

JAN 23 2009

A BILL FOR AN ACT

RELATING TO PENAL RESPONSIBILITY.

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

1 SECTION 1. Section 704-400, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§704-400 [Physical or mental disease, disorder, or defect~~
4 ~~excluding penal responsibility.~~ (1) A person is not
5 responsible, under this Code, for conduct if at the time of the
6 conduct as a result of physical or mental disease, disorder, or
7 defect the person lacks substantial capacity either to
8 appreciate the wrongfulness of the person's conduct or to
9 conform the person's conduct to the requirements of law.

10 ~~(2) As used in this chapter, the terms "physical or mental~~
11 ~~disease, disorder, or defect" do not include an abnormality~~
12 ~~manifested only by repeated penal or otherwise anti-social~~
13 ~~conduct.]~~ **Mental condition not a defense.** A person's mental
14 condition shall not be a defense to any charge of criminal
15 conduct."

16 SECTION 2. Section 704-404, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "(1) Whenever [~~the defendant has filed a notice of~~
2 ~~intention to rely on the defense of physical or mental disease,~~
3 ~~disorder, or defect excluding responsibility, or~~] there is
4 reason to doubt the defendant's fitness to proceed, [~~or reason~~
5 ~~to believe that the physical or mental disease, disorder, or~~
6 ~~defect of the defendant will or has become an issue in the~~
7 ~~ease,~~] the court may immediately suspend all further proceedings
8 in the prosecution. If a trial jury has been empanelled, it
9 shall be discharged or retained at the discretion of the court.
10 The discharge of the trial jury shall not be a bar to further
11 prosecution.

12 (2) Upon suspension of further proceedings in the
13 prosecution, the court shall appoint three qualified examiners
14 in felony cases and one qualified examiner in nonfelony cases to
15 examine and report upon the physical and mental condition of the
16 defendant. In felony cases the court shall appoint at least one
17 psychiatrist and at least one licensed psychologist. The third
18 member may be a psychiatrist, licensed psychologist, or
19 qualified physician. One of the three shall be a psychiatrist
20 or licensed psychologist designated by the director of health
21 from within the department of health. In nonfelony cases the
22 court may appoint either a psychiatrist or a licensed



1 psychologist. All examiners shall be appointed from a list of
2 certified examiners as determined by the department of health.
3 The court, in appropriate circumstances, may appoint an
4 additional examiner or examiners. The examination may be
5 conducted on an out-patient basis or, in the court's discretion,
6 when necessary the court may order the defendant to be committed
7 to a hospital or other suitable facility for the purpose of the
8 examination for a period not exceeding thirty days, or such
9 longer period as the court determines to be necessary for the
10 purpose. The court may direct that one or more qualified
11 physicians or psychologists retained by the defendant be
12 permitted to witness the examination. As used in this section,
13 the term "licensed psychologist" includes psychologists exempted
14 from licensure by section 465-3(a)(3).

15 (3) An examination performed under this section may employ
16 any method that is accepted by the professions of medicine or
17 psychology for the examination of those alleged to be affected
18 by a physical or mental disease, disorder, or defect; provided
19 that each examiner shall form and render diagnoses and opinions
20 upon the physical and mental condition of the defendant
21 independently from the other examiners, and the examiners, upon
22 approval of the court, may secure the services of clinical



1 psychologists and other medical or paramedical specialists to
2 assist in the examination and diagnosis.

3 (4) The report of the examination shall include the
4 following:

5 (a) A description of the nature of the examination;

6 (b) A diagnosis of the physical or mental condition of the
7 defendant;

8 (c) An opinion as to the defendant's capacity to
9 understand the proceedings against the defendant and
10 to assist in the defendant's own defense;

11 ~~[(d) An opinion as to the extent, if any, to which the
12 capacity of the defendant to appreciate the
13 wrongfulness of the defendant's conduct or to conform
14 the defendant's conduct to the requirements of law was
15 impaired at the time of the conduct alleged;~~

16 ~~-(e) When directed by the court, an opinion as to the
17 capacity of the defendant to have a particular state
18 of mind that is required to establish an element of
19 the offense charged;] and~~

20 ~~[-(f)]~~ (d) Where more than one examiner is appointed, a
21 statement that the diagnosis and opinion rendered were
22 arrived at independently of any other examiner, unless



1 there is a showing to the court of a clear need for
2 communication between or among the examiners for
3 clarification. A description of the communication
4 shall be included in the report. After all reports
5 are submitted to the court, examiners may confer
6 without restriction.

