

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 11:46 AM
To: JDLTestimony
Cc: ajohnson@hinamauka.org
Subject: Testimony for SB1067 on 2/7/2011 10:00:00 AM
Attachments: SB1067 Relating to Probation (Hina Mauka).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: Hina Mauka Treatment Center
Address: 45-845 Pookela Street Kaneohe
Phone: 808-203-4303
E-mail: ajohnson@hinamauka.org
Submitted on: 2/6/2011

Comments:

LATE TESTIMONY

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

HINA MAUKA TREATMENT CENTER

Good morning Chair Hee, Vice Chair Shimabukuro and Distinguished Committee Members: My name is Alan Johnson. I am the CEO of Hina Mauka, a non-profit treatment and prevention agency.

Hina Mauka supports SB 1067:

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.

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. 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 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.

Given that providers who are nationally accredited or licensed by the State are subject to strict compliance requirements for confidentiality as part of their accreditation and licensing, we did propose this release of information be to nationally accredited and/or state licensed treatment agencies. Such agencies are held to strict compliance with state and federal laws in order to maintain their credentials, which are necessary for billing and contracting purposes.

Conclusion: In summary, strict 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 during admission or after is equally protected. Having this information during admission, however, will greatly improve admission to an appropriate treatment agency and if admitted, be instrumental in designing an effective individualized treatment plan. Following are recommended changes to the law as noted by strikethrough for removed language and underlined for new language.

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

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.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 6:43 AM
To: JDLEstimony
Cc: lcook@kualoha.org
Subject: Testimony for SB1080 on 2/7/2011 10:00:00 AM
Attachments: SB1067 Relating to Probation.doc

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

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Lisa Cook
Organization: Ku Aloha Ola Mau
Address: 1130 N. Nimitz Ste. C-302 Honolulu, Hawaii
Phone: 808-566-8234
E-mail: lcook@kualoha.org
Submitted on: 2/7/2011

Comments:
See Attached.

LATE TESTIMONY

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

KŪ ALOHA OLA MAU

Good morning Chair Hee, Vice Chair Shimabukuro and Distinguished Committee Members: My name is Lisa Cook. I am the Executive Director for Kū Aloha Ola Mau. Although we are not in a position to receive offender reports, as a member of the substance abuse treatment community, we feel this is important to support.

Kū Aloha supports SB 1067 with recommendations:

Summary: It has been found that mixing high risk offenders with low risk offenders is contraindicated. 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.