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## 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 by amending subsection (8) to read as follows:  
3           "(8) The court shall obtain all existing[7] medical,  
4 mental health, social, police, and juvenile records, including  
5 those expunged, and other pertinent records in the custody of  
6 public agencies, notwithstanding any other statutes, and make  
7 such records available for inspection by the examiners. If,  
8 pursuant to this section, the court orders the defendant  
9 committed to a hospital or other suitable facility under the  
10 control of the director of health, then the county police  
11 departments shall provide to the director of health and the  
12 defendant copies of all police reports from cases filed against  
13 the defendant which have been adjudicated by the acceptance of a  
14 plea of guilty or no contest, a finding of guilt, acquittal,  
15 acquittal pursuant to section 704-400, or by the entry of plea  
16 of guilty or no contest made pursuant to chapter 853, so long as  
17 the disclosure to the director of health and the defendant does



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

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

14 "(1) If the court determines that the defendant lacks  
 15 fitness to proceed, the proceeding against the defendant shall  
 16 be suspended, except as provided in section 704-407, and the  
 17 court shall commit the defendant to the custody of the director  
 18 of health to be placed in an appropriate institution for  
 19 detention, care, and treatment. If the court is satisfied that  
 20 the defendant may be released on condition without danger to the  
 21 defendant or to the person or property of others, the court  
 22 shall order the defendant's release, which shall continue at the



1 discretion of the court on conditions the court determines  
2 necessary. A copy of the report filed pursuant to section  
3 704-404 shall be attached to the order of commitment or order of  
4 release on conditions. When the defendant is committed to the  
5 custody of the director of health for detention, care, and  
6 treatment, the county police departments shall provide to the  
7 director of health and the defendant copies of all police  
8 reports from cases filed against the defendant which have been  
9 adjudicated by the acceptance of a plea of guilty or no contest,  
10 a finding of guilt, acquittal, acquittal pursuant to section  
11 704-400, or by the entry of a plea of guilty or no contest made  
12 pursuant to chapter 853, so long as the disclosure to the  
13 director of health and the defendant 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 sanitize 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[+]. The county  
3 police departments shall provide to the director of  
4 health and the defendant copies of all police reports  
5 from cases filed against the defendant which have been  
6 adjudicated by the acceptance of a plea of guilty or  
7 no contest, a finding of guilt, acquittal, acquittal  
8 pursuant to section 704-400, or by the entry of a plea  
9 of guilty or no contest made pursuant to chapter 853,  
10 so long as the disclosure to the director of health  
11 and the defendant does not frustrate a legitimate  
12 function of the county police departments, with the  
13 exception of expunged records, records of or  
14 pertaining to any adjudication or disposition rendered  
15 in the case of a juvenile, or records containing data  
16 from the United States National Crime Information  
17 Center. The county police departments shall segregate  
18 or sanitize from the police reports information that  
19 would result in the likelihood or actual  
20 identification of individuals who furnished  
21 information in connection with the investigation of



1           who were of investigatory interest. Records shall not  
2           be re-disclosed except to the extent permitted by law;

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

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

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

19          SECTION 5. This Act shall take effect upon its approval.



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

**Report Title:**

Defendant Records; DOH Hospital; DOH Custody

**Description:**

Requires the county police departments to provide to the director of health and the defendants 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. (CD1)