7 (5) If the examination cannot be conducted by reason of
8 the unwillingness of the defendant to participate therein, the
9 report shall so state and shall include, if possible, an opinion
10 as to whether such unwillingness of the defendant was the result
11 of physical or mental disease, disorder, or defect.

12 (6) Three copies of the report of the examination,
13 including any supporting documents, shall be filed with the
14 clerk of the court, who shall cause copies to be delivered to
15 the prosecuting attorney and to counsel for the defendant.

16 (7) Any examiner shall be permitted to make a separate
17 explanation reasonably serving to clarify the examiner's
18 diagnosis or opinion.

19 (8) The court shall obtain all existing medical, mental
20 health, social, police, and juvenile records, including those
21 expunged, and other pertinent records in the custody of public
22 agencies, notwithstanding any other statutes, and make such



1 records available for inspection by the examiners. If, pursuant
2 to this section, the court orders the defendant committed to a
3 hospital or other suitable facility under the control of the
4 director of health, then the county police departments shall
5 provide to the director of health and the defendant copies of
6 all police reports from cases filed against the defendant which
7 have been adjudicated by the acceptance of a plea of guilty or
8 no contest, a finding of guilt, acquittal, acquittal pursuant to
9 section 704-400, or by the entry of plea of guilty or no contest
10 made pursuant to chapter 853, so long as the disclosure to the
11 director of health and the defendant does not frustrate a
12 legitimate function of the county police departments, with the
13 exception of expunged records, records of or pertaining to any
14 adjudication or disposition rendered in the case of a juvenile,
15 or records containing data from the United States National Crime
16 Information Center. The county police departments shall
17 segregate or sanitize from the police reports information that
18 would result in the likelihood or actual identification of
19 individuals who furnished information in connection with its
20 investigation, or who were of investigatory interest. Records
21 shall not be re-disclosed except to the extent permitted by law.



1 (9) The compensation of persons making or assisting in the
2 examination, other than those retained by the nonindigent
3 defendant, who are not undertaking the examination upon
4 designation by the director of health as part of their normal
5 duties as employees of the State or a county, shall be paid by
6 the State."

7 SECTION 3. Section 704-410, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§704-410 Form of expert testimony regarding ~~physical or~~**
10 **~~mental disease, disorder, or defect.~~ fitness to proceed.** (1)

11 At the hearing pursuant to section 704-405 [~~or upon the trial~~],
12 the examiners who reported pursuant to section 704-404 may be
13 called as witnesses by the prosecution, the defendant, or the
14 court. [~~If the issue is being tried before a jury, the jury may~~
15 ~~be informed that the examiners or any of them were designated by~~
16 ~~the court or by the director of health at the request of the~~
17 ~~court, as the case may be.] If called by the court, the witness
18 shall be subject to cross-examination by the prosecution and the
19 defendant. Both the prosecution and the defendant may summon
20 any other qualified physician or licensed psychologist or other
21 expert to testify, but no one who has not examined the defendant
22 shall be competent to testify to an expert opinion with respect~~



1 to the physical or mental condition of the defendant, as
2 distinguished from the validity of the procedure followed by, or
3 the general scientific propositions stated by, another witness.

4 (2) When an examiner testifies on the issue of the
5 defendant's fitness to proceed, the examiner shall be permitted
6 to make a statement as to the nature of the examiner's
7 examination, the examiner's diagnosis of the physical or mental
8 condition of the defendant, and the examiner's opinion of the
9 extent, if any, to which the capacity of the defendant to
10 understand the proceedings against the defendant or to assist in
11 the defendant's own defense is impaired as a result of physical
12 or mental disease, disorder, or defect.

