

The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, March 29, 2011, 3:30 p.m.
State Capitol, Conference Room 325

by

Joan Sakaba
Program Specialist
Adult Client Services Branch, First Circuit Court

Bill No. and Title: Senate Bill No. 1067, S.D. 1, H.D. 1, Relating to Probation.

Purpose: Clarifies the purpose for which an adult probationer's risk assessment and treatment records may be disclosed to case management, assessment, and treatment service providers.

Judiciary's Position:

The Judiciary supports the intent of the bill, which is to allow disclosure of a probationer's risk assessment and treatment records for the purpose of determining whether the probationer is an appropriate candidate for a treatment program. The Judiciary also offers an amendment to the measure.

Upon a probationer's acceptance into treatment or care, the Adult Client Services Branch (ACSB/Probation) is authorized to disclose certain confidential probation records to case management, assessment, and treatment service providers. These records include assessment results that determine the level of a probationer's risk of recidivism (surveillance, high, medium or low risk), and that identify criminogenic need - target areas (anti-social values/beliefs/cognition, anti-social companions, anti-social personality/temperament, family and/or marital, substance abuse, employment, education, leisure and/or recreation), which if addressed by treatment, may improve a probationer's ability to remain arrest-free.



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Access to these records would also facilitate the determination of whether a probationer should be admitted into a treatment program, considering the probationer's assessment results, and the level and type of services offered by the provider. This measure would authorize ACSB/Probation to release the records to service providers for this purpose.

To provide clearer disclosure guidelines, the Judiciary proposes that HRS § 806-73(b)(6)(A), on page 6, lines 7-13, be amended to read as follows:

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

Thank you for the opportunity to testify on SB. No. 1067, S.D. 1., H.D. 1.

For: SB1067 SD1, HD1 (HSCR1089) RELATING TO PROBATION. Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers.

To: COMMITTEE ON JUDICIARY: Representative Gilbert Keith-Agaran, Chair; Representative Karl Rhoads, Vice Chair

Time: Tuesday, March 29th, 2011, 3:30: PM, Conference Room 325

Hawaii Substance Abuse Coalition

Good morning Chair Keith-Agaran, Vice Chair Rhoads and Distinguished Committee Members: My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of more than 20 non-profit treatment and prevention agencies.

Hawaii Substance Abuse Coalition supports SB 1067:

Summary: Substance abuse treatment providers want to receive offender risk information from the Judiciary as part of admission. Currently, providers receive the risk information from the Judiciary after treatment, which often results in some weeks after. Given that providers already receive much more sensitive information during admission such as psychiatric evaluations, medical reports, history of use and other reports, there are confidentiality practices already in place. However, offender risk information is also needed during admission to determine high risk vs. low risk since the criminogenic needs are different, requiring different treatment objectives and behavioral approaches that need to be started at the beginning of treatment. Also, it is not best practices to mix high risk offenders with low risk offenders and not all agencies provide high risk offender treatment so the information is needed to match offenders with the most appropriate programs and services.

Explanation: While a multitude of sensitive medical information about a potential offender seeking admission to treatment agencies is shared during the intake process, a law prevents the sharing of criminal risk information by the Judiciary to treatment agencies until after admission. This risk instrument, LSI-R, is used by the Judiciary to determine level of risk for criminality – high, moderate and low.

This information is critical during admission (not after) to determine applicability for the particular treatment agencies, and if applicable, is used to immediately design the individualized treatment plan. Not having this information, the offender may be admitted to a treatment program that is not best suited for their needs or else if appropriate, the lack of information results in a substandard treatment plan.

Currently, treatment agencies receive extensive medical information, psychiatric diagnosis, and other information. During the assessment, the intake counselor gathers volumes of data about behavioral history, work history, drug use history, and personal relationship history. All of this information is used to determine whether to admit the person and if admitted, to determine level of care as well as design the individualized treatment plan.

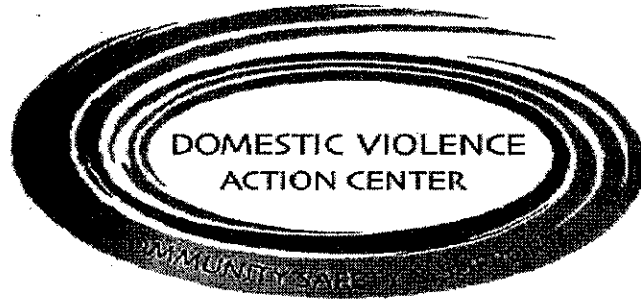
While the Judiciary is allowed to share this risk information after admission, it is much later, which means the offender may be admitted to a program that is not best suited for their needs. Also, according to the Judiciary, it is better in treatment to not mix a high risk offender with lower risk offenders. To discharge a client as inappropriate from a program because the Judiciary risk information determines them to be high risk in a low risk program is hurtful to the offender.

