



## *The Judiciary, State of Hawai'i*

### **Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

Tuesday, February 18, 2014  
2:00 p.m.  
State Capitol, Conference Room 325

By  
R. Mark Browning  
Deputy Chief Judge, Senior Family Judge  
Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1573, Relating to Juvenile Justice Information.

**Purpose:** Allows the dissemination of confidential juvenile justice information to law enforcement agencies for law enforcement purposes and employment.

### **Judiciary's Position:**

The Judiciary respectfully submits this testimony in opposition to House Bill No. 1573.

1. This bill does not have the endorsement of the Juvenile Justice Information Committee (JJIC) because it was never proffered to that Committee for such endorsement. From the inception of the Juvenile Justice Information System (JJIS), all of the creators (including then Chief of Honolulu Police Department Keala and then Senior Family Court Judge Vitousek, leaders of the JJIC for many years) understood that this system of sharing information could only have been created based on professional trust and a mutual respect of competing professional positions. This bill is inconsistent with those tenets.

2. The phrase in the preamble of this bill, "clarify that law enforcement agencies may be allowed to access the juvenile justice information system in the performance of their duties" also appears to be inconsistent with this premise and misunderstands the current statute, the purposes of the JJIS/JJIC, and the long and short term history of the Committee's work. The current statute is clear about the uses and sharing of juvenile information. The purposes of the JJIS/JJIC



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include law enforcement but are not *exclusive* to it. Rehabilitation of youth is also an important purpose. Chief Keala and Judge Vitousek understood this and, although aware that they represented different important community roles, they believed that their work could only be done well if done collaboratively and honestly. The long term history of the JJIC reflects the extreme importance of goodwill and trust. The short term history of the JJIC includes a *draft* of an opinion letter prepared by the Attorney General's office that clearly speaks against this sort of bill (e.g., use of the information for adult charging). Although then Attorney General Mark Bennett was not able to sign the opinion letter before he left office, it was never repudiated. In fact, the JJIC was under the impression that the signing was forthcoming and imminent at that time.

3. The current statute and practices came about by hard work and collaboration among all the JJIC members, past and present, based on respect, trust, and good faith. This goodwill has been sorely tested throughout the years but, like a family who knows they need each other, the members keep collaborating as much as their professional roles allow. The Judiciary is concerned that this bill could damage this system.

Thank you for the opportunity to testify on this bill.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Tuesday, February 18, 2014

2:00 p.m.

Room 325

## **OPPOSE HB 1573 - JUVENILE JUSTICE INFORMATION SHARING**

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 1573 allows the dissemination of information from the juvenile justice information system to law enforcement agencies for purposes of the administration of law enforcement and law enforcement agency employment.

Community Alliance on Prisons OPPOSES this legislation that contravenes everything Hawai'i is now doing to address deficiencies in our juvenile justice system.

Juvenile justice information is sealed for a reason: We don't want to label a person for youthful indiscretions. There is a committee that oversees juvenile justice and, as we have heard in testimony from a member of the Judiciary, this matter was never presented before the committee for discussion. This bill is the first that they knew of this.

Hawai'i is currently involved in several juvenile justice initiatives to reform the system. Please let these strategies move forward. We need to stop greasing the pipeline that runs from the juvenile to the adult system.

The Judiciary opposed this measure in the Senate and the bill was deferred. Community Alliance on Prisons respectfully asks this committee to do likewise. Please hold this measure.

**HB1573**

Submitted on: 2/16/2014

Testimony for JUD on Feb 18, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Comments Only	No

Comments: Please oppose HB1573. We all want to keep youth out of the judicial system. Keeping their records sealed is one of the ways we can help them. So many of them can be kept out by a little hand-up from us. In the long run this is better for the state public safety as well as for their future.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TESTIMONY  
ON  
HB 1573 - RELATING TO JUVENILE JUSTICE INFORMATION  
February 18, 2014

The Honorable Karl Rhoads  
Chair  
The Honorable Sharon E. Har  
Vice Chair  
and Members of the House Committee on Judiciary

Chair Rhoads, Vice Chair Har and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 1573, Relating to Juvenile Justice Information. HB 1573 will allow the dissemination of information from the Juvenile Justice Information System (JJIS) to law enforcement agencies for purposes of administration of law enforcement and law enforcement agency employment.

