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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS OF A PERSON  
FOUND UNFIT TO STAND TRIAL.

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

1           SECTION 1. The purpose of this Act is to amend the law to  
2 establish a compliance reporting mechanism for persons found  
3 unfit to stand trial who are released on conditions to the  
4 community.

5           SECTION 2. Section 704-406, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§704-406 Effect of finding of unfitness to proceed.** (1)

8 If the court determines that the defendant lacks fitness to  
9 proceed, the proceeding against the defendant shall be  
10 suspended, except as provided in section 704-407, and the court  
11 shall commit the defendant to the custody of the director of  
12 health to be placed in an appropriate institution for detention,  
13 care, and treatment. If the court is satisfied that the  
14 defendant may be released on [~~condition~~] conditions without  
15 danger to the defendant or to the person or property of others,  
16 the court shall order the defendant's release, which shall  
17 continue at the discretion of the court on conditions the court



1 determines necessary. A copy of the report filed pursuant to  
2 section 704-404 shall be attached to the order of commitment or  
3 order of release on conditions. When the defendant is committed  
4 to the custody of the director of health for detention, care,  
5 and treatment, the county police departments shall provide to  
6 the director of health and the defendant copies of all police  
7 reports from cases filed against the defendant which have been  
8 adjudicated by [~~the acceptance of a plea of guilty or no~~  
9 ~~contest,~~] a finding of guilt, acquittal, acquittal pursuant to  
10 section 704-400, or by the entry of a plea of guilty or [~~no~~  
11 ~~contest~~] nolo contendere made pursuant to chapter 853[~~, so long~~  
12 ~~as~~]; provided that the disclosure to the director of health and  
13 the defendant does not frustrate a legitimate function of the  
14 county police departments[~~, with the exception of~~]; provided  
15 further that 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[~~-~~] shall not be disclosed pursuant to this  
19 section. The county police departments shall segregate or  
20 [~~sanitize~~] redact from the police reports information that would  
21 result in the [~~likelihood~~] likely or actual identification of  
22 individuals who furnished information in connection with the



1 investigation ~~[of]~~ or who were of investigatory interest.  
2 Records shall not be re-disclosed except to the extent permitted  
3 by law.

4 (2) When the defendant is released on conditions after a  
5 finding of unfitness to proceed, the department of health shall  
6 establish and monitor a fitness restoration program consistent  
7 with conditions set by the court order of release, and shall  
8 inform the prosecuting attorney of the county that charged the  
9 defendant of the plan and report the defendant's non-compliance  
10 therewith.

11 ~~[(2)]~~ (3) When the court, on its own motion or upon the  
12 application of the director of health, the prosecuting attorney,  
13 or the defendant, determines, after a hearing if a hearing is  
14 requested, that the defendant has regained fitness to proceed,  
15 the penal proceeding shall be resumed. If, however, the court  
16 is of the view that so much time has elapsed since the  
17 commitment or release on conditions of the defendant that it  
18 would be unjust to resume the proceeding, the court may dismiss  
19 the charge and:

20 (a) Order the defendant to be discharged;

21 (b) Subject to the law governing the involuntary civil  
22 commitment of persons affected by physical or mental



1 disease, disorder, or defect, order the defendant to  
2 be committed to the custody of the director of health  
3 to be placed in an appropriate institution for  
4 detention, care, and treatment; or

5 (c) Subject to the law governing involuntary outpatient  
6 treatment, order the defendant to be released on  
7 conditions the court determines necessary.

8 [~~3~~] (4) Within a reasonable time following any commitment  
9 under subsection (1), the director of health shall report to the  
10 court on whether the defendant presents a substantial likelihood  
11 of becoming fit to proceed in the future. The court, in  
12 addition, may appoint a panel of three qualified examiners in  
13 felony cases or one qualified examiner in nonfelony cases to  
14 make a report. If, following a report, the court determines  
15 that the defendant probably will remain unfit to proceed, the  
16 court may dismiss the charge and:

17 (a) Release the defendant; or

18 (b) Subject to the law governing involuntary civil  
19 commitment, order the defendant to be committed to the  
20 custody of the director of health to be placed in an  
21 appropriate institution for detention, care, and  
22 treatment.



1       ~~[(4)]~~ (5) Within a reasonable time following any release  
2 under subsection (1), the court shall appoint a panel of three  
3 qualified examiners in felony cases or one qualified examiner in  
4 nonfelony cases to report to the court on whether the defendant  
5 presents a substantial likelihood of becoming fit to proceed in  
6 the future. If, following the report, the court determines that  
7 the defendant probably will remain unfit to proceed, the court  
8 may dismiss the charge and:

- 9       (a) Release the defendant; or  
10       (b) Subject to the law governing involuntary civil  
11             commitment, order the defendant to be committed to the  
12             custody of the director of health to be placed in an  
13             appropriate institution for detention, care, and  
14             treatment."

15       SECTION 3. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17       SECTION 4. This Act shall take effect on January 7, 2059.



**Report Title:**

Mental Health Release on Conditions of a Person Found Unfit to Stand Trial

**Description:**

Requires the Department of Health to provide a fitness restoration program for defendants unfit to proceed with court proceedings and on conditional release, and to report information regarding defendant's plan and compliance to the prosecutor of the county where the defendant was charged. Effective January 7, 2059. (HB1071 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

