
A BILL FOR AN ACT

RELATING TO RECORDS OF DEFENDANTS COMMITTED TO A HOSPITAL
CONTROLLED BY THE DIRECTOR OF HEALTH OR TO CUSTODY OF
DIRECTOR OF HEALTH.

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

1 SECTION 1. Section 704-404, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§704-404 Examination of defendant with respect to**
4 **physical or mental disease, disorder, or defect.** (1) Whenever
5 the defendant has filed a notice of intention to rely on the
6 defense of physical or mental disease, disorder, or defect
7 excluding responsibility, or there is reason to doubt the
8 defendant's fitness to proceed, or reason to believe that the
9 physical or mental disease, disorder, or defect of the defendant
10 will or has become an issue in the case, the court may
11 immediately suspend all further proceedings in the prosecution.
12 If a trial jury has been empanelled, it shall be discharged or
13 retained at the discretion of the court. The discharge of the
14 trial jury shall not be a bar to further prosecution.

15 (2) Upon suspension of further proceedings in the
16 prosecution, the court shall appoint three qualified examiners
17 in felony cases and one qualified examiner in nonfelony cases to



1 examine and report upon the physical and mental condition of the
2 defendant. In felony cases the court shall appoint at least one
3 psychiatrist and at least one licensed psychologist. The third
4 member may be a psychiatrist, licensed psychologist, or
5 qualified physician. One of the three shall be a psychiatrist
6 or licensed psychologist designated by the director of health
7 from within the department of health. In nonfelony cases the
8 court may appoint either a psychiatrist or a licensed
9 psychologist. All examiners shall be appointed from a list of
10 certified examiners as determined by the department of health.
11 The court, in appropriate circumstances, may appoint an
12 additional examiner or examiners. The examination may be
13 conducted on an out-patient basis or, in the court's discretion,
14 when necessary the court may order the defendant to be committed
15 to a hospital or other suitable facility for the purpose of the
16 examination for a period not exceeding thirty days, or such
17 longer period as the court determines to be necessary for the
18 purpose. The court may direct that one or more qualified
19 physicians or psychologists retained by the defendant be
20 permitted to witness the examination. If the court orders the
21 defendant committed to a hospital or other facility for
22 examination, the court shall, upon motion by the defendant,



1 provide the defendant with an opportunity to examine any records
2 to be released to the director of health under this subsection,
3 and to challenge their release. If the defendant objects to the
4 release of any records listed in subsection (9), the county
5 police department shall not release the records objected to
6 without a court order. As used in this section, the term
7 "licensed psychologist" includes psychologists exempted from
8 licensure by section 465-3(a)(3).

9 (3) An examination performed under this section may employ
10 any method that is accepted by the professions of medicine or
11 psychology for the examination of those alleged to be affected
12 by a physical or mental disease, disorder, or defect; provided
13 that each examiner shall form and render diagnoses and opinions
14 upon the physical and mental condition of the defendant
15 independently from the other examiners, and the examiners, upon
16 approval of the court, may secure the services of clinical
17 psychologists and other medical or paramedical specialists to
18 assist in the examination and diagnosis.

19 (4) The report of the examination shall include the
20 following:

21 (a) A description of the nature of the examination;



- 1 (b) A diagnosis of the physical or mental condition of the
2 defendant;
- 3 (c) An opinion as to the defendant's capacity to
4 understand the proceedings against the defendant and
5 to assist in the defendant's own defense;
- 6 (d) An opinion as to the extent, if any, to which the
7 capacity of the defendant to appreciate the
8 wrongfulness of the defendant's conduct or to conform
9 the defendant's conduct to the requirements of law was
10 impaired at the time of the conduct alleged;
- 11 (e) When directed by the court, an opinion as to the
12 capacity of the defendant to have a particular state
13 of mind that is required to establish an element of
14 the offense charged; and
- 15 (f) Where more than one examiner is appointed, a statement
16 that the diagnosis and opinion rendered were arrived
17 at independently of any other examiner, unless there
18 is a showing to the court of a clear need for
19 communication between or among the examiners for
20 clarification. A description of the communication
21 shall be included in the report. After all reports



1 are submitted to the court, examiners may confer
2 without restriction.

3 (5) If the examination cannot be conducted by reason of
4 the unwillingness of the defendant to participate therein, the
5 report shall so state and shall include, if possible, an opinion
6 as to whether such unwillingness of the defendant was the result
7 of physical or mental disease, disorder, or defect.

8 (6) Three copies of the report of the examination,
9 including any supporting documents, shall be filed with the
10 clerk of the court, who shall cause copies to be delivered to
11 the prosecuting attorney and to counsel for the defendant.

12 (7) Any examiner shall be permitted to make a separate
13 explanation reasonably serving to clarify the examiner's
14 diagnosis or opinion.

15 (8) The court shall obtain all existing, medical, mental
16 health, social, police, and juvenile records, including those
17 expunged, and other pertinent records in the custody of public
18 agencies, notwithstanding any other statutes, and make such
19 records available for inspection by the examiners.

20 (9) If, pursuant to this section, the court orders the
21 defendant committed to a hospital or other suitable facility
22 under the control of the director of health, and if the



1 defendant does not object to the release of records as provided
2 in subsection (2), the county police departments shall provide
3 to the director of health copies of all police reports from
4 cases filed against the defendant which have been adjudicated by
5 the acceptance of a plea of guilty or no contest, a finding of
6 guilt, acquittal, acquittal pursuant to section 704-400, or by
7 the entry of plea of guilty or no contest made pursuant to
8 chapter 853, so long as the disclosure to the director of health
9 does not frustrate a legitimate function of the county police
10 departments, with the exception of expunged records, records of
11 or pertaining to any adjudication or disposition rendered in the
12 case of a juvenile, or records containing data from the United
13 States National Crime Information Center. The county police
14 departments shall segregate or redact from the police reports
15 information that would result in the likelihood or actual
16 identification of individuals who furnished information in
17 connection with its investigation, or who were of investigatory
18 interest. Records shall not be re-disclosed except to the
19 extent permitted by law.