The law currently requires prosecutors to check a person's criminal history, including juvenile records, to make proper charging decisions and sentencing motions. Also, police departments are required to check a person's juvenile records when the person applies for a firearms permit. Furthermore, both police and prosecutors conduct pre-employment background checks for their new job applicants as the normal course of business. These background checks are what the law or personnel policies require. This bill will ensure access to the juvenile records after the person becomes an adult, for law enforcement to comply with various requirements set forth in the Hawaii Revised Statutes.

However, it was deemed that these agencies are precluded from using JJIS to conduct such research into a person's background. While these law enforcement agencies could presumably conduct a search of their own records, they are unable to check a person's juvenile record for the rest of the state. For example, the police on Maui would not know that a person has a juvenile record on Kauai that would disqualify him or her from owning a firearm. However, the Juvenile Justice Information Committee (JJIC) came up with a policy restricting the law enforcement agencies from checking their own records. For example, the screening or

circuit court division of a prosecutor's office cannot ask the juvenile division of the same office about an individual's record. Put simply, while JJIS was created to store information, and the law requires that the information be checked under certain circumstances, the information stored is deemed off limits, creating a serious Catch-22.

The Judiciary represented to the Senate Committee on Public Safety and Military Affairs that this issue was not brought up before the JJIC. This is incorrect. The matter was addressed when the JJIC created the policy not to allow the release of the information, the understanding was that the law enforcement agencies would seek legislative approval. The JJIC's policy is apparently based on an opinion rendered by the Attorney General opinion from 2004, a copy of which is attached. There was a subsequent opinion issued around December 2008, a copy of a draft of the opinion is attached, along with our December 29, 2008 response to the draft.

While we understand, and agree with, the need for confidentiality of juvenile records. The Hawaii Revised Statutes, as passed by the Legislature, places certain requirements on law enforcement agencies, and we are only seeking to comply with the law. It appears illogical that the Legislature would pass laws requiring examination of a person's juvenile record and creating a system to keep track of those records, and not allow agencies tasked with following the law regarding a person's juvenile record from accessing the information system. This bill will correct that problem.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committee PASS HB 1573.

Thank you very much for the opportunity to provide testimony on this bill.

LINDA LINGLE  
GOVERNOR



MARK J. BENNETT  
ATTORNEY GENERAL

RICHARD T. BISSEN, JR.  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
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January 27, 2004

**CONFIDENTIAL ATTORNEY-CLIENT INFORMATION**

MEMORANDUM:

TO: Regina Jimenez  
Chair, Juvenile Justice Information Committee

Eileen Madigan  
CPJAD-JJIS

FROM: Russell A. Suzuki  
Deputy Attorney General

SUBJECT: JJIS/JJIC Questions

You have asked that I respond to twelve questions that have arisen in the Juvenile Justice Information Committee's deliberations toward developing policies for the use and sharing of JJIS information. The questions and my responses follow. However, before responding to your questions, I believe that it would be helpful if I take this moment to remind you of the responsibility to consider whether some or all of the provisions of the policies that the Committee develops are required to be adopted as administrative rules. Hawai'i Revised Statutes chapter 91 defines a "rule" to mean: "each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public[.]". As the Committee develops the policies, please consider whether the provisions are internal management policies, which apply only to agencies and not the public or whether the regulations do affect the public and are therefore "rules" under chapter 91.

QUESTION 1: When data is entered into JJIS, does it then become JJIS' information which can only be used and disseminated pursuant to Hawai'i Rev. Stat. chapter 846D or does data entered by individual agencies still belong to those agencies?

ANSWER: For purposes of chapter 846D, "agencies" means "all agencies which have primary investigative, action, or program responsibility for minors." Data in the agency files would still be considered records of the agency and belong to the agency. However, such records, when provided to the JJIS and collected, stored, disseminated and analyzed from the JJIS, can only be disseminated pursuant to Hawai'i Rev. Stat. §§ 846D-4 and 846D-6. Hawai'i Rev. Stat. § 846D-4 states as follows:

§846D-4 Limitations on dissemination. Dissemination of information from the juvenile justice information system shall be limited whether directly or through any intermediary only to:

- (1) Agencies which have primary investigative, detention, custodial, adjudicative, and program responsibility for minors, including but not limited to the county police departments, the county prosecutors, the family courts, and the Hawai'i youth correctional facilities;
- (2) Individuals and agencies pursuant to a specific agreement with an agency with primary investigative, detention, custodial, and program responsibility to provide services to fulfill that responsibility; provided that the agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the purpose of this chapter;
- (3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a juvenile justice agency; provided that the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purpose of this chapter;
- (4) The minor, the minor's parents or guardians, and the minor's attorney and guardian ad litem for the purpose of examining records pertaining to the minor; or
- (5) Persons who have been injured or damaged, their subrogees, and legal representatives; provided that the information is limited only to that information that may be disclosed as provided under section 571-84(f) and (g). [Emphasis added.]