13 ~~[(3) When an examiner testifies on the issue of the~~
14 ~~defendant's responsibility for conduct alleged or the issue of~~
15 ~~the defendant's capacity to have a particular state of mind~~
16 ~~which is necessary to establish an element of the offense~~
17 ~~charged, the examiner shall be permitted to make a statement as~~
18 ~~to the nature of the examiner's examination, the examiner's~~
19 ~~diagnosis of the physical or mental condition of the defendant~~
20 ~~at the time of the conduct alleged, and the examiner's opinion~~
21 ~~of the extent, if any, to which the capacity of the defendant to~~
22 ~~appreciate the wrongfulness of the defendant's conduct or to~~



1 ~~conform the defendant's conduct to the requirements of law or to~~
2 ~~have a particular state of mind which is necessary to establish~~
3 ~~an element of the offense charged was impaired as a result of~~
4 ~~physical or mental disease, disorder, or defect at that time.~~

5 ~~(4)]~~ (3) When an examiner testifies, the examiner shall be
6 permitted to make any explanation reasonably serving to clarify
7 the examiner's diagnosis and opinion and may be cross-examined
8 as to any matter bearing on the examiner's competency or
9 credibility or the validity of the examiner's diagnosis or
10 opinion."

11 SECTION 4. Section 704-402, Hawaii Revised Statutes, is
12 repealed.

13 [~~§704-402 Physical or mental disease, disorder, or defect~~
14 ~~excluding responsibility is an affirmative defense; form of~~
15 ~~verdict and judgment when finding of irresponsibility is made.~~

16 ~~(1) Physical or mental disease, disorder, or defect excluding~~
17 ~~responsibility is an affirmative defense.~~

18 ~~(2) When the defense provided for by subsection (1) is~~
19 ~~submitted to a jury, the court shall, if requested by the~~
20 ~~defendant, instruct the jury as to the consequences to the~~
21 ~~defendant of an acquittal on the ground of physical or mental~~
22 ~~disease, disorder, or defect excluding responsibility.~~



1 ~~(3) When the defendant is acquitted on the ground of~~
2 ~~physical or mental disease, disorder, or defect excluding~~
3 ~~responsibility, the verdict and the judgment shall so state."]~~

4 SECTION 5. Section 704-408, Hawaii Revised Statutes, is
5 repealed.

6 ~~["§704-408 Determination of irresponsibility. If the~~
7 ~~report of the examiners filed pursuant to section 704-404, or~~
8 ~~the report of examiners of the defendant's choice under section~~
9 ~~704-409, states that the defendant at the time of the conduct~~
10 ~~alleged was affected by a physical or mental disease, disorder,~~
11 ~~or defect that substantially impaired the defendant's capacity~~
12 ~~to appreciate the wrongfulness of the defendant's conduct or to~~
13 ~~conform the defendant's conduct to the requirements of law, the~~
14 ~~court shall submit the defense of physical or mental disease,~~
15 ~~disorder, or defect to the jury or the trier of fact at the~~
16 ~~trial of the charge against the defendant."]~~

17 SECTION 6. Section 704-411, Hawaii Revised Statutes, is
18 repealed.

19 ~~["§704-411 Legal effect of acquittal on the ground of~~
20 ~~physical or mental disease, disorder, or defect excluding~~
21 ~~responsibility; commitment; conditional release; discharge;~~
22 ~~procedure for separate post-acquittal hearing. (1) When a~~



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

- 7 ~~(a) The court shall order the defendant to be committed to~~
8 ~~the custody of the director of health to be placed in~~
9 ~~an appropriate institution for custody, care, and~~
10 ~~treatment if the court finds that the defendant:~~
- 11 ~~(i) Is affected by a physical or mental disease,~~
12 ~~disorder, or defect;~~
- 13 ~~(ii) Presents a risk of danger to self or others; and~~
- 14 ~~(iii) Is not a proper subject for conditional release;~~
15 ~~provided that the director of health shall place~~
16 ~~defendants charged with misdemeanors or felonies not~~
17 ~~involving violence or attempted violence in the least~~
18 ~~restrictive environment appropriate in light of the~~
19 ~~defendant's treatment needs and the need to prevent~~
20 ~~harm to the person confined and others. The county~~
21 ~~police departments shall provide to the director of~~
22 ~~health and the defendant copies of all police reports~~



