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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  
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 the  
13 best suited to the offender's treatment needs or the offender  
14 may 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 Insurance 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 The purpose of this Act is to allow certain adult probation  
5 records, including those relevant to a defendant's risk  
6 assessment and past treatment, to be provided to certain case  
7 management, assessment, or treatment service providers for use  
8 as part of the determination of whether the defendant should be  
9 accepted or admitted into a treatment program.

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

12 "(b) All adult probation records shall be confidential and  
13 shall not be deemed to be public records. As used in this  
14 section, the term "records" includes[7] but is not limited to[7]  
15 all records made by any adult probation officer in the course of  
16 performing the probation officer's official duties. The  
17 records, or the content of the records, shall be divulged only  
18 as follows:

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



1 (A) An adult probation officer, court officer, social  
2 worker of a Hawaii state adult probation unit, or  
3 a family court officer who is preparing a report  
4 for the courts; or

5 (B) A state or federal criminal justice agency, or  
6 state or federal court program that:

7 (i) Is providing supervision of a defendant or  
8 offender convicted and sentenced by the  
9 courts of Hawaii; or

10 (ii) Is responsible for the preparation of a  
11 report for a court;

12 (2) The residence address, work address, home telephone  
13 number, or work telephone number of a current or  
14 former defendant shall be provided only to:

15 (A) A law enforcement officer as defined in section  
16 710-1000(13) to locate the probationer for the  
17 purpose of serving a summons or bench warrant in  
18 a civil, criminal, or deportation hearing, or for  
19 the purpose of a criminal investigation; or

20 (B) A collection agency or licensed attorney  
21 contracted by the judiciary to collect any  
22 delinquent court-ordered penalties, fines,



1                   restitution, sanctions, and court costs pursuant  
2                   to section 601-17.5[-];

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

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

6           (B) The Hawaii paroling authority;

7           (C) Any psychiatrist, psychologist, or other  
8           treatment practitioner who is treating the  
9           defendant pursuant to a court order or parole  
10           order for that treatment;

11           (D) The intake service centers;

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

14           (F) Any Hawaii state adult probation officer or adult  
15           probation officer of another state or federal  
16           jurisdiction who:

17           (i) Is engaged in the supervision of a defendant  
18           or offender convicted and sentenced in the  
19           courts of Hawaii; or

20           (ii) Is engaged in the preparation of a report  
21           for a court regarding a defendant or



1                   offender convicted and sentenced in the  
2                   courts of Hawaii;

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

8           (5) Upon written request, the victim, or the parent or  
9           guardian of a minor victim or incapacitated victim, of  
10          a defendant who has been placed on probation for an  
11          offense under section 580-10(d)(1), 586-4(e),  
12          586-11(a), or 709-906 may be notified by the  
13          defendant's probation officer when the probation  
14          officer has any information relating to the safety and  
15          welfare of the victim;

16          (6) Notwithstanding paragraph (3) and upon notice to the  
17          defendant, records and information relating to the  
18          defendant's risk assessment and need for treatment  
19          services; information related to the defendant's past  
20          treatment and assessments, with the prior written  
21          consent of the defendant for information from a  
22          treatment service provider; provided that for any



1 substance abuse records such release shall be subject  
2 to Title 42 Code of Federal Regulations Part 2,  
3 relating to the confidentiality of alcohol and drug  
4 abuse patient records; and information that has  
5 therapeutic or rehabilitative benefit, may be provided  
6 to:

7 (A) A case management, assessment, or treatment  
8 service provider assigned by adult probation to  
9 service the defendant; provided that ~~[such]~~ the  
10 information shall be given only upon the  
11 screening for admission, acceptance, or  
12 admittance of the defendant into a ~~[treatment]~~  
13 program;

14 (B) Correctional case manager, correctional unit  
15 manager, and parole officers involved with the  
16 defendant's treatment or supervision; and

17 (C) In accordance with applicable law, persons or  
18 entities doing research;

19 (7) Probation drug test results may be released with prior  
20 written consent of a defendant to the defendant's  
21 treating physician when test results indicate



1 substance use which may be compromising the  
2 defendant's medical care or treatment;  
3 (8) Any person, agency, or entity receiving records, or  
4 contents of records, pursuant to this subsection shall  
5 be subject to the same restrictions on disclosure of  
6 the records as Hawaii state adult probation offices;  
7 and  
8 (9) Any person who uses the information covered by this  
9 subsection for purposes inconsistent with the intent  
10 of this subsection or outside of the scope of the  
11 person's official duties shall be fined no more than  
12 \$500."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2011, and  
16 shall be repealed on July 1, 2016; provided that section 806-  
17 73(b), Hawaii Revised Statutes, shall be reenacted in the form  
18 in which it read on the day before the effective date of this  
19 Act.



**Report Title:**

Adult Probation; Records Confidentiality

**Description:**

Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers. Sunsets on July 1, 2016. (CD1)

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

