

JAN 17 2008

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 department of health to convene a task force
4 to "analyze the identification, diagnosis, and treatment of
5 persons with mental illness who are committed to the Hawaii
6 state hospital by the state criminal justice system." The
7 purpose of this Act is to enact the recommendations made by that
8 task force.

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

12 "§704- Annual report; forensic patient data. The Hawaii
13 state hospital shall produce an annual report for distribution,
14 which shall at minimum summarize yearly data on forensic
15 patients including:

16 (1) Gross admission and discharge numbers.



1 (2) Admission and discharge numbers broken down by the
2 following commitment categories:

3 (a) Original order under section 407-411(a);
4 (b) Pending examination under section 407-411(3); or
5 (c) Maximum seventy-two hour recommitment pending
6 examination under section 407-413(1).

7 (3) Number of persons committed by each court and county.
8 (4) Gross lengths of stay.
9 (5) Lengths of stay broken down by commitment categories
10 outlined in paragraph 2.

11 (6) Forensic statuses broken down by categories of
12 underlying crimes.

13 §704- Rulemaking authority. The department shall adopt
14 rules outlining specific criteria and procedures relating to the
15 application of statutory periods of involuntary inpatient
16 hospitalization described in sections 407-411 through 407-413,
17 including but not limited to the seventy-two hour period for
18 individuals subject to conditional release described in section
19 407-413, the thirty-day period following revocation of
20 conditional release under section 407-412, and all periods of
21 continued inpatient hospitalization following the expiration of
22 any initial assessment period."



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



1 not involving violence or attempted violence in
2 the least restrictive environment appropriate in
3 light of the defendant's treatment needs and the
4 need to prevent harm to the person confined and
5 others;

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

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

21 (2) The court, upon its own motion or on the motion of the
22 prosecuting attorney or the defendant, shall order a separate



1 post-acquittal hearing for the purpose of taking evidence on the
2 issue of physical or mental disease, disorder, or defect and the
3 risk of danger that the defendant presents to self or others.

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

- 5 (a) In nonfelony cases, the court shall appoint a
6 qualified examiner to examine and report upon the
7 physical and mental condition of the defendant. The
8 court may appoint either a psychiatrist or a licensed
9 psychologist. The examiner may be designated by the
10 director of health from within the department of
11 health. The examiner shall be appointed from a list
12 of certified examiners as determined by the department
13 of health. The court, in appropriate circumstances,
14 may appoint an additional examiner or examiners; and
- 15 (b) In felony cases, the court shall appoint three
16 qualified examiners to examine and report upon the
17 physical and mental condition of the defendant. In
18 each case, the court shall appoint at least one
19 psychiatrist and at least one licensed psychologist.
20 The third member may be a psychiatrist, a licensed
21 psychologist, or a qualified physician. One of the
22 three shall be a psychiatrist or licensed psychologist



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

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

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



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

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

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

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

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

22 (1) After the expiration of at least ninety days following



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

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



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



1 704-411(1)(b) shall continue to receive mental health or other
2 treatment and care deemed appropriate by the director of health
3 until discharged from conditional release. The person shall
4 follow all prescribed treatments and take all prescribed
5 medications according to the instructions of the person's
6 treating mental health professional. If ~~[any]~~ a mental health
7 professional who is treating ~~[any conditionally released person]~~
8 a person subject to conditional release believes either the
9 person is not complying with the requirements of this section or
10 there is other evidence that hospitalization ~~[is]~~ may be
11 appropriate, the mental health professional shall report ~~[the~~
12 ~~matter]~~ that belief to the person's probation officer ~~[of the~~
13 ~~conditionally released person]~~. ~~[The]~~ Upon receiving such a
14 report and if there is reasonable cause to do so, the probation
15 officer ~~[may]~~ shall order the ~~[conditionally released]~~ person to
16 be hospitalized for a period not to exceed seventy-two hours ~~[if~~
17 ~~the probation officer has probable cause to believe the person~~
18 ~~has violated the requirements of this subsection]~~. Upon the
19 expiration of the seventy-two hour period computed pursuant to
20 section 1-29, if the director determines that the person
21 presents a risk of danger to self or others, or for other
22 reasons determines that conditions exist that mandate further



1 inpatient hospitalization, a hearing shall be held [~~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).~~

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



1 ~~date of [any preceding hearing on an application for~~
2 ~~modification of conditions of release or for discharge.] a~~
3 hearing held on a prior application.

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

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

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

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



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

3 SECTION 6. The department of health shall submit a report
4 to the legislature on the rules adopted pursuant to the new
5 section contained in section 2 of this Act entitled
6 "§704- Rulemaking authority." no later than twenty days prior
7 to the convening of the 2009 regular session.

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

12 The sum appropriated shall be expended by the judiciary for
13 the purposes of this Act.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2008.

17

INTRODUCED BY: Rosalyn H Baker
By Request



Report Title:

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

Description:

Requires the Hawaii state hospital to produce an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditional release 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.

