



GOV. MSG. NO. 742

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

May 23, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 23, 2008, the following bill was signed into law:

SB2396 SD1 HD3 CD1

A BILL FOR AN ACT RELATING TO MENTAL
HEALTH.
(ACT 100)

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

PART I

SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1, H.D. 1, adopted by the twenty-third Hawaii state legislature in 2006 called for the governor to convene a task force to "evaluate and recommend possible procedural, statutory, and public policy changes to minimize the census at Hawaii State Hospital and promote community based health services for forensic patients." The purpose of this part is to enact the recommendations made by that task force.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§334- Annual report; forensic patient data. The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session which, at a minimum, shall summarize yearly data on forensic patients, including:



- 1 (1) Gross numbers for admissions to and discharges from
- 2 the Hawaii state hospital;
- 3 (2) The number of admissions to, discharges from, and
- 4 lengths of stays in the Hawaii state hospital, broken
- 5 down by the following commitment categories:
- 6 (A) Original order under section 704-411(1)(a);
- 7 (B) Pending examination under section 704-411(3);
- 8 (C) Maximum seventy-two-hour recommitment pending
- 9 examination under section 704-413(1);
- 10 (D) Original order under section 704-404; and
- 11 (E) Original order under section 704-406;
- 12 (3) Number of persons committed to the Hawaii state
- 13 hospital by each court and county;
- 14 (4) Gross lengths of stay in the Hawaii state hospital
- 15 for:
- 16 (A) Patients discharged during the fiscal year; and
- 17 (B) Individuals remaining as inpatients at the end of
- 18 the fiscal year;
- 19 and
- 20 (5) Number of patients in the Hawaii state hospital on
- 21 forensic status, broken down by categories of
- 22 underlying crimes, such as by crimes against the



1 person, sex offenses, and property crimes, and by
2 grade of offense."

3 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§704-411 Legal effect of acquittal on the ground of**
6 **physical or mental disease, disorder, or defect excluding**
7 **responsibility; commitment; conditional release; discharge;**
8 **procedure for separate post-acquittal hearing. (1) When a**
9 defendant is acquitted on the ground of physical or mental
10 disease, disorder, or defect excluding responsibility, the
11 court, on the basis of the report made pursuant to section
12 704-404, if uncontested, or the medical or psychological
13 evidence given at the trial or at a separate hearing, shall make
14 an order as follows:

15 (a) The court shall order the defendant to be committed to
16 the custody of the director of health to be placed in
17 an appropriate institution for custody, care, and
18 treatment if the court finds that the defendant:

- 19 (i) Is affected by a physical or mental disease,
20 disorder, or defect;
- 21 (ii) Presents a risk of danger to self or others; and
- 22 (iii) Is not a proper subject for conditional release;



1 provided that the director of health shall place
2 defendants charged with misdemeanors or felonies not
3 involving violence or attempted violence in the least
4 restrictive environment appropriate in light of the
5 defendant's treatment needs and the need to prevent
6 harm to the person confined and others;

7 (b) The court shall order the defendant to be [~~released on~~
8 ~~such conditions~~] granted conditional release with
9 conditions as the court deems necessary if the court
10 finds that the defendant is affected by physical or
11 mental disease, disorder, or defect and that the
12 defendant presents a danger to self or others, but
13 that the defendant can be controlled adequately and
14 given proper care, supervision, and treatment if the
15 defendant is released on condition; or

16 (c) The court shall order the defendant discharged if the
17 court finds that the defendant is no longer affected
18 by physical or mental disease, disorder, or defect or,
19 if so affected, that the defendant no longer presents
20 a danger to self or others and is not in need of care,
21 supervision, or treatment.



1 (2) The court, upon its own motion or on the motion of the
2 prosecuting attorney or the defendant, shall order a separate
3 post-acquittal hearing for the purpose of taking evidence on the
4 issue of physical or mental disease, disorder, or defect and the
5 risk of danger that the defendant presents to self or others.

6 (3) When ordering a hearing pursuant to subsection (2):

7 (a) In nonfelony cases, the court shall appoint a
8 qualified examiner to examine and report upon the
9 physical and mental condition of the defendant. The
10 court may appoint either a psychiatrist or a licensed
11 psychologist. The examiner may be designated by the
12 director of health from within the department of
13 health. The examiner shall be appointed from a list
14 of certified examiners as determined by the department
15 of health. The court, in appropriate circumstances,
16 may appoint an additional examiner or examiners; and

17 (b) In felony cases, the court shall appoint three
18 qualified examiners to examine and report upon the
19 physical and mental condition of the defendant. In
20 each case, the court shall appoint at least one
21 psychiatrist and at least one licensed psychologist.