QUESTION 2: Can agencies release data they themselves have entered into JJIS to other agencies and programs not specifically covered in Hawai'i Rev. Stat. chapter 846D?

ANSWER: Agency data that has been inputted into JJIS but is also maintained in the custody of the agency remains as a record of the agency. How that information is disseminated depends on



the laws governing such agency information. However, data entered into JJIS and accessed from the JJIS is JJIS information and is governed by Hawai'i Rev. Stat. §§ 846D-4 and -6 for dissemination. Hawai'i Rev. Stat. § 846D-1(c) provides that "[t]he attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information and obtaining the agreement of agencies permitted to directly input and access information." [Emphasis added.] The Committee should assist the attorney general in developing the procedures and agreements that make clear that information accessed from the JJIS can only be disseminated as provided in chapter 846D.

QUESTION 3: There is no "original" data in the JJIS. Each data element comes from one or more of the juvenile justice agencies. Do the agencies retain ownership of their own data after they have entered it into the JJIS? Do the statutory limitations on dissemination apply to the originating agency with respect to the data elements that they have entered? Can the originating agencies share their own data in whatever manner they see fit?

ANSWER: Question 3 appears to be a reiteration of Question 2. The establishment of the JJIS is not intended to replace agency records. Agencies maintain, independent of JJIS, the information reported to JJIS from its records. The laws governing such agency information control dissemination of those records. However, if the information is retrieved from the JJIS and not independently from the agency's records, then that information is governed by Hawai'i Rev. Stat. §§ 846D-4 and -6.

QUESTION 4. In Hawai'i Rev. Stat. § 846D-6(2) the term "courts" is used. Should that be interpreted as something other than Family Court?

ANSWER: When used in Hawai'i Rev. Stat. § 846D-6(2), the term "courts" is intended to mean all courts, including the family courts. The words of a law are generally to be understood in their most known and usual signification. (Hawai'i Rev. Stat. § 1-14.) Furthermore, the legislative history of chapter 846D supports a broad definition of courts. In House Standing Committee Report 1015, the Committee stated that:

The JJIS would give personnel who work with juveniles background information on arrest and court data, personal data, social services provided, as well as information if a juvenile is a suicide risk or wanted on a warrant. The JJIS

is initially targeted for use by persons needing the information for decision-making on individual juveniles.

1991 House Standing Committee Report 1015, p. 1203.

QUESTION 5: Can Family Court judges decide at will to broaden or tighten the rules on dissemination?

ANSWER: Hawai'i Rev. Stat. § 846D-6 provides that "Information from the juvenile justice information system may be disseminated to: . . . (2) The courts in accordance with their adjudicative responsibility." However, it is the responsibility of the attorney general to "develop the system and the procedures for reporting, inputting, accessing, and protecting the information and obtaining the agreement of agencies permitted to directly input and access information." Hawai'i Rev. Stat. § 846D-1(c). If the Attorney General has adopted administrative rules relating to the dissemination of JJIS information, then the courts would be obliged to obey those rules. (State v. Kotis, 91 Haw. 319 (1999) (Administrative rules, like statutes, have the force and effect of law).

QUESTION 6: What happens if Hawai'i Rev. Stat. § 846D limitations on dissemination conflicts with another state or federal law?

ANSWER: Generally when these issues arise, it would be prudent to seek the advice of the attorney general's office. Whether two state statutes are indeed in conflict should only be made after a careful attempt to read them harmoniously with each other. That same principle of construction is also applicable to federal laws. However, if the state law is indeed in conflict with a federal law, under the Supremacy Clause of the U.S. Constitution, the federal law will control.

QUESTION 7: Office of Youth Services shares information with contracted researchers for research purposes "pursuant to an agreement with a juvenile justice agency." Is OYS a juvenile justice agency?

