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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~~] 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.



**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 program and compliance to the prosecutor of the county where the defendant was charged. Effective July 1, 2011. (HB1071 CD1)

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