20 [~~9~~] (10) The compensation of persons making or assisting
21 in the examination, other than those retained by the nonindigent
22 defendant, who are not undertaking the examination upon



1 designation by the director of health as part of their normal
2 duties as employees of the State or a county, shall be paid by
3 the State."

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

6 "(1) If the court determines that the defendant lacks
7 fitness to proceed, the proceeding against the defendant shall
8 be suspended, except as provided in section 704-407, and the
9 court shall commit the defendant to the custody of the director
10 of health to be placed in an appropriate institution for
11 detention, care, and treatment. If the court is satisfied that
12 the defendant may be released on condition without danger to the
13 defendant or to the person or property of others, the court
14 shall order the defendant's release, which shall continue at the
15 discretion of the court on conditions the court determines
16 necessary. A copy of the report filed pursuant to section
17 704-404 shall be attached to the order of commitment or order of
18 release on conditions. If the court orders the defendant
19 committed to a hospital or other facility for examination, the
20 court shall, upon motion by the defendant, provide the defendant
21 with an opportunity to examine any records to be released to the
22 director of health pursuant to this subsection and to challenge



1 their release. If the defendant objects to the release of
2 records, the county police department shall not release such
3 records without a court order. When the defendant is committed
4 to the custody of the director of health for detention, care,
5 and treatment, and if the defendant does not challenge or object
6 to the release of records as provided in this subsection, the
7 county police departments shall provide to the director of
8 health copies of all police reports from cases filed against the
9 defendant which have been adjudicated by the acceptance of a
10 plea of guilty or no contest, a finding of guilt, acquittal,
11 acquittal pursuant to section 704-400, or by the entry of a plea
12 of guilty or no contest made pursuant to chapter 853, so long as
13 the disclosure to the director of health does not frustrate a
14 legitimate function of the county police departments, with the
15 exception of expunged records, records of or pertaining to any
16 adjudication or disposition rendered in the case of a juvenile,
17 or records containing data from the United States National Crime
18 Information Center. The county police departments shall
19 segregate or redact from the police reports information that
20 would result in the likelihood or actual identification of
21 individuals who furnished information in connection with the
22 investigation of who were of investigatory interest. Records



1 shall not be re-disclosed except to the extent permitted by
2 law."

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

5 "(1) When a defendant is acquitted on the ground of
6 physical or mental disease, disorder, or defect excluding
7 responsibility, the court, on the basis of the report made
8 pursuant to section 704-404, if uncontested, or the medical or
9 psychological evidence given at the trial or at a separate
10 hearing, shall make an order as follows:

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

15 (i) Is affected by a physical or mental disease,
16 disorder, or defect;

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

18 (iii) Is not a proper subject for conditional release;

19 provided that the director of health shall place
20 defendants charged with misdemeanors or felonies not
21 involving violence or attempted violence in the least
22 restrictive environment appropriate in light of the



1 defendant's treatment needs and the need to prevent
2 harm to the person confined and others[+]. If the
3 court orders the defendant committed to a hospital or
4 other facility for examination, the court shall, upon
5 motion by the defendant, provide the defendant with an
6 opportunity to examine any records to be released to
7 the director of health under this paragraph and to
8 challenge their release. If the defendant objects to
9 the release of records pursuant to this paragraph, the
10 county police department shall not release such
11 records without a court order. If the defendant does
12 not raise an objection to the release of records, the
13 county police departments shall provide to the
14 director of health copies of all police reports from
15 cases filed against the defendant which have been
16 adjudicated by the acceptance of a plea of guilty or
17 no contest, a finding of guilt, acquittal, acquittal
18 pursuant to section 704-400, or by the entry of a plea
19 of guilty or no contest made pursuant to chapter 853,
20 so long as the disclosure to the director of health
21 does not frustrate a legitimate function of the county
22 police departments, with the exception of expunged



1 records, records of or pertaining to any adjudication
2 or disposition rendered in the case of a juvenile, or
3 records containing data from the United States
4 National Crime Information Center. The county police
5 departments shall segregate or redact from the police
6 reports information that would result in the
7 likelihood or actual identification of individuals who
8 furnished information in connection with the
9 investigation of who were of investigatory interest.
10 Records shall not be re-disclosed except to the extent
11 permitted by law;

12 (b) The court shall order the defendant to be released on
13 such conditions as the court deems necessary if the
14 court finds that the defendant is affected by physical
15 or mental disease, disorder, or defect and that the
16 defendant presents a danger to self or others, but
17 that the defendant can be controlled adequately and
18 given proper care, supervision, and treatment if the
19 defendant is released on condition; or

20 (c) The court shall order the defendant discharged if the
21 court finds that the defendant is no longer affected
22 by physical or mental disease, disorder, or defect or,



1 if so affected, that the defendant no longer presents
2 a danger to self or others and is not in need of care,
3 supervision, or treatment."

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

6 SECTION 5. This Act shall take effect on January 1, 2112.



S.B. NO. 3069
S.D. 2
H.D. 1

Report Title:

Defendant Records; DOH Hospital; DOH Custody

Description:

Requires the county police departments to provide to the Director of Health certain police reports of defendants who are committed to a hospital under the control of the Director of Health or to the custody of the Director. Allows the defendant to object to the release of information. (SB3069 HD1)

