



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

**WRITTEN TESTIMONY
ONLY**

In reply, please refer to:
File:

House Committee on Public Safety and Military Affairs

S.B. 1067 SD1, RELATING TO PROBATION

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.

Interim Director of Health

March 17, 2011; 8:30 a.m.; room 309

1 **Department's Position:** The Department of Health (DOH) defers to the Judiciary on the types
2 of probation records released, however, we oppose the addition of underscored text in
3 subparagraph (C), referring to Title 42 Code of Federal Regulations (CFR) Part 2, relating to the
4 confidentiality of alcohol and drug abuse patient records.

5 **Fiscal Implications:** None.

6 **Purpose and Justification:** The proposed amendments are intended to: (1) clarify that adult
7 probation records may be released to mental health service providers who are nationally
8 accredited or licensed by the State for the purpose of therapy or rehabilitation; and (2) establish
9 procedures to protect against improper divulging of confidential information.

10 The proposed additional text (on page 7, lines 5-13) in subparagraph (C) referencing
11 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records, is unnecessary as the
12 provision in paragraph 6 is applicable to all three of the ensuing subparagraphs [i.e., (A), (B)
13 and (C)].

14 Thank you for the opportunity to testify on this measure.

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The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 07, 2011, 10:00 a.m.

State Capitol, Conference Room 016

by

Joan Sakaba

Program Specialist, Adult Client Services Branch, First Circuit Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1067, Relating to Probation.

Purpose: To allow the release of individual offender probation records pertaining to risk and need assessments and other information, to service providers as part of the determination for admission.

Judiciary's Position:

The Judiciary supports the intent of the proposed amendment, which is to provide service providers as much information as is needed in determining probationer appropriateness for care.

The Judiciary's Adult Client Services Branches (ACSB/probation) currently conduct Level of Services Inventories-Revised (LSI-R) and the Adult Substance Use Survey (ASUS). The results of these assessments provide a risk score which interprets into surveillance, high, medium or low risk for offender recidivism. They additionally provide information on criminogenic need – target areas which if addressed may improve a client's ability to remain arrest-free. Criminogenic need includes anti-social values/beliefs/cognition, anti-social companions, anti-social personality/temperament, family and/or marital, substance abuse, employment, education, leisure and/or recreation. Currently risk/need profiles are maintained within restricted probation records, but can be and are being given to service providers upon a client's acceptance into treatment or care, for more effective treatment and case planning. The passage of this bill will allow access to the results of these as part of the determination for admission. Providers feel that it is necessary to have this information to assess whether a referred offender matches with the



Senate Bill No.1067, Relating to Probation
Senate Committee Judiciary and Labor
Monday, February 7, 2011
Page 2

level of services and kinds of treatment/care provided. ACSB is willing to release these profiles and other records (with applicable required client consent) should this bill become law.

The Judiciary however has concerns with respect to the qualification that this information only be given to a "licensed health care practitioner or a state licensed or nationally accredited treatment program as part of the determination for admission." It is believed that the fitness of the receiving parties be left to the determination of the probation divisions. Current law reads, "may be provided;" and, it is believed that probation officers are able to distinguish between programs professional and non-professional services. In addition, licensing does not always mean that a program will know how to use or interpret any specific tool. It is currently the goal of the Interagency Council of Intermediate Sanctions (ICIS), a criminal justice system-wide effort to infuse evidence-based effective practices into services for offenders. Training in the interpretation of the LSI-R/ASUS have been and are being offered to providers of services for the criminal justice client. Further, not all areas of services; for instance, case management, sex offender treatment, domestic violence treatment; do not currently require licensing or accreditation within this state. These services are a vital part of the care provided to the offender and with the recommended wording, they would be excluded from receiving pertinent information.

Finally, the recommended language in Section (6)(C) pertaining to the confidentiality and release of substance abuse records is not believed necessary as this requirement is already addressed in Section (6). The inclusion of the recommended wording in (6)(C) is redundant.

Thank you for the opportunity to testify on SB. No. 1067.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Public Safety & Military Affairs**

March 17, 2011

S.B. No. 1067, S.D. 1: RELATING TO PROBATION

Chair Aquino and Members of the Committee:

We oppose the passage of S.B. No. 1067, S.D. 1 which mandates the judiciary to disclose specified information on criminal defendants to treatment programs prior to admission to treatment by the program. While we question the expenditure of resources to provide this service by the Judiciary to outside programs, our primary objection is that such disclosure will discourage treatment programs from making an objective, unbiased assessment of a defendant's application to enter their program.

