

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 466
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1,
2 H.D. 1, adopted by the twenty-third Hawaii state legislature in
3 2006 called for the governor to convene a task force to
4 "evaluate and recommend possible procedural, statutory, and
5 public policy changes to minimize the census at Hawaii State
6 Hospital and promote community based health services for
7 forensic patients."

8 The purpose of this Act is to enact the recommendations
9 made by that task force.

10 SECTION 2. Chapter 704, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§334- Annual report; forensic patient data. The
14 department of health shall submit an annual report to the
15 legislature no later than twenty days prior to the convening of
16 each legislative session, which at a minimum, shall summarize
17 yearly data on forensic patients including, but not limited to:



- 1 (1) Gross admission and discharge numbers to the Hawaii
2 state hospital;
- 3 (2) The number of admission, discharge, and lengths of
4 stays in the Hawaii state hospital, broken down by the
5 following commitment categories:
 - 6 (A) Original order under section 704-411(a);
 - 7 (B) Pending examination under section 704-413(3);
 - 8 (C) Maximum seventy-two hour recommitment pending
9 examination under section 407-413(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 year; and
 - 17 (B) Individuals remaining as inpatients at the end of
18 the year; and
- 19 (5) Number of patients in the Hawaii state hospital on
20 forensic statuses, broken down by categories of
21 underlying crimes, such as by felony or by
22 misdemeanor."



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

3 **"§704-411 Legal effect of acquittal on the ground of**
4 **physical or mental disease, disorder, or defect excluding**
5 **responsibility; commitment; conditional release; discharge;**
6 **procedure for separate post-acquittal hearing. (1) When a**
7 defendant is acquitted on the ground of physical or mental
8 disease, disorder, or defect excluding responsibility, the
9 court, on the basis of the report made pursuant to section
10 704-404, if uncontested, or the medical or psychological
11 evidence given at the trial or at a separate hearing, shall make
12 an order as follows:

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

17 (i) Is affected by a physical or mental disease,
18 disorder, or defect;

19 (ii) Presents a risk of danger to self or others; and

20 (iii) Is not a proper subject for conditional release;
21 provided that the director of health shall place

22 defendants charged with misdemeanors or felonies not



1 involving violence or attempted violence in the least
2 restrictive environment appropriate in light of the
3 defendant's treatment needs and the need to prevent
4 harm to the person confined and others;

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

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

20 (2) The court, upon its own motion or on the motion of the
21 prosecuting attorney or the defendant, shall order a separate
22 post-acquittal hearing for the purpose of taking evidence on the



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1 issue of physical or mental disease, disorder, or defect and the
2 risk of danger that the defendant presents to self or others.

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

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

14 (b) In felony cases, the court shall appoint three
15 qualified examiners to examine and report upon the
16 physical and mental condition of the defendant. In
17 each case, the court shall appoint at least one
18 psychiatrist and at least one licensed psychologist.
19 The third member may be a psychiatrist, a licensed
20 psychologist, or a qualified physician. One of the
21 three shall be a psychiatrist or licensed psychologist
22 designated by the director of health from within the



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1 department of health. The three examiners shall be
2 appointed from a list of certified examiners as
3 determined by the department of health.

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

18 (4) Whether the court's order under subsection (1) is made
19 on the basis of the medical or psychological evidence given at
20 the trial, or on the basis of the report made pursuant to
21 section 704-404, or the medical or psychological evidence given
22 at a separate hearing, the burden shall be upon the State to



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1 prove, by a preponderance of the evidence, that the defendant is
2 affected by a physical or mental disease, disorder, or defect
3 and may not safely be discharged and that the defendant should
4 be either committed or conditionally released as provided in
5 subsection (1).

6 (5) For each individual who is acquitted of a felony on
7 the ground of physical or mental disease, disorder, or defect
8 excluding responsibility, and is the subject of inpatient
9 hospitalization, the court shall conduct hearings to assess any
10 need for further inpatient hospitalization beginning one
11 calendar year after the date of commitment. If the person
12 remains subject to inpatient hospitalization, a status hearing
13 shall be held once per year for the next four years, and then in
14 biennial intervals thereafter.

15 (6) In any proceeding governed by this section, the
16 defendant's fitness shall not be an issue."

