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

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

12           "§334-    Annual report; forensic patient data. The  
13 department of health shall submit an annual report to the  
14 legislature no later than twenty days prior to the convening of  
15 each regular legislative session which shall at minimum  
16 summarize yearly data on forensic patients including:



- 1        (1) Gross numbers for admission to and discharge from the  
2        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 704-413(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        (5) Number of patients in the Hawaii state hospital on  
20        forensic status, broken down by categories of  
21        underlying crimes, such as by crimes against the



1           person, sex offenses, and property crimes and by grade  
2           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) For each individual who is acquitted of a felony on  
10 the ground of physical or mental disease, disorder, or defect  
11 excluding responsibility, and is the subject of inpatient  
12 hospitalization, the court shall conduct hearings to assess any  
13 need for further inpatient hospitalization beginning one  
14 calendar year after the date of commitment. If the person  
15 remains subject to inpatient hospitalization, a status hearing  
16 shall be held once per year for the next four years, and then in  
17 biennial intervals thereafter.

18 ~~[(5)]~~ (6) In any proceeding governed by this section, the  
19 defendant's fitness shall not be an issue."

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



1           "§704-412 Committed person; application for conditional  
2 release or discharge; by the director of health; by the person.  
3 (1) After the expiration of at least ninety days following  
4 ~~[the]~~ an original order of commitment pursuant to ~~[section~~  
5 ~~[704-411,]~~ section 704-411(1)(a), or after the expiration of at  
6 least thirty days following the revocation of conditional  
7 release pursuant to section 704-413(3), if the director of  
8 health is of the opinion that the person committed ~~[to the~~  
9 ~~director's custody]~~ is still affected by a physical or mental  
10 disease, disorder, or defect and may be ~~[released on condition]~~  
11 granted conditional release or discharged without danger to self  
12 or to the person or property of others or that the person is no  
13 longer affected by a physical or mental disease, disorder, or  
14 defect, the director shall make application for ~~[the discharge~~  
15 ~~or conditional release of the person in]~~ either the conditional  
16 release or discharge of the person, as appropriate. In such a  
17 case, the director shall submit a report to the court ~~[from]~~ by  
18 which the person was ordered committed and shall transmit ~~[a~~  
19 ~~copy]~~ copies of the application and report to the prosecuting  
20 attorney of the county from which the person was committed~~[-~~  
21 ~~The]~~ and to the person ~~[shall be given notice of such~~  
22 ~~application.]~~ committed.





1           (2) After the expiration of ninety days from the date of  
2 the original order of commitment pursuant to section 704-411, or  
3 after the expiration of thirty days following the revocation of  
4 conditional release pursuant to section 704-413(3), the person  
5 committed may apply to the court from which the person was  
6 committed for an order of discharge upon the ground that the  
7 person is no longer affected by a physical or mental disease,  
8 disorder, or defect. The person committed may apply for  
9 ~~[discharge or conditional release]~~ conditional release or  
10 discharge upon the ground that, though still affected by a  
11 physical or mental disease, disorder, or defect, the person may  
12 be released without danger to self or to the person or property  
13 of others. A copy of the application shall be transmitted to  
14 the prosecuting attorney of the county from which the  
15 ~~[defendant] person~~ was committed. ~~[If the determination of the~~  
16 ~~court is adverse to the application,]~~ If the court denies the  
17 application, the person shall not be permitted to file [a  
18 ~~further]~~ another application for either conditional release or  
19 discharge until one year ~~[has elapsed from]~~ after the date of  
20 ~~[any preceding hearing on an application for the person's~~  
21 ~~discharge or conditional release.]~~ the hearing held on the  
22 immediate prior application."



