
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

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

10 SECTION 2. Chapter 334, 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 regular legislative session which shall at minimum
17 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) Except where an individual has applied for conditional
10 release or discharge within the previous year, the court shall
11 conduct a hearing to assess any further need for inpatient
12 hospitalization of a person who is acquitted on the ground of
13 physical or mental disease, disorder, or defect excluding
14 responsibility:

15 (a) On or about one calendar year after the date of
16 commitment, and once per calendar year thereafter for
17 the next four calendar years; and

18 (b) Thereafter to paragraph (a), once biennially
19 thereafter on or about the date of commitment.

20 [~~5~~] (6) In any proceeding governed by this section, the
21 defendant's fitness shall not be an issue."



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

3 **"§704-412 Committed person; application for conditional**
4 **release or discharge; by the director of health; by the person.**

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



1 from which the person was committed[~~—The~~] and to the person
2 ~~[shall be given notice of such application.]~~ committed.

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



1 ~~discharge or conditional release.]~~ the hearing held on the
2 immediate prior application."

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

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



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

16 (2) The director of health may apply to the court ordering
17 any person released pursuant to this chapter, for the person's
18 discharge from, or modification of, the order granting
19 conditional release; provided that the person receives
20 community-based mental health services from or contracted by the
21 department of health, and the director is of the opinion that
22 the person on conditional release is no longer affected by a



1 physical or mental disease, disorder, or defect and may be
2 discharged or the order may be modified, without danger to the
3 person or to others. The director shall make application for
4 the discharge from, or modification of, the order of conditional
5 release in a report to the court. The director shall transmit a
6 copy of the application and report to the prosecuting attorney
7 of the county from which the conditional release order was made,
8 to the person's treating mental health professionals, and to the
9 probation officer supervising the conditional release. The
10 person on conditional release shall be given notice of the
11 application.

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



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

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

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

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

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



- 1 (b) The person recklessly causes serious or substantial
2 bodily injury to another;
- 3 (c) The person intentionally or knowingly causes bodily
4 injury to a correctional worker, as defined in section
5 710-1031(2), who is engaged in the performance of duty
6 or who is within a correctional facility;
- 7 (d) The person intentionally or knowingly causes bodily
8 injury to another with a dangerous instrument;
- 9 (e) The person intentionally or knowingly causes bodily
10 injury to an educational worker who is engaged in the
11 performance of duty or who is within an educational
12 facility. For the purposes of this paragraph,
13 "educational worker" means: any administrator,
14 specialist, counselor, teacher, or employee of the
15 department of education or an employee of a charter
16 school; a person who is a volunteer, as defined in
17 section 90-1, in a school program, activity, or
18 function that is established, sanctioned, or approved
19 by the department of education; or a person hired by
20 the department of education on a contractual basis and
21 engaged in carrying out an educational function; [e]



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

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

18 PART III

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect on July 1, 2025.



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; creates criminal offense of assault in second degree for assault on employee of state-operated or state-contracted mental health facility. Effective 7/1/2025. (SD2)