Also, to not have this information during admission, a treatment plan can not address risk factors such that the offender does not receive programmed approaches that could have helped the offender cope with their risk tendencies such as aggression and dominance. Typically, offenders are either not aware of their risk factors or may not be forthcoming during the initial interview. Moreover, probation officers may be overwhelmed and many do not have the time to submit risk information after admission.

All information, whether received during admission or after admission, is protected under federal confidentiality laws including HIPAA and federal regulations 42CFR Part 2. There are enforcement provisions if a provider is not compliant. Such laws apply whether the offender is admitted or not.

Conclusion: In summary, the risk information is shared already. Other information that is much more sensitive is already shared during admission. This change in law is a matter timing – the information would be shared during admission as opposed to after admission. There are compelling treatment reasons to disclose such information during admission as a means to improve treatment services. Such information, whether during or after admission, is already heavily protected by Federal confidentiality laws.

We appreciate the opportunity to testify and are available for testimony.



March 28, 2011

FROM: Nanci Kreidman, M.A.
Domestic Violence Action Center

TO: Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Members of the Committee

RE: SB 1067, SD 1, HD 1 Support
Hearing Date: Tuesday, March 29, 2011, 3:30pm, Conf Rm #325

Aloha and good morning. Please accept this testimony in support of SB 1067, SD 1, HD 1. We have been aware of the need for information to be shared by probation with community intervention agencies.

This need remains important for programs to understand the people they are serving and to provide an additional measure of safety for victims and for staff working with violent offenders.

Finding the right program and making certain the program has the right information makes a world of difference.

Thank you for hearing this Bill. We look forward to your favorable action on the measure.

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Addiction Treatment Services

For: SB1067 SD1 (HSCR1089) Relating To Probation

To: COMMITTEE ON JUDICIARY:

Representative Gilbert Keith-Agaran, Chair

Representative Karl Rhoads, Vice Chair

Time: Tuesday, March 29, 2011 at 3:30 p.m. in Conference Room 325

WRITTEN TESTIMONY IN SUPPORT OF SB 1067 SD1

ALOHA CHAIR KEITH-AGARAN, VICE CHAIR RHOADS, AND JUDICIARY COMMITTEE MEMBERS:

My name is Larry Williams, executive director of The Salvation Army Addiction Treatment Services. ATS provides a comprehensive continuum of substance abuse treatment services for more than 1,200 adults annually, many of whom are adult probationers referred from the Hawaii State Judiciary. **Salvation Army ATS supports passage of Senate Bill No. 1067 SD1** for the following reasons:

Current best practices for treatment of adult offenders dictate timely sharing of risk assessment information by adult probation officers with treatment providers in referring probations to treatment providers. Sharing of risk assessment information is critical for matching offender needs with strengths of treatment agencies, placement in the most appropriate treatment modality, and timely development and implementation of individualized treatment plans.

However, current law prevents the Judiciary from sharing confidential probation information with treatment providers until after the probationer is admitted to treatment. Confidentiality is not the issue here since Federal confidentiality laws protect this information from improper public disclosure. This information is protected regardless if the offender is admitted into a program or not. Consequently, disclosing this information prior to admission or after admission is equally protected. Having this information during the admission process will greatly facilitate admission to the optimum treatment agency, placement in the appropriate treatment modality, and timely design and implementation of an effective individualized treatment plan.

SB No. 1067 SD1 will amend the law to allow the Judiciary to share confidential probation information with treatment providers prior to admission to treatment.

Therefore, I respectfully request that the **House Committee on Judiciary pass SB1067 SD1.**

Thank you for this opportunity to provide input regarding this important subject matter.

Participating Agency



Aloha United Way

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For: SB1067 SD1, HD1 (HSCR1089) RELATING TO PROBATION. Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers.

To: COMMITTEE ON JUDICIARY: Representative Gilbert Keith-Agaran, Chair; Representative Karl Rhoads, Vice Chair

Time: Tuesday, March 29th, 2011, 3:30: PM, Conference Room 325

Kū Aloha Ola Mau

Good morning Chair Keith-Agaran, Vice Chair Rhoads and Distinguished Committee Members: My name is Lisa Cook, Executive Director of Kū Aloha Ola Mau a substance abuse treatment agency who has treated over 13,000 persons since inception 35 years ago.

Kū Aloha Ola Mau supports SB 1067:

Summary: Substance abuse treatment providers want to receive offender risk information from the Judiciary as part of admission. Currently, providers receive the risk information from the Judiciary after treatment, which often results in some weeks after. Given that providers already receive much more sensitive information during admission such as psychiatric evaluations, medical reports, history of use and other reports, there are confidentiality practices already in place. However, offender risk information is also needed during admission to determine high risk vs. low risk since the criminogenic needs are different, requiring different treatment objectives and behavioral approaches that need to be started at the beginning of treatment. Also, it is not best practices to mix high risk offenders with low risk offenders and not all agencies provide high risk offender treatment so the information is needed to match offenders with the most appropriate programs and services.

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