HYCF) to obtain vital information necessary to coordinate services for youth across State agencies and with private providers. This measure will go a long way in removing those barriers.

In accordance with Section 352-2.1, Hawaii Revised Statutes, the OYS is mandated to “provide for the custody, rehabilitation, and institutional care and services to prepare for reentry into their communities and families, youth committed by the courts to the State.” To accomplish the goals set forth, it is imperative that information germane to individual youth be available so that effective comprehensive treatment plans utilizing the

best combination of services to meet his or her needs may be developed and implemented. In order to achieve this, we require information from agencies, both public and private, that a youth has had prior contact with. This sharing is especially important in developing discharge plans to move youth back into their home communities.

Information sharing is also a requirement of the Memorandum of Agreement (MOA) between the US Department of Justice and the State of Hawaii concerning conditions at the HYCF. To ensure compliance with the provisions pertaining to the transfer of records from the Family Courts and detention facilities to HYCF, an agreement for this purpose between the Judiciary and OYS has been in effect since August 2007. This measure will codify that agreement.

At this time, though, we have no agreements to facilitate the sharing of information from additional agencies that have serviced our wards prior to their commitment. Youth committed to HYCF usually have had extensive contact with many State agencies, including the Department of Human Services (DHS), Department of Education (DOE), and the Department of Health (DOH). In addition, most State agencies rely on private providers to help carry out their mandate through the delivery of direct services to clients. Each agency operates under mandates that govern their particular responsibility to youth and which may preclude the sharing of information.

If we are to effectively provide services that will meet the needs of our youth, we must do it through a multidisciplinary approach that allows us to collaborate and share information on youth involved with multiple systems to avoid duplication and provide comprehensive services.

We appreciate the intent of the privacy laws to protect the youth from the misuse of information. And we are very committed to ensuring that confidential information shared is held to the same high standards to continue to protect privacy.

In summary, the OYS strongly supports SB 859 as it facilitates coordinated services to youth.

Date of Hearing: February 19, 2009

Committee: Senate Public Safety and Military
Affairs/Human Services

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title: S.B. 0859, Relating to Persons Committed to the Hawaii Youth
Correctional Facilities or to the Custody or Care of the Executive
Director of the Office of Youth Services.

Purpose: Allows the Hawaii Youth Correctional Facility to obtain
necessary information on youth committed to the facility quickly
when the youth are admitted, and to use the information for
treatment and care within the facility.

Department's Position: The Department of Education (Department) opposes S.B. 0859.
The Family Educational Rights and Privacy Act (FERPA), 34 CFR
Part 99, and the Individuals with Disabilities Education Act
(IDEA) govern the confidentiality of information requirements that
apply to personally identifiable data, information, and records
collected or maintained by all public schools.. The Department
must have written permission from the parent or eligible student in
order to release any information from a student's educational
record. Exceptions to the consent are allowed under the certain
conditions: a school official with legitimate educational interest;
other schools to which a student is transferring; specified officials
for audit or evaluation purposes; appropriate parties in connection

with financial aid to the student; organizations conducting certain studies for or on behalf of the school; accrediting organizations; to comply with a judicial order or lawfully issued subpoena; appropriate officials in cases of health and safety emergencies; and state and local authorities, within a juvenile justice system, pursuant to specific State law adopted before November 19, 1974.

Currently, students who are committed to the Hawaii Youth Correctional Facilities (HYCF) are provided their educational services at the on-site school. The teachers are Department of Education employees and have access to their students' records.

The Department does not support S.B. 0859.

Marlene Uesugi

From: lmau [peaceofmindhawaii@gmail.com]
Sent: Wednesday, February 18, 2009 8:47 AM
To: PSM Testimony; PBStestimony
Subject: Definitte SUPPORT OF SB 859 ..LYNNETTE MAU-09.02.19.

Committee Chairs:

Sen. Will Espero & Sen. Chun Lum

re: DEFINITE SUPPORT OF SB 859:

DATE: Thursday, February 19, 2009
TIME: 1:00 p.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

A G E N D A

SB 859

Testimony
Status

RELATING TO PERSONS COMMITTED TO THE HAWAII YOUTH CORRECTIONAL FACILITIES OR TO THE CUSTODY OR CARE OF THE EXECUTIVE DIRECTOR OF THE OFFICE OF YOUTH SERVICES.

Allows the Hawaii Youth Correctional Facility to obtain necessary information on youth committed to the facility quickly when the youth are admitted, and to use the information for treatment and care within the facility.

Mahalo Nui Loa,--
Lynnette Mau
PeaceOfMindHawaii@gmail.com
Clearing the Pathways to Recovery
Neuro-Integrative Cognition
www.wordsofpeace.org

"In this world is directly influenced by the society around us.. but what is the true thirst ?.. who are you? are you just this puppet built of layers of paper?..the good news is that you are not like that. there is a quest to be fulfilled to be in peace..and how beautiful is that..keep the right company and you will soak in the traits.. the True being existence to be in this life to be simple. To be in this life. To be conscious."

Prem Rawat
www.wordsofpeace.org