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

3 "§704-413 Conditional release; application for  
4 modification or discharge; termination of conditional release  
5 and commitment. (1) Any person [~~released~~] granted conditional  
6 release pursuant to [~~section 704-411~~] chapter 704 shall continue  
7 to receive mental health or other treatment and care deemed  
8 appropriate by the director of health until discharged from  
9 conditional release. The person shall follow all prescribed  
10 treatments and take all prescribed medications according to the  
11 instructions of the person's treating mental health  
12 professional. If [~~any~~] a mental health professional who is  
13 treating [~~any~~] a [~~conditionally-released~~] person granted  
14 conditional release believes that either the person is not  
15 complying with the requirements of this section or there is  
16 other evidence that hospitalization is appropriate, the mental  
17 health professional shall report the matter to the probation  
18 officer of the [~~conditionally-released person.~~] person granted  
19 conditional release. The probation officer may order the  
20 [~~conditionally-released~~] person granted conditional release to  
21 be hospitalized for a period not to exceed seventy-two hours if  
22 the probation officer has probable cause to believe the person



1 has violated the requirements of this subsection. No person  
2 shall be hospitalized beyond the seventy-two hour period, as  
3 computed pursuant to section 1-29, unless a hearing has been  
4 held pursuant to subsection ~~[(3)-]~~ (4); provided that on or  
5 before the expiration of the seventy-two hour period, a court  
6 may conduct a hearing to determine whether the person would  
7 benefit from further hospitalization which may render a  
8 revocation unnecessary. If satisfied, the court may order  
9 further temporary hospitalization for a period not to exceed  
10 ninety days, subject to extension as appropriate, but in no  
11 event for a period longer than one year. At any time within  
12 that period, the court may determine that a hearing pursuant to  
13 subsection (4) should be conducted.

14 (2) The director of health may apply to the court ordering  
15 any person released pursuant to chapter 704, for the person's  
16 discharge from, or modification of, the order granting  
17 conditional release; provided that the person receives  
18 community-based mental health services from or contracted by the  
19 department of health, and the director is of the opinion that  
20 the person on conditional release is no longer affected by a  
21 physical or mental disease, disorder, or defect and may be  
22 discharged or the order may be modified, without danger to the



1 person or to others. The director shall make application for  
2 the discharge from, or modification of, the order of conditional  
3 release in a report to the court. The director shall transmit a  
4 copy of the application and report to the prosecuting attorney  
5 of the county from which the conditional release order was made,  
6 to the person's treating mental health professionals, and to the  
7 probation officer supervising the conditional release. The  
8 person on conditional release shall be given notice of the  
9 application.

10        ~~[-2-]~~ (3) Any person ~~[released]~~ granted conditional  
11 release pursuant to [section 704-411] chapter 704 may apply to  
12 the court ordering the conditional release for discharge from,  
13 or modification of, the order granting conditional release on  
14 the ground that the person is no longer affected by a physical  
15 or mental disease, disorder, or defect and may be discharged, or  
16 the order may be modified, without danger to the person or to  
17 others. The application shall be accompanied by a letter from  
18 or supporting affidavit of a qualified physician or licensed  
19 psychologist. A copy of the application and letter or affidavit  
20 shall be transmitted to the prosecuting attorney of the circuit  
21 from which the order issued and to any persons supervising the  
22 release, and the hearing on the application shall be held



1 following notice to such persons. If the [~~determination of the~~  
2 court [~~is adverse to~~] denies the application, the person shall  
3 not be permitted to file [~~further~~] another application for  
4 either discharge or modification of conditional release until  
5 one year [~~has elapsed from~~] after the date of [~~any preceding~~  
6 hearing on an application for modification of conditions of  
7 ~~release or for discharge.~~] the denial.

8 [~~(3)~~] (4) If, at any time after the order pursuant to  
9 [~~section 704-411~~] chapter 704 granting conditional release, the  
10 court determines, after hearing evidence, that:

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

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

20 (5) For each individual who is granted conditional release  
21 under chapter 704, the court shall conduct hearings to assess  
22 any need to continue or modify the conditions beginning one



1 calendar year after the date of the original court order for  
2 conditional release. If the person remains subject to  
3 conditional release, a status hearing shall be held once per  
4 year for the next four years, and then in biennial intervals  
5 thereafter."

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

10 The sum appropriated shall be expended by the judiciary for  
11 the purposes of this Act.

12 SECTION 7. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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



**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)

