



## *The Judiciary, State of Hawai‘i*

**Testimony to the  
Senate Committee on Judiciary and Labor**  
Senator Gilbert Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 28, 2016, 9:00 a.m.  
State Capitol, Conference Room 016

By

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**Bill No. and Title:** House Bill No. 2561, House Draft 1, Relating to the Administration of Justice

**Purpose:** Enacts recommendations of the penal code review committee, convened pursuant to HCR 155 (2015).

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

The Judiciary respectfully notes a concern with one provision relating to the release of records when applied to juvenile records.

We respectfully suggest a friendly amendment, below, to address our concern.

House Bill No. 2561, House Draft 1 allows the prosecuting attorney and counsel for the defendant to petition the court for all the records collected for the mental health examiners (see page 7, from lines 18). As applied to juveniles and juveniles records, this language may be overbroad and against statutory and public policy, both of which mandate confidentiality. This is particularly exacerbated by the possibility of releasing the confidential information and records in digital format. The “protective” ability of the court to apply “conditions the court determines appropriate” would be extremely difficult to enforce even if these confidential records are provided in hard copy or digital format. For example, if a court orders that said information shall



not be used, directly or indirectly, in any other case against the defendant, there would be no reasonable way for anyone to know about a breach. In fact, the person who allegedly disobeyed this order may not be aware of the origin of the information or the relevant court order. The same type of problem also applies to the prohibition against re-disclosure except to the extent permitted by law. Besides state law, we also need to confront the violation of federal laws such as HIPAA (medical records), FERPA (school records), and releasing records of substance abuse evaluations and reports, which may be included in these juvenile records.

In a recent publication by the Justice Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* (February 2016), the authors stated at page two “Research confirms—and the law recognizes—that youth have the capacity for change and rehabilitation, and yet records continue to erect barriers to youths’ success as they grow into adulthood. Modern technology exacerbates the problem as it facilitates access . . . .” The publication examines the collateral consequences faced by juveniles in the areas of education and employment.

We recommend a friendly amendment by adding the following qualifying language (in bold *and italics*) from Section 4, page 7, from line 18:

(8) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other [~~statutes,~~] statute, and make [~~such~~] the records available for inspection by the examiners[-] in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate[.] ***provided that juvenile records shall not be made available unless constitutionally required.***

Thank you for the opportunity to provide testimony on this measure.