1 ~~from cases filed against the defendant which have been~~
2 ~~adjudicated by the acceptance of a plea of guilty or~~
3 ~~no contest, a finding of guilt, acquittal, acquittal~~
4 ~~pursuant to section 704-400, or by the entry of a plea~~
5 ~~of guilty or no contest made pursuant to chapter 853,~~
6 ~~so long as the disclosure to the director of health~~
7 ~~and the defendant does not frustrate a legitimate~~
8 ~~function of the county police departments, with the~~
9 ~~exception of expunged records, records of or~~
10 ~~pertaining to any adjudication or disposition rendered~~
11 ~~in the case of a juvenile, or records containing data~~
12 ~~from the United States National Crime Information~~
13 ~~Center. The county police departments shall segregate~~
14 ~~or sanitize from the police reports information that~~
15 ~~would result in the likelihood or actual~~
16 ~~identification of individuals who furnished~~
17 ~~information in connection with the investigation of~~
18 ~~who were of investigatory interest. Records shall not~~
19 ~~be re-disclosed except to the extent permitted by law;~~
20 (b) ~~The court shall order the defendant to be granted~~
21 ~~conditional release with conditions as the court deems~~
22 ~~necessary if the court finds that the defendant is~~



1 ~~affected by physical or mental disease, disorder, or~~
2 ~~defect and that the defendant presents a danger to~~
3 ~~self or others, but that the defendant can be~~
4 ~~controlled adequately and given proper care,~~
5 ~~supervision, and treatment if the defendant is~~
6 ~~released on condition; or~~

7 ~~(e) The court shall order the defendant discharged if the~~
8 ~~court finds that the defendant is no longer affected~~
9 ~~by physical or mental disease, disorder, or defect or,~~
10 ~~if so affected, that the defendant no longer presents~~
11 ~~a danger to self or others and is not in need of care,~~
12 ~~supervision, or treatment.~~

13 ~~(2) The court, upon its own motion or on the motion of the~~
14 ~~prosecuting attorney or the defendant, shall order a separate~~
15 ~~post-acquittal hearing for the purpose of taking evidence on the~~
16 ~~issue of physical or mental disease, disorder, or defect and the~~
17 ~~risk of danger that the defendant presents to self or others.~~

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

19 ~~(a) In nonfelony cases, the court shall appoint a~~
20 ~~qualified examiner to examine and report upon the~~
21 ~~physical and mental condition of the defendant. The~~
22 ~~court may appoint either a psychiatrist or a licensed~~



1 ~~psychologist. The examiner may be designated by the~~
2 ~~director of health from within the department of~~
3 ~~health. The examiner shall be appointed from a list~~
4 ~~of certified examiners as determined by the department~~
5 ~~of health. The court, in appropriate circumstances,~~
6 ~~may appoint an additional examiner or examiners; and~~

7 (b) ~~In felony cases, the court shall appoint three~~
8 ~~qualified examiners to examine and report upon the~~
9 ~~physical and mental condition of the defendant. In~~
10 ~~each case, the court shall appoint at least one~~
11 ~~psychiatrist and at least one licensed psychologist.~~
12 ~~The third member may be a psychiatrist, a licensed~~
13 ~~psychologist, or a qualified physician. One of the~~
14 ~~three shall be a psychiatrist or licensed psychologist~~
15 ~~designated by the director of health from within the~~
16 ~~department of health. The three examiners shall be~~
17 ~~appointed from a list of certified examiners as~~
18 ~~determined by the department of health.~~

19 ~~To facilitate the examination and the proceedings thereon, the~~
20 ~~court may cause the defendant, if not then confined, to be~~
21 ~~committed to a hospital or other suitable facility for the~~
22 ~~purpose of examination for a period not exceeding thirty days or~~



