
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
6 because it is used to design the individualized treatment plan.
7 While the judiciary is allowed to share risk information
8 regarding the offender after admission of the offender to a
9 treatment service program, treatment service providers should
10 have this information prior to the admission of the offender
11 into a treatment program. Without this information, the
12 offender may be admitted to a treatment program that is not best
13 suited to the offender's treatment needs or the offender may
14 receive a substandard or 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 of 1996, and Title 42 Code of Federal



1 Regulations Part 2, relating to confidentiality of alcohol and
2 drug abuse. These federal laws and regulations apply whether or
3 not the offender is admitted into a treatment program.
4 Furthermore, mental health service providers who are nationally
5 accredited or licensed by the State are subject to strict
6 compliance requirements for confidentiality as part of their
7 accreditation and licensing. However, additional safeguards can
8 be 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 on July 1, 2050.

11



Report Title:

Adult Probation; Records Confidentiality

Description:

Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers. Effective 7/1/2050. (SD1)

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