22 The third member may be a psychiatrist, a licensed



1 psychologist, or a qualified physician. One of the
2 three shall be a psychiatrist or licensed psychologist
3 designated by the director of health from within the
4 department of health. The three examiners shall be
5 appointed from a list of certified examiners as
6 determined by the department of health.

7 To facilitate the examination and the proceedings thereon, the
8 court may cause the defendant, if not then confined, to be
9 committed to a hospital or other suitable facility for the
10 purpose of examination for a period not exceeding thirty days or
11 such longer period as the court determines to be necessary for
12 the purpose upon written findings for good cause shown. The
13 court may direct that qualified physicians or psychologists
14 retained by the defendant be permitted to witness the
15 examination. The examination and report and the compensation of
16 persons making or assisting in the examination shall be in
17 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),
18 and (9). As used in this section, the term "licensed
19 psychologist" includes psychologists exempted from licensure by
20 section 465-3(a)(3).

21 (4) Whether the court's order under subsection (1) is made
22 on the basis of the medical or psychological evidence given at



1 the trial, or on the basis of the report made pursuant to
2 section 704-404, or the medical or psychological evidence given
3 at a separate hearing, the burden shall be upon the State to
4 prove, by a preponderance of the evidence, that the defendant is
5 affected by a physical or mental disease, disorder, or defect
6 and may not safely be discharged and that the defendant should
7 be either committed or conditionally released as provided in
8 subsection (1).

9 (5) The director of health may apply to the court to
10 conduct a hearing to assess any further need for inpatient
11 hospitalization of a person who is acquitted on the ground of
12 physical or mental disease, disorder, or defect excluding
13 responsibility. The director shall make this application in a
14 report to the circuit from which the order was issued. The
15 director shall transmit a copy of the application and report to
16 the prosecuting attorney of the county from which the order was
17 issued.

18 (6) Any person committed pursuant to this chapter may
19 apply to the court to conduct a hearing to assess any further
20 need for inpatient hospitalization of the committed person
21 acquitted on the ground of physical or mental disease, disorder,
22 or defect excluding responsibility. The application shall be



1 accompanied by a letter from or supporting affidavit of a
2 qualified physician or licensed psychologist. A copy of the
3 application and letter or affidavit shall be transmitted to the
4 circuit from which the order was issued. The person shall
5 transmit a copy of the application and letter or affidavit to
6 the prosecuting attorney of the county from which the order was
7 issued.

8 (7) Upon application to the court by either the director
9 of health or the person committed, the court shall complete the
10 hearing process and render a decision within sixty days of the
11 application, provided that for good cause the court may extend
12 the sixty day time frame upon the request of the director of
13 health or the person.

14 ~~[(5)]~~ (8) In any proceeding governed by this section, the
15 defendant's fitness shall not be an issue."

16 SECTION 4. Section 704-412, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§704-412 Committed person; application for conditional**
19 **release or discharge; by the director of health; by the person.**

20 (1) After the expiration of at least ninety days following
21 ~~[the]~~ an original order of commitment pursuant to ~~[section~~
22 ~~704-411,]~~ section 704-411(1)(a), or after the expiration of at



1 least sixty days following the revocation of conditional release
2 pursuant to section 704-413, if the director of health is of the
3 opinion that the person committed [~~to the director's custody~~] is
4 still affected by a physical or mental disease, disorder, or
5 defect and may be [~~released on condition~~] granted conditional
6 release or discharged without danger to self or to the person or
7 property of others or that the person is no longer affected by a
8 physical or mental disease, disorder, or defect, the director
9 shall make an application for [~~the discharge or conditional~~
10 ~~release of the person in~~] either the conditional release or
11 discharge of the person, as appropriate. In such a case, the
12 director shall submit a report to the court [~~from~~] by which the
13 person was ordered committed and shall transmit [~~a copy~~] copies
14 of the application and report to the prosecuting attorney of the
15 county from which the person was committed[~~—The~~] and to the
16 person [~~shall be given notice of such application.~~] committed.