1 ~~such longer period as the court determines to be necessary for~~
2 ~~the purpose upon written findings for good cause shown. The~~
3 ~~court may direct that qualified physicians or psychologists~~
4 ~~retained by the defendant be permitted to witness the~~
5 ~~examination. The examination and report and the compensation of~~
6 ~~persons making or assisting in the examination shall be in~~
7 ~~accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),~~
8 ~~and (9). As used in this section, the term "licensed~~
9 ~~psychologist" includes psychologists exempted from licensure by~~
10 ~~section 465-3(a)(3):~~

11 ~~(4) Whether the court's order under subsection (1) is made~~
12 ~~on the basis of the medical or psychological evidence given at~~
13 ~~the trial, or on the basis of the report made pursuant to~~
14 ~~section 704-404, or the medical or psychological evidence given~~
15 ~~at a separate hearing, the burden shall be upon the State to~~
16 ~~prove, by a preponderance of the evidence, that the defendant is~~
17 ~~affected by a physical or mental disease, disorder, or defect~~
18 ~~and may not safely be discharged and that the defendant should~~
19 ~~be either committed or conditionally released as provided in~~
20 ~~subsection (1).~~

21 ~~(5) The director of health may apply to the court to~~
22 ~~conduct a hearing to assess any further need for inpatient~~



1 ~~hospitalization of a person who is acquitted on the ground of~~
2 ~~physical or mental disease, disorder, or defect excluding~~
3 ~~responsibility. The director shall make this application in a~~
4 ~~report to the circuit from which the order was issued. The~~
5 ~~director shall transmit a copy of the application and report to~~
6 ~~the prosecuting attorney of the county from which the order was~~
7 ~~issued.~~

8 ~~(6) Any person committed pursuant to this chapter may~~
9 ~~apply to the court to conduct a hearing to assess any further~~
10 ~~need for inpatient hospitalization of the committed person~~
11 ~~acquitted on the ground of physical or mental disease, disorder,~~
12 ~~or defect excluding responsibility. The application shall be~~
13 ~~accompanied by a letter from or supporting affidavit of a~~
14 ~~qualified physician or licensed psychologist. A copy of the~~
15 ~~application and letter or affidavit shall be transmitted to the~~
16 ~~circuit from which the order was issued. The person shall~~
17 ~~transmit a copy of the application and letter or affidavit to~~
18 ~~the prosecuting attorney of the county from which the order was~~
19 ~~issued.~~

20 ~~(7) Upon application to the court by either the director~~
21 ~~of health or the person committed, the court shall complete the~~
22 ~~hearing process and render a decision within sixty days of the~~



1 application, provided that for good cause the court may extend
2 the sixty day time frame upon the request of the director of
3 health or the person.

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

6 SECTION 7. Section 704-412, Hawaii Revised Statutes, is
7 repealed.

8 [~~§704-412 Committed person; application for conditional~~
9 ~~release or discharge; by the director of health; by the person.~~

10 ~~(1) After the expiration of at least ninety days following an~~
11 ~~original order of commitment pursuant to section 704-411(1)(a),~~
12 ~~or after expiration of at least sixty days following the~~
13 ~~revocation of conditional release pursuant to section 704-413,~~
14 ~~if the director of health is of the opinion that the person~~
15 ~~committed is still affected by a physical or mental disease,~~
16 ~~disorder, or defect and may be granted conditional release or~~
17 ~~discharged without danger to self or to the person or property~~
18 ~~of others or that the person is no longer affected by a physical~~
19 ~~or mental disease, disorder, or defect, the director shall make~~
20 ~~an application for either the conditional release or discharge~~
21 ~~of the person, as appropriate. In such a case, the director~~
22 ~~shall submit a report to the court by which the person was~~



1 ~~ordered committed and shall transmit copies of the application~~
2 ~~and report to the prosecuting attorney of the county from which~~
3 ~~the person was committed and to the person committed.~~

