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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 court shall provide  
11 copies of all of the aforementioned records to the director of  
12 health with the exception of those expunged or juvenile records  
13 not related to mental health."

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

16 "(1) If the court determines that the defendant lacks  
17 fitness to proceed, the proceeding against the defendant shall



1 be suspended, except as provided in section 704-407, and the  
2 court shall commit the defendant to the custody of the director  
3 of health to be placed in an appropriate institution for  
4 detention, care, and treatment. If the court is satisfied that  
5 the defendant may be released on condition without danger to the  
6 defendant or to the person or property of others, the court  
7 shall order the defendant's release, which shall continue at the  
8 discretion of the court on conditions the court determines  
9 necessary. A copy of the report filed pursuant to section  
10 704-404 shall be attached to the order of commitment or order of  
11 release on conditions. When the defendant is committed to the  
12 custody of the director of health for detention, care, and  
13 treatment, unless already provided pursuant to section  
14 704-404(8), the court shall provide the director of health  
15 copies of all existing medical, mental health, social, police,  
16 and juvenile records, including other pertinent records in the  
17 custody of public agencies obtained pursuant to section  
18 704-404(8), with the exception of expunged records; provided  
19 that the disclosure of the defendant's juvenile records shall be  
20 limited to those records relating to the defendant's mental  
21 health or mental condition. Records shall not be re-disclosed  
22 except to the extent permitted by law."



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

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

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

13 (i) Is affected by a physical or mental disease,  
14 disorder, or defect;

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

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

17 provided that the director of health shall place  
18 defendants charged with misdemeanors or felonies not  
19 involving violence or attempted violence in the least  
20 restrictive environment appropriate in light of the  
21 defendant's treatment needs and the need to prevent  
22 harm to the person confined and others[+]. Unless



1 already provided pursuant to sections 704-404(8) or  
2 704-406(1), the court shall provide the director of  
3 health copies of all existing medical, mental health,  
4 social, police, and juvenile records, including other  
5 pertinent records in the custody of public agencies  
6 that have been obtained pursuant to section  
7 704-404(8), with the exception of expunged records;  
8 provided that the disclosure of the defendant's  
9 juvenile records shall be limited to those records  
10 relating to the defendant's mental health or mental  
11 condition. Records shall not be re-disclosed except  
12 to the extent permitted by law;

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

21 (c) The court shall order the defendant discharged if the  
22 court finds that the defendant is no longer affected



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

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

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



**Report Title:**

Records of Defendants Committed to a Hospital Controlled by the Director of Health or to Custody of Director of Health

**Description:**

Requires the courts to provide the director of health with the records of defendants court-ordered to the state hospital or related facility under the cognizance of the department. (SD2)

