

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO PROBATION.

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

1           SECTION 1. The legislature finds that Hawaii law is silent  
2 on the disclosure of information by the judiciary of criminal  
3 risk information post-intake to treatment agencies.

4           The legislature further finds that risk information from  
5 the Hawaii probation office is critical to treatment agencies as  
6 it is used to design the individualized treatment plan. While  
7 the judiciary is allowed to share risk information on the  
8 offender after admission of the offender to a treatment service  
9 program, treatment service providers should have this  
10 information prior to admission of the offender into a treatment  
11 program. Without this information, the offender may be admitted  
12 to a treatment program that is not best suited to the offender's  
13 treatment needs or the offender may receive a substandard or  
14 inappropriate treatment plan.

15           All information, whether received during admission or after  
16 admission, is protected under federal confidentiality laws  
17 including the Federal Health Information Portability and  
18 Accountability Act, and Title 42, Code of Federal Regulations,



1 Part 2, relating to confidentiality of alcohol and drug abuse.  
2 These federal laws and regulations apply whether or not the  
3 offender is admitted into a treatment program. Furthermore,  
4 mental health service providers who are nationally accredited or  
5 licensed by the State are subject to strict compliance  
6 requirements for confidentiality as part of their accreditation  
7 and licensing. However, additional safeguards can be  
8 implemented to further protect the confidentiality of risk  
9 information.

10 The purpose of this Act is to:

11 (1) Clarify that adult probation records may be released  
12 to mental health service providers who are nationally  
13 accredited or licensed by the State for the purpose of  
14 therapy or rehabilitation; and

15 (2) Establish procedures to protect against improper  
16 divulging of confidential information.

17 SECTION 2. Section 806-73, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) All adult probation records shall be confidential and  
20 shall not be deemed to be public records. As used in this  
21 section, the term "records" includes [7] but is not limited to [7]  
22 all records made by any adult probation officer in the course of



1 performing the probation officer's official duties. The  
2 records, or the content of the records, shall be divulged only  
3 as follows:

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

7 (A) An adult probation officer, court officer, social  
8 worker of a Hawaii state adult probation unit, or  
9 a family court officer who is preparing a report  
10 for the courts; or

11 (B) A state or federal criminal justice agency, or  
12 state or federal court program that:

13 (i) Is providing supervision of a defendant or  
14 offender convicted and sentenced by the  
15 courts of Hawaii; or

16 (ii) Is responsible for the preparation of a  
17 report for a court;

18 (2) The residence address, work address, home telephone  
19 number, or work telephone number of a current or  
20 former defendant shall be provided only to:

21 (A) A law enforcement officer as defined in section  
22 710-1000(13) to locate the probationer for the



1 purpose of serving a summons or bench warrant in  
2 a civil, criminal, or deportation hearing, or for  
3 the purpose of a criminal investigation; or

4 (B) A collection agency or licensed attorney  
5 contracted by the judiciary to collect any  
6 delinquent court-ordered penalties, fines,  
7 restitution, sanctions, and court costs pursuant  
8 to section 601-17.5.

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

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

12 (B) The Hawaii paroling authority;

13 (C) Any psychiatrist, psychologist, or other  
14 treatment practitioner who is treating the  
15 defendant pursuant to a court order or parole  
16 order for that treatment;

17 (D) The intake service centers;

18 (E) In accordance with applicable law, persons or  
19 entities doing research; and

20 (F) Any Hawaii state adult probation officer or adult  
21 probation officer of another state or federal  
22 jurisdiction who:



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

4                   (ii) Is engaged in the preparation of a report  
5                   for a court regarding a defendant or  
6                   offender convicted and sentenced in the  
7                   courts of Hawaii;

8           (4) Access to adult probation records by a victim, as  
9           defined in section 706-646 to enforce an order filed  
10          pursuant to section 706-647, shall be limited to the  
11          name and contact information of the defendant's adult  
12          probation officer;

13          (5) Upon written request, the victim, or the parent or  
14          guardian of a minor victim or incapacitated victim, of  
15          a defendant who has been placed on probation for an  
16          offense under section 580-10(d)(1), 586-4(e),  
17          586-11(a), or 709-906 may be notified by the  
18          defendant's probation officer when the probation  
19          officer has any information relating to the safety and  
20          welfare of the victim;

21          (6) Notwithstanding paragraph (3) and upon notice to the  
22          defendant, records and information relating to the



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

12 (A) A case management, assessment, or treatment  
13 service provider assigned by adult probation to  
14 service the defendant; provided that ~~[such]~~ the  
15 information shall be given only upon the  
16 acceptance or admittance of the defendant into a  
17 treatment program[+] and shall be given only to a  
18 licensed health care practitioner or a state  
19 licensed or nationally accredited treatment  
20 program as part of the determination for  
21 admission;



- 1 (B) Correctional case manager, correctional unit  
2 manager, and parole officers involved with the  
3 defendant's treatment or supervision; and
- 4 (C) In accordance with applicable law, persons or  
5 entities doing research; provided that the  
6 information obtained for research purposes from a  
7 treatment service provider shall not be divulged  
8 without the defendant's prior written consent;  
9 provided further that the disclosure of substance  
10 abuse records shall be subject to Title 42 Code  
11 of Federal Regulations Part 2, relating to the  
12 confidentiality of alcohol and drug abuse patient  
13 records;
- 14 (7) Probation drug test results may be released with prior  
15 written consent of a defendant to the defendant's  
16 treating physician when test results indicate  
17 substance use which may be compromising the  
18 defendant's medical care or treatment;
- 19 (8) Any person, agency, or entity receiving records, or  
20 contents of records, pursuant to this subsection shall  
21 be subject to the same restrictions on disclosure of



1 the records as Hawaii state adult probation offices;  
2 and

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

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

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

11

INTRODUCED BY:

*Uta Hee*





**Report Title:**

Adult Probation; Records Confidentiality

**Description:**

Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers.

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