ANSWER: Although it is unclear under the statute whether the Office of Youth Services is intended to be a juvenile justice agency, it appears that by your question it has acted as one and has been permitted to act as such by entering into agreements with contracted researchers. Under chapter 846D, a juvenile justice agency is one that has primary investigative, detention, custodial, adjudicative, and program responsibility for minors. Hawai'i Rev. Stat. § 846D-4 gives as examples of juvenile justice

agencies, such as the county police departments, the county prosecutors, the family courts, and the Hawai'i youth correctional facilities. Because the Office of Youth Services develops and provides programs, which service both juvenile justice and nonjuvenile justice system youths, it arguably comes within the definition of a juvenile justice agency. The Attorney General has authority under Hawai'i Rev. Stat. § 846D-6 to identify other individuals and agencies who may receive information from the JJIS. If it is desired to make certain that the Office of Youth Services can receive access to JJIS information, the Attorney General can so clarify and provide by administrative rule.

QUESTION 8: Does Hawai'i Rev. Stat. § 846D-4(2) limit dissemination to juvenile rather than adult criminal purposes?

ANSWER: Generally, yes. Hawai'i Rev. Stat. § 846D-4, together with the legislative history identified in question 4, make clear that the purpose of the JJIS is to provide information to personnel who work with juveniles for use by persons needing the information for decision-making on individual juveniles.

QUESTION 9: Although the term "adjudication" is commonly used in Family Court proceedings, does it have a broader meaning when applied to adult court proceedings?

ANSWER: The term adjudication is one of many terms that refer to the judicial acts of a judge in deciding a case. In the family court context a juvenile may be adjudicated to be a person in need of supervision where in the adult court proceeding the person would be convicted or acquitted. All of these terms refer to the act of judging. How the term is defined depends on the context in which it is used.

QUESTION 10: If so, is the interpretation of Hawai'i Rev. Stat. § 846D-6(2) that a JJIS agency may provide JJIS information in criminal proceedings? (Information being provided to defense attorneys in adult criminal proceedings being used to discredit witnesses, being used to make prosecutorial decisions in adult proceedings, being used by prosecutors or APD in adult sentencing hearings.)

ANSWER: It depends. It is the responsibility of the Attorney General to develop the procedures for protecting the information and obtaining the agreements of agencies permitted to directly input and access information. As previously stated, Hawai'i Rev. Stat. § 846D-4, together with the legislative history identified in question 4, make clear that the purpose of

the JJIS is to provide information to personnel who work with juveniles for use by persons needing the information for decision-making on individual juveniles. If the court matter involves a person who has been injured or damaged by a juvenile's action, then Hawai'i Rev. Stat. § 846D-4(5) allows dissemination as provided under Hawai'i Rev. Stat. § 571-84(f) and (g). Hawai'i Rev. Stat. § 846D-6, provides permissive authority, not a mandatory requirement to disseminate information to courts. The JJIS should not voluntarily disseminate JJIS information to a court unless it is satisfied that the information is necessary for decision-making on individual juveniles. However, and relevant to Question 6's inquiry about conflicts with federal laws, sometimes a defense attorney involved in a criminal proceeding will attempt to seek JJIS information. In such a situation, JJIS should not voluntarily disseminate JJIS information to the defense attorney because the attorney is not one of the persons entitled to have access to the information. However, if a subpoena is issued for the production of JJIS records based on the need to have such information to confront a witness in a criminal proceeding against the defendant, then in that situation, a judge could determine that such information is necessary to preserve a defendant's Sixth Amendment right to confront witnesses against the defendant. In this situation, if the court requires the dissemination of the JJIS information in order to determine whether the information is necessary to preserve the criminal defendant's Sixth Amendment rights, then the records can be disseminated to the court for an *in camera* inspection. If the court orders the dissemination of the records to the defendant, then generally the court's order should be obeyed. This is a situation where the federal law would trump the state statute under the Supremacy Clause of the United States Constitution. When this kind of situation occurs, please seek our advice and assistance at the earliest moment.

QUESTION 11: For juvenile justice agencies, is there any statutory limitation on sharing JJIS information within the agency?

ANSWER: Yes, Hawai'i Rev. Stat. § 846D-5 prescribes the responsibilities of agencies in supervising, training, and maintaining the authorized uses of JJIS information.

QUESTION 12: Would the following examples be considered a misuse of JJIS information (a statutory violation)? (disclosure to military for enlisting decisions, prosecution (where the offender is now an adult), using to discredit a witness, dissemination for use by employers, sharing juvenile records with criminal court, sharing with the juvenile's defense attorney,



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disclosure to military police).

