



GOV. MSG. NO. **1215**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 14, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 14, 2011, the following bill was signed into law:

HB1071 HD2 SD1 CD1

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

Act 112 (11)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

JUN 14 2011

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 112
H.B. NO. 1071
H.D. 2
S.D. 1
C.D. 1

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~~] that have
8 been adjudicated by the acceptance of a plea of guilty or [~~no~~
9 ~~contest,~~] nolo contendere, a finding of guilt, acquittal,
10 acquittal pursuant to section 704-400, or by the entry of a plea
11 of guilty or [~~no-contest~~] nolo contendere made pursuant to
12 chapter 853, so long as the disclosure to the director of health
13 and the defendant does not frustrate a legitimate function of
14 the county police departments [~~, with the exception of~~]; provided
15 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 provided. The county police
19 departments shall segregate or sanitize from the police reports
20 information that would result in the [~~likelihood~~] likely or
21 actual identification of individuals who furnished information
22 in connection with the investigation [~~of~~] or who were of



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

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

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 other
8 commitment under subsection (1), the director of health shall
9 report to the court on whether the defendant presents a
10 substantial likelihood of becoming fit to proceed in the future.
11 The court, in addition, may appoint a panel of three qualified
12 examiners in felony cases or one qualified examiner in nonfelony
13 cases to make a report. If, following a report, the court
14 determines that the defendant probably will remain unfit to
15 proceed, the 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.



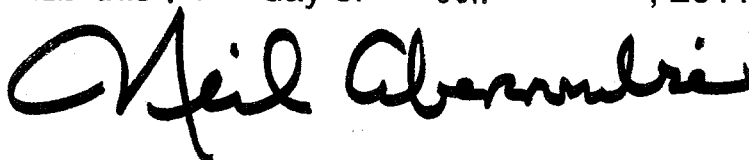
1 [~~4~~] (5) Within a reasonable time following any other
2 release on conditions under subsection (1), the court shall
3 appoint a panel of three qualified examiners in felony cases or
4 one qualified examiner in nonfelony cases to report to the court
5 on whether the defendant presents a substantial likelihood of
6 becoming fit to proceed in the future. If, following the
7 report, the court determines that the defendant probably will
8 remain unfit to proceed, the court 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 July 1, 2011.

APPROVED this 14 day of JUN, 2011



GOVERNOR OF THE STATE OF HAWAII