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

21 SECTION 8. Section 704-413, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§704-413 Conditional release; application for~~
2 ~~modification or discharge; termination of conditional release~~
3 ~~and commitment. (1) Any person granted conditional release~~
4 ~~pursuant to this chapter shall continue to receive mental health~~
5 ~~or other treatment and care deemed appropriate by the director~~
6 ~~of health until discharged from conditional release. The person~~
7 ~~shall follow all prescribed treatments and take all prescribed~~
8 ~~medications according to the instructions of the person's~~
9 ~~treating mental health professional. If a mental health~~
10 ~~professional who is treating a person granted conditional~~
11 ~~release believes that either the person is not complying with~~
12 ~~the requirements of this section or there is other evidence that~~
13 ~~hospitalization is appropriate, the mental health professional~~
14 ~~shall report the matter to the probation officer of the person~~
15 ~~granted conditional release. The probation officer may order~~
16 ~~the person granted conditional release to be hospitalized for a~~
17 ~~period not to exceed seventy two hours if the probation officer~~
18 ~~has probable cause to believe the person has violated the~~
19 ~~requirements of this subsection. No person shall be~~
20 ~~hospitalized beyond the seventy two hour period, as computed~~
21 ~~pursuant to section 1-29, unless a hearing has been held~~
22 ~~pursuant to subsection (4); provided that on or before the~~



1 ~~expiration of the seventy-two-hour period, a court may conduct a~~
2 ~~hearing to determine whether the person would benefit from~~
3 ~~further hospitalization, which may render a revocation of~~
4 ~~conditional release unnecessary. If satisfied, the court may~~
5 ~~order further temporary hospitalization for a period not to~~
6 ~~exceed ninety days, subject to extension as appropriate, but in~~
7 ~~no event for a period longer than one year. At any time within~~
8 ~~that period, the court may determine that a hearing pursuant to~~
9 ~~subsection (4) should be conducted.~~

10 ~~(2) The director of health may apply to the court ordering~~
11 ~~any person released pursuant to this chapter, for the person's~~
12 ~~discharge from, or modification of, the order granting~~
13 ~~conditional release; provided that the person receives~~
14 ~~community-based mental health services from or contracted by the~~
15 ~~department of health, and the director is of the opinion that~~
16 ~~the person on conditional release is no longer affected by a~~
17 ~~physical or mental disease, disorder, or defect and may be~~
18 ~~discharged, or the order may be modified, without danger to the~~
19 ~~person or to others. The director shall make an application for~~
20 ~~the discharge from, or modification of, the order of conditional~~
21 ~~release in a report to the circuit from which the order was~~
22 ~~issued. The director shall transmit a copy of the application~~



1 ~~and report to the prosecuting attorney of the county from which~~
2 ~~the conditional release order was issued, to the person's~~
3 ~~treating mental health professionals, and to the probation~~
4 ~~officer supervising the conditional release. The person on~~
5 ~~conditional release shall be given notice of the application.~~

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



1 ~~(4) If, at any time after the order pursuant to this~~
2 ~~chapter granting conditional release, the court determines,~~
3 ~~after hearing evidence, that:~~

4 ~~(a) The person is still affected by a physical or mental~~
5 ~~disease, disorder, or defect, and the conditions of~~
6 ~~release have not been fulfilled; or~~

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

13 ~~(5) Upon application for discharge from, or modification~~
14 ~~of, the order of conditional release by either the director of~~
15 ~~health or the person, the court shall complete the hearing~~
16 ~~process and render a decision within sixty days of the~~
17 ~~application, provided that for good cause the court may extend~~
18 ~~the sixty day time frame upon the request of the director of~~
19 ~~health or the person."]~~

20 SECTION 9. Section 704-414, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§704-414 Procedure upon application for discharge,~~
2 ~~conditional release, or modification of conditions of release.~~
3 ~~Upon filing of an application pursuant to section 704-412 for~~
4 ~~discharge or conditional release, or upon the filing of an~~
5 ~~application pursuant to section 704-413 for discharge or for~~
6 ~~modification of conditions of release, the court shall appoint~~
7 ~~three qualified examiners in felony cases and one qualified~~
8 ~~examiner in nonfelony cases to examine and report upon the~~
9 ~~physical and mental condition of the defendant. In felony cases~~
10 ~~the court shall appoint at least one psychiatrist and at least~~
11 ~~one licensed psychologist. The third member may be a~~
12 ~~psychiatrist, a licensed psychologist, or a qualified physician.~~
13 ~~One of the three shall be a psychiatrist or licensed~~
14 ~~psychologist designated by the director of health from within~~
15 ~~the department of health. The examiners shall be appointed from~~
16 ~~a list of certified examiners as determined by the department of~~
17 ~~health. To facilitate the examination and the proceedings~~
18 ~~thereon, the court may cause the defendant, if not then~~
19 ~~confined, to be committed to a hospital or other suitable~~
20 ~~facility for the purpose of the examination and may direct that~~
21 ~~qualified physicians or psychologists retained by the defendant~~
22 ~~be permitted to witness the examination. The examination and~~