ANSWER: Although I will attempt to answer your question as to each situation, please know that these general responses could change depending on whether additional facts are presented as is the usual case in real situations. Be sure to use this response as a general guide rather than a definitive position.

As to disclosure to military for enlisting decisions, there does not appear to be any statutory authority for such dissemination.

Similarly, for prosecution where the offender is an adult, there does not appear to be any statutory authority for such dissemination. Remember the purpose for this information is to assist persons needing the information to make decisions on individual juveniles.

As to using to discredit a witness, see answer to Question 10.

As to dissemination for use by employers, again just like for military recruiters, there does not appear to be any statutory authority for such dissemination.

As to sharing juvenile records with criminal courts, see answer to Question 10.

As to sharing with the juvenile's defense attorney, Hawai'i Rev. Stat. § 846D-4(4) allows dissemination to the minor so the minor would be able to obtain the information and provide it to the minor's counsel.

As to disclosure to military police, military police would not be considered to be a juvenile justice agency but the Attorney General could adopt rules to allow such dissemination under certain prescribed situations. See, Hawai'i Rev. Stat. § 846D-6(4).

I hope that this response helps to clarify your responsibilities. Should you have additional concerns please let us know.



LINDA LINGLE  
GOVERNOR



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December 3, 2008

Mr. Stuart Okumura  
Crime Prevention and Justice  
Assistance Division  
Department of Attorney General  
235 S. Beretania Street, Suite 401  
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**DRAFT**

Dear Mr. Okumura:

Re: Use of Juvenile Justice Data Center Information by Prosecutors

This responds to the request of the Juvenile Justice Information Committee as to whether county prosecutors may use Juvenile Justice Information System (JJIS) information in adult criminal proceedings.

For the reasons stated herein, we answer in the negative, with the limited exception that the use of JJIS information to provide a convicted defendant's juvenile record for purposes of the presentence investigation and report, as opposed to the use of such information in the adversarial prosecution of a defendant, would be allowable so long as appropriate rules are adopted to allow such access.

Section 846D-4, Hawaii Revised Statutes, provides as follows:

**§846D-4 Limitation on dissemination.** Dissemination of information from the juvenile justice information system shall be limited whether directly or through any intermediary only to:

- (1) Agencies which have primary investigative, detention, custodial, adjudicative, and program responsibility for minors, including but not limited to the county police departments, the county prosecutors, the family courts, and the Hawaii youth correctional facilities;
- (2) Individuals and agencies pursuant to a specific agreement with an agency with primary investigative, detention, custodial, and program responsibility to provide services to fulfill that responsibility; provided that the agreement shall specifically

authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the purpose of this chapter;

(3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a juvenile justice agency; provided that the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purpose of this chapter.

(4) The minor, the minor's parents or guardians, and the minor's attorney and guardian ad litem for the purpose of examining records pertaining to the minor; or

(5) Persons who have been injured or damaged, their subrogees, and legal representatives; provided that the information is limited only to that information that may be disclosed as provided under section 571-84(f) and (g).

Under the above-referenced statute, only agencies which have primary investigative, detention, custodial, adjudicative, and program responsibility for minors can have access to and use JJIS information. Consistent with this requirement, Section E of the Internal Management agreement, which all user agencies agree to follow, provides as follows: "All Juvenile Justice Agency participants shall ensure that **access and use of the data in the JJIS is limited to those individuals and their appropriate staff who are actively involved in decision-making regarding an individual juvenile.**" Section L further provides that: "The Agency shall disseminate JJIS data only for purposes of the administration of **juvenile justice.**" (Emphases added.)

Section 846D-6(4), Hawaii Revised Statutes, provides that information from the juvenile justice information system may further be disseminated to "[o]ther individuals and agencies who are provided for in this chapter or by rule adopted thereunder." In State v. Nobriga, 56 Haw. 75, 527 P.2d 1269 (1974), the Hawaii Supreme Court distinguished between the adversarial prosecution proceeding in court and the sentencing process and determined that in the sentencing process, pursuant to section 706-602(b), which requires information of the "defendant's history of delinquency or criminality," confidential family court juvenile records could be used in preparing the report. Section 846D-6, therefore, authorizes the use of juvenile records for the sentencing aspect of a criminal proceeding but not for the prosecution stage of the criminal proceeding.