17 (2) After the expiration of ninety days from the date of
18 the order of commitment pursuant to section 704-411, or after
19 the expiration of sixty days following the revocation of
20 conditional release pursuant to section 704-413, the person
21 committed may apply to the court from which the person was
22 committed for an order of discharge upon the ground that the



1 person is no longer affected by a physical or mental disease,
2 disorder, or defect. The person committed may apply for
3 ~~[discharge or conditional release]~~ conditional release or
4 discharge upon the ground that, though still affected by a
5 physical or mental disease, disorder, or defect, the person may
6 be released without danger to self or to the person or property
7 of others. A copy of the application shall be transmitted to
8 the prosecuting attorney of the county from which the
9 ~~[defendant]~~ person was committed. If the ~~[determination of the~~
10 ~~court is adverse to the application,]~~ court denies the
11 application, the person shall not be permitted to file [a
12 ~~further]~~ another application for either conditional release or
13 discharge until one year ~~[has elapsed from]~~ after the date of
14 ~~[any preceding hearing on an application for the person's~~
15 ~~discharge or conditional release.]~~ the hearing held on the
16 immediate prior application."

17 SECTION 5. Section 704-413, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§704-413 Conditional release; application for**
20 **modification or discharge; termination of conditional release**
21 **and commitment.** (1) Any person ~~[released]~~ granted conditional
22 release pursuant to ~~[section 704-411]~~ this chapter shall



1 continue to receive mental health or other treatment and care
2 deemed appropriate by the director of health until discharged
3 from conditional release. The person shall follow all
4 prescribed treatments and take all prescribed medications
5 according to the instructions of the person's treating mental
6 health professional. If [~~any~~] a mental health professional who
7 is treating [~~any conditionally released~~] a person granted
8 conditional release believes that either the person is not
9 complying with the requirements of this section or there is
10 other evidence that hospitalization is appropriate, the mental
11 health professional shall report the matter to the probation
12 officer of the [~~conditionally released person.~~] person granted
13 conditional release. The probation officer may order the
14 [~~conditionally released~~] person granted conditional release to
15 be hospitalized for a period not to exceed seventy-two hours if
16 the probation officer has probable cause to believe the person
17 has violated the requirements of this subsection. No person
18 shall be hospitalized beyond the [~~seventy-two hour~~] seventy-two-
19 hour period, as computed pursuant to section 1-29, unless a
20 hearing has been held pursuant to subsection [~~(3)~~] (4);
21 provided that on or before the expiration of the seventy-two-
22 hour period, a court may conduct a hearing to determine whether



1 the person would benefit from further hospitalization, which may
2 render a revocation of conditional release unnecessary. If
3 satisfied, the court may order further temporary hospitalization
4 for a period not to exceed ninety days, subject to extension as
5 appropriate, but in no event for a period longer than one year.
6 At any time within that period, the court may determine that a
7 hearing pursuant to subsection (4) should be conducted.

8 (2) The director of health may apply to the court ordering
9 any person released pursuant to this chapter, for the person's
10 discharge from, or modification of, the order granting
11 conditional release; provided that the person receives
12 community-based mental health services from or contracted by the
13 department of health, and the director is of the opinion that
14 the person on conditional release is no longer affected by a
15 physical or mental disease, disorder, or defect and may be
16 discharged, or the order may be modified, without danger to the
17 person or to others. The director shall make an application for
18 the discharge from, or modification of, the order of conditional
19 release in a report to the circuit from which the order was
20 issued. The director shall transmit a copy of the application
21 and report to the prosecuting attorney of the county from which
22 the conditional release order was issued, to the person's



1 treating mental health professionals, and to the probation
2 officer supervising the conditional release. The person on
3 conditional release shall be given notice of the application.

4 ~~[(2)]~~ (3) Any person ~~[released]~~ granted conditional
5 release pursuant to ~~[section 704-411]~~ this chapter may apply to
6 the court ordering the conditional release for discharge from,
7 or modification of, the order granting conditional release on
8 the ground that the person is no longer affected by a physical
9 or mental disease, disorder, or defect and may be discharged, or
10 the order may be modified, without danger to the person or to
11 others. The application shall be accompanied by a letter from
12 or supporting affidavit of a qualified physician or licensed
13 psychologist. A copy of the application and letter or affidavit
14 shall be transmitted to the prosecuting attorney of the circuit
15 from which the order issued and to any persons supervising the
16 release, and the hearing on the application shall be held
17 following notice to such persons. If the ~~[determination of the]~~
18 court ~~[is adverse to]~~ denies the application, the person shall
19 not be permitted to file ~~[further]~~ another application for
20 either discharge or modification of conditional release until
21 one year ~~[has elapsed from]~~ after the date of ~~[any preceding]~~