Our current statute gives the Judiciary the discretion to share the specified information with a treatment provider "upon acceptance of the defendant into" the treatment program. This bill would require the Judiciary to gather all of the information specified in the statute, including:

- records and information relating to the defendant's risk assessment and need for treatment services, and
- information related to the defendant's past treatment and assessments, with the prior written consent of the defendant for information from a treatment service provider, (subject to HIPA regulations related to "alcohol and drug abuse patient records"), and
- information that has therapeutic or rehabilitative benefit.

The bill mandates that the above information be provided to any properly licensed treatment program that the defendant applies to enter. Currently, to the extent that a program requires this information before deciding whether to accept a defendant, the programs can and do require the defendant to sign consents for release of information so that the program can gather the information it considers essential to making a decision about acceptance into their program. One way of looking at this bill, is that it will make taxpayers pay state personnel to do the work previously done by the treatment programs in their application process.

We are always cautious about the release of what is very confidential information about our clients. This bill, mandating as it does the release of this information as part of an application process, does not even provide that the program must return the information, having made no copies of it, if the defendant is not accepted into their program. It also does not contain any provision requiring the program to maintain the confidentiality of the information. Many of these programs employ former patients as counselors and such, some are even family members or neighbors of persons applying to the program and we are very hesitant that confidential information be shared in such circumstances.

The adult probation records which this bill addresses often contain an assessment of the risk of danger which a defendant presents. Access to these assessments are currently so guarded that they are not even provided to the prosecutor or defense counsel. This bill would mandate that they be shared with any number of treatment programs.

Also, currently, in deciding whether to accept a defendant for treatment, programs conduct a risk assessment independent of the probation department's assessment. Oftentimes, the court relies upon this independent assessment by the program. The program's assessment can differ from that of the probation department. In making a fair determination as to whether a defendant should be admitted to a treatment program, the court should be allowed access to as many different assessments as possible.

It is feared that passage of this measure will result in agencies choosing to forego independent risk assessments and simply conform to the findings made by the probation department.

For these reasons, we oppose this measure. Thank for the opportunity to comment on this bill.

For: RELATING TO PROBATION. Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers.
To: COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS:
Representative Henry Aquino, Chair; Representative Ty Cullen, Vice Chair
Time: Thursday, March 17th, 2011, 8:30: AM, Conference Room 309

HAWAII SUBSTANCE ABUSE COALITION

Good morning Chair Aquino, Vice Chair Cullen 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.

HSAC supports SB 1067 SD1 with recommendations:

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.

Recommendations: We recommend changes to (6) (A) to remove the newly proposed language that limited information to only "licensed" providers so that the Judiciary may also send risk information to case managers and assessors as well because they then determine which treatment agency to refer. Also, given that confidentiality is covered in earlier paragraphs, we remove the proposed changes to the research paragraph (C) describing confidentiality restrictions since such restrictions are defined in an earlier paragraph. These changes are noted below. Please note that some underlined changes (proposed) are recommended to be stricken.

SECTION 2 1. Section 806-73, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

(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 as part of the determination for only upon the acceptance or admittance of the defendant into a treatment program[;] and shall be given only to a licensed health care practitioner or a state licensed or nationally accredited treatment program as part of the determination for admission;

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

(C) In accordance with applicable law, persons or entities doing research; provided that the information obtained for research purposes from a treatment service provider shall not be divulged without the defendant's prior written consent; provided further that the disclosure of substance abuse records shall be subject to Title 42 Code of Federal Regulations Part 2, relating to the confidentiality of alcohol and drug abuse patient records;

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



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William Booth
Founder

Linda Bond
General

James Knaggs
Territorial Commander

Edward Hill
Divisional Commander

Lawrence Williams
Executive Director

The Salvation Army

Addiction Treatment Services

For: SB1067 SD1 Relating To Probation

To: COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS:

Representative Henry Aquino, Chair; Representative Ty Cullen, Vice Chair

Time: Thursday, March 17, 2011 at 8:30 a.m. in Conference Room 309

WRITTEN TESTIMONY IN SUPPORT OF SB 1067 SD1

ALOHA CHAIR AQUINO, VICE CHAIR CULLEN, AND 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 Public Safety & Military Affairs support SB1067 SD1 by passing it out of committee.**

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

Participating Agency



Aloha United Way

2228 Liliha Street, Unit 304 ♦ Honolulu, Hawai'i 96817 ♦ Tel: (808) 595-5808 ♦ Fax: (808) 529-1490
Visit us at: www.SalvationArmyHawaii.org