

JAN 23 2006

S.B. NO. 2086

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# A BILL FOR AN ACT

RELATING TO CHAPTER 704, HAWAII REVISED STATUTES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that certain individuals  
2 who are charged with a criminal offense suffer from a physical  
3 or mental disease, disorder, or defect that may render them  
4 unfit to proceed or not penally responsible for their actions,  
5 or both. Some of these individuals are committed to the custody  
6 of the director of health and are prescribed antipsychotic or  
7 other medications to treat their illness. While taking their  
8 medication, the person may be well enough to be held at a low  
9 level of custody. However, if the person refuses to take the  
10 prescribed medication, the illness may return, and the person  
11 may attempt to escape and succeed in doing so because the person  
12 was held at a lower level of custody while still medicated.

13           The legislature also finds that there exist constitutional  
14 and other limitations on the forced medication of persons who  
15 refuse voluntarily to take medication prescribed to them. As a  
16 result, on numerous occasions, individuals who have stopped  
17 taking their medications have escaped from the lower level of  
18 custody earned while still on medication, have reoffended, and



1 have been either found unfit to proceed or acquitted of the new  
2 offense, and returned to custody, with the cycle repeating  
3 itself over and over again. Action is necessary to prevent the  
4 escape of committed individuals who have stopped taking their  
5 medication.

6 The purpose of this Act is to require the director of  
7 health to hold persons committed to the director's custody  
8 pursuant to chapter 704, Hawaii Revised Statutes, at a level of  
9 custody appropriate to their willingness to take antipsychotic  
10 or other medication prescribed to them.

11 SECTION 2. Section 704-406, Hawaii Revised Statutes, is  
12 amended by amending subsection (1) to read as follows:

13 "(1) If the court determines that the defendant lacks  
14 fitness to proceed, the proceeding against the defendant shall  
15 be suspended, except as provided in section 704-407, and the  
16 court shall commit the defendant to the custody of the director  
17 of health to be placed in an appropriate institution for  
18 detention, care, and treatment. The director of health shall  
19 place a defendant in an environment with restrictions  
20 appropriate to the defendant's willingness to take antipsychotic  
21 or other medication prescribed to the defendant. If the  
22 defendant refuses to take the medication, the director of health



1 shall place the defendant in an environment with restrictions  
2 necessary to minimize the risk of danger to the defendant and  
3 others, including measures necessary to prevent escape. If the  
4 court is satisfied that the defendant may be released on  
5 condition without danger to the defendant or to the person or  
6 property of others, the court shall order the defendant's  
7 release, which shall continue at the discretion of the court, on  
8 conditions the court determines necessary. A copy of the report  
9 filed pursuant to section 704-404 shall be attached to the order  
10 of commitment or order of conditional release."

11 SECTION 3. Section 704-411, Hawaii Revised Statutes, is  
12 amended by amending subsection (1) to read as follows:

13 "(1) When a defendant is acquitted on the ground of  
14 physical or mental disease, disorder, or defect excluding  
15 responsibility, the court [~~shall~~], on the basis of the report  
16 made pursuant to section 704-404, if uncontested, or the medical  
17 or psychological evidence given at the trial or at a separate  
18 hearing, shall make an order as follows:

19 (a) The court shall order the defendant to be committed to  
20 the custody of the director of health to be placed in  
21 an appropriate institution for custody, care, and  
22 treatment if the court finds that the defendant



1 presents a risk of danger to oneself or others and  
2 that the defendant is not a proper subject for  
3 conditional release; provided that the director of  
4 health [~~shall~~]:

5 (i) Shall place defendants charged with misdemeanors  
6 or felonies not involving violence or attempted  
7 violence in the least restrictive environment  
8 appropriate in light of the defendant's treatment  
9 needs and the need to prevent harm to the person  
10 confined and others;

11 (ii) Shall not place a defendant in a less restrictive  
12 environment if the defendant has been prescribed  
13 antipsychotic or other medication but refuses to  
14 take the medication. The director of health  
15 shall return to a more restrictive environment  
16 any defendant who was placed in a less  
17 restrictive environment because the defendant  
18 voluntarily was taking antipsychotic or other  
19 prescribed medication but has stopped voluntarily  
20 taking the medication; or

21 (b) The court shall order the defendant to be released on  
22 such conditions as the court deems necessary if the



1 court finds that the defendant is affected by physical  
2 or mental disease, disorder, or defect and that the  
3 defendant presents a danger to oneself or others, but  
4 that the defendant can be controlled adequately and  
5 given proper care, supervision, and treatment if the  
6 defendant is released on condition; or

7 (c) The court shall order the defendant discharged from  
8 custody if the court finds that the defendant is no  
9 longer affected by physical or mental disease,  
10 disorder, or defect, or, if so affected, that the  
11 defendant no longer presents a danger to oneself or  
12 others and is not in need of care, supervision, or  
13 treatment."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Clemente R. Pacheco*

*James Mercado*



SB 2006

**Report Title:**

Penal Responsibility; Fitness to Proceed

**Description:**

Requires the director of health to hold a person found unfit to proceed in a criminal proceeding or acquitted by reason of physical or mental disease, disorder, or defect at a level of custody sufficient to prevent escape if the person refuses to take prescribed antipsychotic medication.

