

JAN 26 2011

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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 contest,  
9 a finding of guilt, acquittal, acquittal pursuant to section  
10 704-400, or by the entry of a plea of guilty or no contest made  
11 pursuant to chapter 853, so long as the disclosure to the  
12 director of health and the defendant does not frustrate a  
13 legitimate function of the county police departments, with the  
14 exception of expunged records, records of or pertaining to any  
15 adjudication or disposition rendered in the case of a juvenile,  
16 or records containing data from the United States National Crime  
17 Information Center. The county police departments shall  
18 segregate or sanitize from the police reports information that  
19 would result in the likelihood or actual identification of  
20 individuals who furnished information in connection with the  
21 investigation of who were of investigatory interest. Records  
22 shall not be re-disclosed except to the extent permitted by law.

1           (2) When the defendant is released on conditions after a  
2 finding of unfitness to proceed, the department of health shall  
3 establish and monitor a fitness restoration program consistent  
4 with conditions set by the court order of release, and shall  
5 inform the department of public safety's intake service center  
6 of the plan and the defendant's ongoing compliance therewith.  
7 The Intake Service Center shall take appropriate action, which  
8 may include reporting any violation to the court for possible  
9 revocation purposes.

10           [~~(2)~~] (3) When the court, on its own motion or upon the  
11 application of the director of health, the prosecuting attorney,  
12 or the defendant, determines, after a hearing if a hearing is  
13 requested, that the defendant has regained fitness to proceed,  
14 the penal proceeding shall be resumed. If, however, the court  
15 is of the view that so much time has elapsed since the  
16 commitment or release on conditions of the defendant that it  
17 would be unjust to resume the proceeding, the court may dismiss  
18 the charge and:

- 19           (a) Order the defendant to be discharged;
- 20           (b) Subject to the law governing the involuntary civil  
21           commitment of persons affected by physical or mental  
22           disease, disorder, or defect, order the defendant to

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

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

7 [~~3~~] (4) Within a reasonable time following any commitment  
8 under subsection (1), the director of health shall report to the  
9 court on whether the defendant presents a substantial likelihood  
10 of becoming fit to proceed in the future. The court, in  
11 addition, may appoint a panel of three qualified examiners in  
12 felony cases or one qualified examiner in nonfelony cases to  
13 make a report. If, following a report, the court determines  
14 that the defendant probably will remain unfit to proceed, the  
15 court may dismiss the charge and:

16 (a) Release the defendant; or

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



**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. Allows Department of Public Safety to take appropriate action on information shared regarding defendant compliance.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO MENTAL HEALTH  
RELEASE ON CONDITIONS OF A PERSON FOUND  
UNFIT TO STAND TRIAL.

PURPOSE: To establish a compliance reporting  
mechanism for persons found unfit to stand  
trial who are released on conditions to the  
community.

MEANS: Amend section 704-406, Hawaii Revised  
Statutes (HRS).

JUSTIFICATION: A criminal defendant must be able to  
participate meaningfully in court  
proceedings; in other words, be "fit to  
proceed" in order to go to trial or proceed  
with a plea bargain. Fitness refers,  
generally, to a defendant's ability to  
understand basic court proceedings,  
understand the details and specifics of the  
particular case, and work constructively  
with defense counsel. If a defendant is  
believed to be unable to do one or more of  
those three things, then the defendant is  
found "unfit to proceed" by the court.  
Court proceedings are typically halted  
temporarily, and the defendant is ordered to  
fitness restoration activities either in  
custody or while released on conditions in  
the community. It is expected that a  
combination of mental health treatment and  
education about court proceedings will  
eventually enable the defendant to  
participate meaningfully in court  
proceedings, at which time the court  
proceedings may be resumed.

Section 704-411, HRS, allows different  
placement options for fitness restoration:  
in the custody of the Director of the  
Department of Health (DOH) (Hawaii State  
Hospital (HSH) inpatient care) or placement

in the community. The determining factor in making the placement decision is the level of dangerousness of the defendant. If the court is satisfied that the person's level of dangerousness can be safely managed in the community, then the defendant may be "released on conditions," to reside at home, in a group home, at the AMHD fitness restoration facility, or elsewhere.

The current statute provides no description of a monitoring or reporting process for persons released on conditions into the community. The statute is silent on who should provide monitoring of these individuals, or what procedure should be followed should the person not comply with the terms and conditions of the person's release.

This proposal seeks to provide language detailing monitoring and reporting responsibilities. The proposal states that the department of health monitors defendants released on conditions as unfit to proceed, provides a plan for treatment, and reports defendants' compliance with the plan to the Department of Public Safety's (PSD) Intake Service Center (ISC). Upon receipt of the plan and compliance update, the ISC will take appropriate action, which may include reporting violations to the court for possible revocation proceedings.

This proposal resembles in philosophy the spirit of the Hawaii conditional release (CR) statutes. Hawaii's CR statutes require the department of health to provide treatment and report compliance to an assigned probation officer, who may in turn report violations to the court. The current proposal follows the same basic theory, but ISC replaces probation as the assigned agency to which plans and compliance are reported. This change is necessary because persons who are unfit to proceed are not yet adjudicated, but are instead pre-trial



defendants. A pre-trial agency (i.e., ISC) is the only appropriate agency for this population.

This proposal is expected to clarify the mechanism for reporting compliance and non-compliance to the court in cases involving persons released to the community as unfit to proceed. Ultimately, it is expected that courts will exercise the release on conditions option more frequently, as confidence in monitoring and reporting violations increases.

Impact on the public: While the option for release to the community currently exists, it is underutilized. More than 95% of all persons found unfit to proceed are sent to the HSH for restoration.

Enhancing the current statute will provide tighter regulation of monitoring and reporting of individuals' compliance with court-ordered requirements, including mental health treatments. It is likely that this enhancement will bolster confidence in the potential use of the statute, resulting in an increased number of individuals released on conditions as unfit to proceed.

This will result in increased freedoms for appropriate mentally ill individuals, with an enhanced mechanism to report potentially problematic behavior more quickly so as to maintain public safety.

Impact on the department and other agencies: This will result in several beneficial outcomes: creating more bed space at HSH for individuals who have a greater need for acute psychiatric care, maintain the HSH population at acceptable levels; and saving taxpayer money through the diversion of cases from HSH.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH-495.

OTHER AFFECTED  
AGENCIES: Department of Public Safety; Judiciary; City  
and County of Honolulu Prosecutors; County  
Prosecutors; Department of the Attorney  
General; Office of the Public Defender.

EFFECTIVE DATE: Upon approval.