

SB 1067

TESTIMONY



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



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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 Judiciary and Labor**

February 7, 2011

S.B. No. 1067: RELATING TO PROBATION

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 1067 which seeks to allow the judiciary to disclose post-intake information on criminal defendants to treatment agencies prior to admission to treatment within the agency. We fear that such disclosure will discourage the agency from making an objective, unbiased assessment of a defendant's risk to the court.

The adult probation records which this bill addresses often contain an assessment of the risk of danger which a defendant presents. Currently, in deciding whether to accept a defendant for treatment, an agency must 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 conforming to the findings made by the probation department.

Thank for the opportunity to comment on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 9:42 AM
To: JDLEvidence
Cc: ajohnson@hinamauka.org
Subject: Testimony for SB1067 on 2/7/2011 10:00:00 AM
Attachments: SB1067 Relating to Probation.doc; SB1067 Relating to Probation.doc

Testimony for JDL 2/7/2011 10:00:00 AM SB1067

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Alan Johnson
Organization: Hawaii Substance Abuse Coalition
Address: 45-845 Pookela Street Kaneohe, Hawai'i
Phone: 808-203-4303
E-mail: ajohnson@hinamauka.org
Submitted on: 2/6/2011

Comments:
Recommended changes

For: RELATING TO PROBATION. Clarifies the permissible divulging of adult probation records by probation officers to treatment service providers.
To: SENATE COMMITTEE ON JUDICIARY AND LABOR: Senator Clayton Hee, Chair, Senator Maile Shimabukuro, Vice Chair
Time: Monday, Feb. 7, 2011, 10:00: AM, Conference Room 016

HAWAII SUBSTANCE ABUSE COALITION

Good morning Chair Hee, Vice Chair Shimabukuro 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 with recommendations:

Summary: Prior to admission for offenders, substance abuse agencies receive psychiatric reports, medical information, history of use, and other reports. However, offender risk information is also needed. Since it is not best practices to mix high risk offenders with low risk offenders and because not all agencies provide high risk offender treatment, the information is needed to match offenders with the most appropriate programs.

Recommendations: We recommend changes to so that providers may receive information as part of the admission process before admission subject to the prior written consent of the offender These changes are noted in underline form.

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;~~

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

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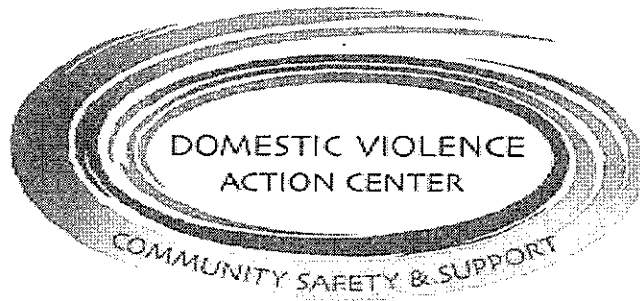
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We appreciate the opportunity to testify and are available for testimony.



February 04, 2011

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

TO: Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Members of the Committee

RE: SB 1067 Support
Hearing Date: Monday, February 7, 2011, 10:00am, Conf Rm #016

Aloha and good morning. Please accept this testimony in support of SB 1067. 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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