1 ~~report and the compensation of persons making or assisting in~~
2 ~~the examination shall be in accord with section 704-404(3),~~
3 ~~(4)(a) and (b), (6), (7), (8), and (9). As used in this~~
4 ~~section, the term "licensed psychologist" includes psychologists~~
5 ~~exempted from licensure by section 465-3(a)(3)."]~~

6 SECTION 10. Section 704-415, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§704-415 Disposition of application for discharge,~~
9 ~~conditional release, or modification of conditions of release.~~

10 ~~(1) If the court is satisfied from the report filed pursuant to~~
11 ~~section 704-414, and such testimony of the reporting examiners~~
12 ~~as the court deems necessary, that:~~

13 ~~(a) The person is affected by a physical or mental~~
14 ~~disease, disorder, or defect and the discharge,~~
15 ~~conditional release, or modification of conditions of~~
16 ~~release applied for may be granted without danger to~~
17 ~~the committed or conditionally released person or to~~
18 ~~the person or property of others; or~~

19 ~~(b) The person is no longer affected by a physical or~~
20 ~~mental disease, disorder, or defect,~~



1 ~~the court shall grant the application and order the relief. If~~
2 ~~the court is not so satisfied, it shall promptly order a~~
3 ~~hearing.~~

4 ~~(2) Any such hearing shall be deemed a civil proceeding~~
5 ~~and the burden shall be upon the applicant to prove that the~~
6 ~~person is no longer affected by a physical or mental disease,~~
7 ~~disorder, or defect or may safely be either released on the~~
8 ~~conditions applied for or discharged. According to the~~
9 ~~determination of the court upon the hearing, the person shall~~
10 ~~be:~~

11 ~~(a) Discharged;~~

12 ~~(b) Released on such conditions as the court determines to~~
13 ~~be necessary; or~~

14 ~~(c) Recommited to the custody of the director of health,~~
15 ~~subject to discharge or release only in accordance~~
16 ~~with the procedure prescribed in section 704-412."]~~

17 SECTION 11. The legislative reference bureau shall prepare
18 proposed conforming legislation to make necessary amendments to
19 statutes affected by the repeal of sections 704-402, 704-408,
20 704-411, 704-412, 704-413, 704-414, and 704-415. The
21 legislative reference bureau shall transmit such proposed



1 legislation to the legislature not later than twenty days prior
2 to the convening of the regular session of 2010.

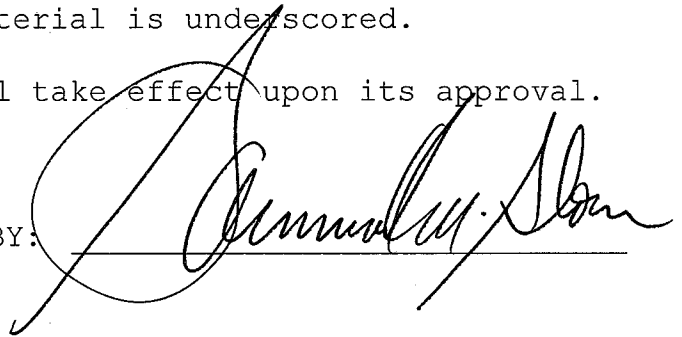
3 SECTION 12. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun, before its effective date.

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

8 SECTION 14. This Act shall take effect upon its approval.

9

INTRODUCED BY: _____



Report Title:

Insanity Defense

Description:

Eliminates the insanity defense.