1 ~~hearing on an application for modification of conditions of~~
2 ~~release or for discharge.] the denial.~~

3 [~~(3)~~] (4) If, at any time after the order pursuant to
4 [~~section 704-411~~] this chapter granting conditional release, the
5 court determines, after hearing evidence, that:

6 (a) The person is still affected by a physical or mental
7 disease, disorder, or defect, and the conditions of
8 release have not been fulfilled; or

9 (b) For the safety of the person or others, the person's
10 conditional release should be revoked,

11 the court may forthwith modify the conditions of release or
12 order the person to be committed to the custody of the director
13 of health, subject to discharge or release [~~only~~] in accordance
14 with the procedure prescribed in section 704-412.

15 (5) Upon application for discharge from, or modification
16 of, the order of conditional release by either the director of
17 health or the person, the court shall complete the hearing
18 process and render a decision within sixty days of the
19 application, provided that for good cause the court may extend
20 the sixty day time frame upon the request of the director of
21 health or the person."

22 PART II



1 SECTION 6. Patient to staff assault at Hawaii state
2 hospital has recently been an area of heightened organizational
3 focus and public scrutiny. Hawaii state hospital monitors and
4 follows up on all instances of patient to patient and patient to
5 staff assault, monitors patient and staff injuries, and has a
6 number of continuing monitoring, supervisory and training
7 processes focused on decreasing the instances and severity of
8 assault, and staff or patient injury.

9 Although most of the assaults on staff are quite minor, not
10 causing any injury and not requiring any treatment, a very small
11 number can be serious. In addition, while most of the assaults
12 are committed by patients during the first part of their
13 hospitalization or when they are acutely psychotic, a very small
14 number seem to be the result of behavior by an individual who
15 has adequate self control and who knows what he or she is doing.
16 It is with respect to this latter group that this part is
17 directed.

18 The purpose of this part is to establish criminal charges
19 against a person who intentionally or knowingly causes bodily
20 injury to a person employed in a state-operated or -contracted
21 mental health facility as a class C felony. Currently, such an
22 assault would generally be a misdemeanor.



1 SECTION 7. Section 707-711, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of assault in the second
4 degree if:

- 5 (a) The person intentionally or knowingly causes
6 substantial bodily injury to another;
- 7 (b) The person recklessly causes serious or substantial
8 bodily injury to another;
- 9 (c) The person intentionally or knowingly causes bodily
10 injury to a correctional worker, as defined in section
11 710-1031(2), who is engaged in the performance of duty
12 or who is within a correctional facility;
- 13 (d) The person intentionally or knowingly causes bodily
14 injury to another with a dangerous instrument;
- 15 (e) The person intentionally or knowingly causes bodily
16 injury to an educational worker who is engaged in the
17 performance of duty or who is within an educational
18 facility. For the purposes of this paragraph,
19 "educational worker" means: any administrator,
20 specialist, counselor, teacher, or employee of the
21 department of education or an employee of a charter
22 school; a person who is a volunteer, as defined in



1 section 90-1, in a school program, activity, or
2 function that is established, sanctioned, or approved
3 by the department of education; or a person hired by
4 the department of education on a contractual basis and
5 engaged in carrying out an educational function; [~~e~~]

6 (f) The person intentionally or knowingly causes bodily
7 injury to any emergency medical services personnel who
8 is engaged in the performance of duty. For the
9 purposes of this paragraph, "emergency medical
10 services personnel" shall have the same meaning as in
11 section 321-222[-]; or

12 (g) The person intentionally or knowingly causes bodily
13 injury to a person employed at a state-operated or
14 -contracted mental health facility. For the purposes
15 of this paragraph, "a person employed at a state-
16 operated or -contracted mental health facility"
17 includes health care professionals as defined in
18 section 451D-2, administrators, orderlies, security
19 personnel, volunteers, and any other person who is
20 engaged in the performance of a duty at a state-
21 operated or -contracted mental health facility."



1 SECTION 8. This part does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun, before its effective date.

4 PART III

5 SECTION 9. If any provision of this Act, or the
6 application thereof to any person or circumstance is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act, which can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 10. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act shall take effect on July 1, 2008.

APPROVED this 23 day of MAY, 2008



GOVERNOR OF THE STATE OF HAWAII