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

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

21 (1) After the expiration of at least ninety days following
22 [~~the~~] an original order of commitment pursuant to [~~section~~



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1 ~~704-411,]~~ section 704-411(1)(a), or after the expiration of at
2 least thirty-days following the revocation of conditional
3 release pursuant to section 704-413(3), if the director of
4 health is of the opinion that the person committed [~~to the~~
5 ~~director's custody]~~ or conditionally released is still affected
6 by a physical or mental disease, disorder, or defect and may be
7 released on condition or discharged without danger to self or to
8 the person or property of others or that the person is no longer
9 affected by a physical or mental disease, disorder, or defect,
10 the director shall make application for either the discharge or
11 the conditional release of the person [~~in~~] as appropriate. In
12 such a case, the director shall submit a report to the court
13 [~~from~~] by which the person was ordered committed and shall
14 transmit [~~a copy~~] copies of the application and report to the
15 prosecuting attorney of the county from which the person was
16 committed[~~. The~~] and to the person [~~shall be given notice of~~
17 ~~such application.~~] committed.

18 (2) After the expiration of ninety days from the date of
19 the order of commitment pursuant to section 704-411, or after
20 the expiration of thirty days following the revocation of
21 conditional release pursuant to section 704-413(3), the person
22 committed may apply to the court from which the person was



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1 committed for an order of discharge upon the ground that the
2 person is no longer affected by a physical or mental disease,
3 disorder, or defect. The person committed may apply for
4 discharge or conditional release upon the ground that, though
5 still affected by a physical or mental disease, disorder, or
6 defect, the person may be released without danger to self or to
7 the person or property of others. A copy of the application
8 shall be transmitted to the prosecuting attorney of the county
9 from which the ~~[defendant]~~ person was committed. ~~[If the~~
10 ~~determination of the court is adverse to the application,]~~ If
11 the court denies the application, the person shall not be
12 permitted to file ~~[a further]~~ another application for either
13 discharge or conditional release until one year ~~[has elapsed~~
14 ~~from]~~ after the date of ~~[any preceding hearing on an application~~
15 ~~for the person's discharge or conditional release.]~~ a hearing
16 held on a 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] 704-411(1)(b) 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 either the person is not complying
9 with the requirements of this section or there is other evidence
10 that hospitalization is appropriate, the mental health
11 professional shall report the matter to the probation officer of
12 the conditionally released person. The probation officer may
13 order the conditionally released person to be hospitalized for a
14 period not to exceed seventy-two hours if the probation officer
15 has probable cause to believe the person has violated the
16 requirements of this subsection. No person shall be
17 hospitalized beyond the seventy-two hour period, as computed
18 pursuant to section 1-29, unless a hearing has been held
19 pursuant to subsection (3) [~~-~~]; provided that on or before the
20 expiration of the seventy-two hour period, a court may conduct a
21 hearing to determine whether the person would benefit from
22 further hospitalization which may render a revocation



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

7 (2) Any person [~~released~~] granted conditional release
8 pursuant to section [~~704-411~~] 704-411(1)(b) may apply to the
9 court ordering the conditional release for discharge from, or
10 modification of, the order granting conditional release on the
11 ground that the person is no longer affected by a physical or
12 mental disease, disorder, or defect and may be discharged, or
13 the order may be modified, without danger to the person or to
14 others. The application shall be accompanied by a letter from
15 or supporting affidavit of a qualified physician or licensed
16 psychologist. A copy of the application and letter or affidavit
17 shall be transmitted to the prosecuting attorney of the circuit
18 from which the order issued and to any persons supervising the
19 release, and the hearing on the application shall be held
20 following notice to such persons. If the [~~determination of the~~]
21 court [~~is adverse to~~] denies the application, the person shall
22 not be permitted to file [~~further~~] another application for



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1 either discharge or modification of conditional release until
2 one year [~~has elapsed from~~] after the date of [~~any preceding~~
3 ~~hearing on an application for modification of conditions of~~
4 ~~release or for discharge.~~] the denial.

5 (3) If, at any time after the order pursuant to section
6 [~~704-411~~] 704-411(b)(1) granting conditional release, the court
7 determines, after hearing evidence, that:

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

11 (b) For the safety of the person or others, the person's
12 conditional release should be revoked,
13 the court may forthwith modify the conditions of release or
14 order the person to be committed to the custody of the director
15 of health, subject to discharge or release [~~only~~] in accordance
16 with the procedure prescribed in section 704-412.

17 (4) For each individual who is granted conditional release
18 under section 704-411(1)(b), the court shall conduct hearings to
19 assess any need to continue or modify the conditions beginning
20 one calendar year after the date of the original court order for
21 conditional release. If the person remains subject to
22 conditional release, a status hearing shall be held once per



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1 year for the next four years, and then in biennial intervals
2 thereafter."

3 SECTION 6. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2008-2009 to
6 support the operations and expansion of the mental health court.

7 The sum appropriated shall be expended by the judiciary for
8 the purposes of this Act.

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect on July 1, 2050.



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Report Title:

Health; Mental Health Court; Conditional Release and Discharge;
Forensic Patients; Appropriation

Description:

Requires the department of health to submit an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditionally released or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations. (SD1)