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**DRAFT**

In conclusion, we believe that JJIS information could be allowed to be used for the sentencing part of a criminal proceeding pursuant to section 846D-6, Hawaii Revised Statutes, so long as an administrative rule is adopted to allow such dissemination. Such information cannot be used for the prosecutorial part of a criminal proceeding.

Should you have questions, please feel free to contact us.

Very truly yours,

Russell A. Suzuki  
Deputy Attorney General

APPROVED:

Mark J. Bennett  
Attorney General



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December 29, 2008

Mark Bennett, Esq.  
Attorney General  
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Dear Mr. Bennett:

We are in receipt of Deputy Attorney General Russell Suzuki's memorandum dated January 27, 2004, and the draft memorandum dated December 3, 2008. Both memoranda relate to access of the Juvenile Justice Information System (JJIS).

According to Mr. Suzuki's interpretation of Hawaii law, our Department is prohibited from accessing the JJIS in the prosecution of an adult individual (who has a juvenile "criminal" history), except for sentencing purposes. For the following reasons, we respectfully disagree

First, HRS § 846D-4(1), which was enacted in 1991, expressly allows dissemination of information from the JJIS to county prosecutors. Here, there are no specific limitations prohibiting the use of those records "for the prosecution stage of the criminal proceeding". Additionally, it is important to note that State v. Nobriga, 56 Haw. 75, 527 P.2d 1269 (1974) was decided seventeen years **prior** to the enactment of HRS § 846D-4(1).

Second, in certain instances, county prosecutors require access to an adult's juvenile history in order to properly determine whether or not to charge the adult with a particular crime. For example, under 134-7(d), a "person who is less than twenty-five years old and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug" is prohibited from owning, possessing, or controlling any firearm or ammunition therefor. Like HRS § 846D-4(1) above, HRS § 134-7(d) was also enacted post-Nobriga, specifically, in 1988.

In addition, HRS § 134-7(e) requires that "[a]ny agency within the State shall make its records relating to family court adjudications available to law enforcement officials.

Similarly, in certain circumstances under HRS § 291E-61.5, an adult who has been previously adjudicated for an enumerated law violation, may be charged with Habitually Operating a Vehicle Under the Influence of an Intoxicant. Here again, the county prosecutor would require access to the adult's juvenile history in order to make an informed charging decision.

Third, limiting the county prosecutor's access to an adult's juvenile history to only sentencing matters is unrealistic. It is a constitutional requirement that a trial judge ensure that a guilty plea be voluntarily and knowingly entered. State v. Dicks, 57 Haw. 46, 549 P.2d 727 (1976). Therefore, any plea agreement involving sentencing as a "young adult defendant" under HRS § 706-667, requires examination of the adult's juvenile history **prior** to entry of plea to determine youthful offender eligibility.

Fourth, along with its duty to administer justice, all of the county prosecutors are mandated to determine whether or not a particular individual is subject to "career criminal prosecution efforts". An individual may be the subject of career criminal prosecution efforts if the individual, among other things, has 1) no adult record but who has an extensive juvenile record; or 2) is a juvenile with an extensive record who has been waived to the circuit court for trial. Thus, the county prosecutors clearly require access to an adult's JJIS history in order to properly determine whether the adult must be subject to "career criminal prosecution efforts."

Finally, HRS § 846D-1 requires the Department of the Attorney General, in maintaining the JJIS, to balance the right of the public and press to be informed against the right of privacy and confidentiality of the minor and their families. Consistent with this balancing approach, HRS § 571-84.6 allows public inspection of all legal records in certain cases involving minors who have been adjudicated by the court under HRS § 571-11(1), unless otherwise ordered by the court in writing.

Indeed, without access to the adult's juvenile history, none of the county prosecutors would be able to make an intelligent and informed decisions regarding charging, plea negotiations, sentencing, or career criminal classification. Clearly, this would be contrary to the other purposes of the JJIS, that is, to



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provide accurate, comprehensive, and timely information to government agencies concerned with juvenile offenders to carry out their responsibilities. See HRS § 846D-1(a).

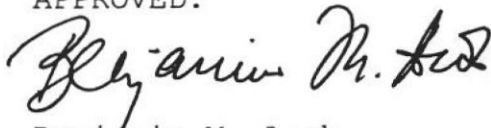
Accordingly, based upon all of the above, we respectfully ask that you issue a written policy allowing all county prosecutors access to the JJIS in a manner consistent with this letter. Should you have any questions or concerns, please feel free to contact me at (808) 270-7777.

Very truly yours,



PETER A. HANANO  
First Deputy Prosecuting Attorney

APPROVED:



Benjamin M. Acob  
Prosecuting Attorney

**LATE**

**HB1573**

Submitted on: 2/17/2014

Testimony for JUD on Feb 18, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Justin F. Kollar	County of Kauai Office of the Prosecuting Attorney	Support	No

Comments: Joining in the reasons stated by the Maui Prosecutor.

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**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawai'i**

February 18, 2014

**RE: H.B. 1573; RELATING TO JUVENILE JUSTICE INFORMATION.**

Chair Rhoads, Vice-Chair Har, and members of the House Committee on Judiciary, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in **support** of House Bill 1573.

The purpose of H.B. 1573 is to allow law enforcement agencies to access the statewide juvenile justice information system ("JJIS") for the administration of law enforcement and law enforcement agency employment.

In order to properly screen and/or charge some cases for prosecution, the Department needs to know whether an individual has prior juvenile offenses related to the new offense. While we are permitted to access our own internal records, regarding the individual's juvenile history, we do not have access to juvenile records from neighbor islands, other than JJIS. However, the current language of HRS §846D-4 has been interpreted to mean that our adult divisions are not allowed to access JJIS (even though our juvenile offender division has such access). Moreover, it is our understanding that the county police departments have similar limitations under the current language of HRS §846D-4, even though they need this information for a number of purposes as well.

The language proposed in H.B. 1573 would be narrow enough to permit the needed access for law enforcement agencies on all islands, while limiting this use strictly to "the administration of law enforcement... and law enforcement agency employment."

For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 1573. Thank for you the opportunity to testify on this matter.

**LATE**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Oppose	No

Comments:

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**HB1573**  
**RELATING TO JUVENILE JUSTICE INFORMATION**  
House Committee on Judiciary

February 18, 2014

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB1573, which would allow the dissemination of information from the juvenile justice information system to law enforcement agencies for purposes of law enforcement administration and employment. **This bill would allow mistakes made in youth to follow young offenders into adulthood, attaching criminal stigma permanently to their lives, and disrupting important reformation opportunities that would otherwise help to prevent cycles of recidivism from forming.**

In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system.<sup>i</sup> This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system and are also most frequently arrested in all offense categories.<sup>ii</sup> Since 2012, OHA has administered the Native Hawaiian Justice Task Force (NHJTF), which was tasked by the Legislature to address this multi-faceted issue. A copy of the NHJTF 2012 legislative report and related materials are available at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce). In this report, the Task Force acknowledged that "an individual's contact with the criminal justice system, regardless of race, often begins at youth."<sup>iii</sup>

Juvenile records are sealed to protect young offenders from the long-term stigma of a criminal record and to prevent cycles of recidivism from quickly forming. Research has well established that children under the age of 18 are still developing their physical, mental, and emotional capacity to deal with psychological challenges, external pressures, and circumstances outside of their control; in other words, juveniles are not as capable of socially responsible executive decision-making as adults.<sup>iv</sup> Accordingly, it has been long considered inappropriate to stigmatize individuals for their entire lives, based upon transgressions they may have committed during their formative years. Allowing juvenile justice records to follow young offenders into adulthood would contravene the principles we have long held: that juvenile offenders should be given a clean slate to reform their behaviors from youthful indiscretions. Without such reformation opportunities, juvenile offenders may lose an important psychological and social incentive to avoid recidivist criminal behavior as they transition into adulthood.



# LATE TESTIMONY

Therefore, OHA urges the committee to **HOLD** HB1573. Mahalo for the opportunity to testify on this measure.

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<sup>i</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM (2010) available at [http://www.oha.org/sites/default/files/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/sites/default/files/ir_final_web_rev.pdf).

<sup>ii</sup> *Id.* at 68

<sup>iii</sup> 2012 NATIVE HAWAIIAN JUSTICE TASK FORCE REP. sec. C, at 21.

<sup>iv</sup> AMNESTY INTERNATIONAL & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 45-49 (2005), available at

<[http://www.amnestyusa.org/sites/default/files/pdfs/threstoftheirlives\\_report.pdf](http://www.amnestyusa.org/sites/default/files/pdfs/threstoftheirlives_report.pdf)>.