
A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH EXAMINATION REPORTS.

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

1 SECTION 1. The purpose of this Act is to amend the law
2 governing the reports of examinations of defendants with respect
3 to physical or mental disease, disorder, or defect, fitness to
4 proceed, and penal responsibility to ensure the reports'
5 confidentiality and also require that the reports be provided to
6 the director of health.

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

9 "**§704-404 Examination of defendant with respect to**
10 **physical or mental disease, disorder, or defect.** (1) Whenever
11 the defendant has filed a notice of intention to rely on the
12 defense of physical or mental disease, disorder, or defect
13 excluding responsibility, or there is reason to doubt the
14 defendant's fitness to proceed, or reason to believe that the
15 physical or mental disease, disorder, or defect of the defendant
16 will or has become an issue in the case, the court may
17 immediately suspend all further proceedings in the prosecution.

18 If a trial jury has been empanelled, it shall be discharged or



1 retained at the discretion of the court. The discharge of the
2 trial jury shall not be a bar to further prosecution.

3 (2) Upon suspension of further proceedings in the
4 prosecution, the court shall appoint three qualified examiners
5 in felony cases and one qualified examiner in nonfelony cases to
6 examine and report upon the physical and mental condition of the
7 defendant. In felony cases the court shall appoint at least one
8 psychiatrist and at least one licensed psychologist. The third
9 member may be a psychiatrist, licensed psychologist, or
10 qualified physician. One of the three shall be a psychiatrist
11 or licensed psychologist designated by the director of health
12 from within the department of health. In nonfelony cases the
13 court may appoint either a psychiatrist or a licensed
14 psychologist. All examiners shall be appointed from a list of
15 certified examiners as determined by the department of health.
16 The court, in appropriate circumstances, may appoint an
17 additional examiner or examiners. The examination may be
18 conducted on an out-patient basis or, in the court's discretion,
19 when necessary the court may order the defendant to be committed
20 to a hospital or other suitable facility for the purpose of the
21 examination for a period not exceeding thirty days, or ~~[such]~~ a
22 longer period as the court determines to be necessary for the



1 purpose. The court may direct that one or more qualified
2 physicians or psychologists retained by the defendant be
3 permitted to witness the examination. As used in this section,
4 the term "licensed psychologist" includes psychologists exempted
5 from licensure by section 465-3(a)(3).

6 (3) An examination performed under this section may employ
7 any method that is accepted by the professions of medicine or
8 psychology for the examination of those alleged to be affected
9 by a physical or mental disease, disorder, or defect; provided
10 that each examiner shall form and render diagnoses and opinions
11 upon the physical and mental condition of the defendant
12 independently from the other examiners, and the examiners, upon
13 approval of the court, may secure the services of clinical
14 psychologists and other medical or paramedical specialists to
15 assist in the examination and diagnosis.

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

- 18 (a) A description of the nature of the examination;
19 (b) A diagnosis of the physical or mental condition of the
20 defendant;



- 1 (c) An opinion as to the defendant's capacity to
2 understand the proceedings against the defendant and
3 to assist in the defendant's own defense;
- 4 (d) An opinion as to the extent, if any, to which the
5 capacity of the defendant to appreciate the
6 wrongfulness of the defendant's conduct or to conform
7 the defendant's conduct to the requirements of law was
8 impaired at the time of the conduct alleged;
- 9 (e) When directed by the court, an opinion as to the
10 capacity of the defendant to have a particular state
11 of mind that is required to establish an element of
12 the offense charged; and
- 13 (f) Where more than one examiner is appointed, a statement
14 that the diagnosis and opinion rendered were arrived
15 at independently of any other examiner, unless there
16 is a showing to the court of a clear need for
17 communication between or among the examiners for
18 clarification. A description of the communication
19 shall be included in the report. After all reports
20 are submitted to the court, examiners may confer
21 without restriction.



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

6 (6) [~~Three~~] The original and three copies of the report of
7 the examination, including any supporting documents, shall be
8 filed with the clerk of the court, who shall cause copies to be
9 delivered to the prosecuting attorney and to counsel for the
10 defendant.

11 (7) Any examiner shall be permitted to make a separate
12 explanation reasonably serving to clarify the examiner's
13 diagnosis or opinion.

14 (8) The court shall obtain all existing medical, mental
15 health, social, police, and juvenile records, including those
16 expunged, and other pertinent records in the custody of public
17 agencies, notwithstanding any other statutes, and make [~~such~~]
18 the records available for inspection by the examiners. If,
19 pursuant to this section, the court orders the defendant
20 committed to a hospital or other suitable facility under the
21 control of the director of health, [~~then~~] the clerk of the court
22 shall cause a copy of each dispositive order concerning



1 proceedings under this chapter to be delivered to the director
2 of health, and shall attach a copy of the report of examination,
3 including supporting documents, if any, to the director of
4 health's copy of each dispositive order. Furthermore, the
5 county police departments shall provide to the director of
6 health and the defendant copies of all police reports from cases
7 filed against the defendant which have been adjudicated by the
8 acceptance of a plea of guilty or no contest, a finding of
9 guilt, acquittal, acquittal pursuant to section 704-400, or by
10 the entry of plea of guilty or no contest made pursuant to
11 chapter 853, so long as the disclosure to the director of health
12 and the defendant does not frustrate a legitimate function of
13 the county police departments, with the exception of expunged
14 records, records of or pertaining to any adjudication or
15 disposition rendered in the case of a juvenile, or records
16 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 its
21 investigation, or who were of investigatory interest. Records
22 shall not be re-disclosed except to the extent permitted by law.



1 For purposes of this section "dispositive orders" mean
2 orders that affect the legal status of the defendant, including
3 orders for examination; orders finding defendant fit to proceed;
4 orders acquitting defendant pursuant to section 704-411; orders
5 concerning discharge, conditional release, and modification of
6 conditional release pursuant to sections 704-412, 704-413, 704-
7 414, and 704-415; and orders of civil commitment in lieu of
8 prosecution or of sentence pursuant to section 706-607.

9 (9) The compensation of persons making or assisting in the
10 examination, other than those retained by the nonindigent
11 defendant, who are not undertaking the examination upon
12 designation by the director of health as part of their normal
13 duties as employees of the State or a county, shall be paid by
14 the State.

15 (10) Except as provided in this section, or by court order
16 allowing disclosure of examination reports to persons or
17 entities other than those identified in this section, all
18 examination reports submitted to the court pursuant to this
19 section, including the original report, shall be confidential
20 and shall not be disclosed by any person. The court may direct
21 disclosure of an examination report or reports to persons or
22 entities other than those identified in this section upon its



1 determination that disclosure is necessary for the conduct of
2 proceedings before the court and that failure to make the
3 disclosure would be contrary to the public interest."

4 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
5 amended by amending subsection (3) to read as follows:

6 "(3) When ordering a hearing pursuant to subsection (2):

- 7 (a) In nonfelony cases, the court shall appoint a
8 qualified examiner to examine and report upon the
9 physical and mental condition of the defendant. The
10 court may appoint either a psychiatrist or a licensed
11 psychologist. The examiner may be designated by the
12 director of health from within the department of
13 health. The examiner shall be appointed from a list
14 of certified examiners as determined by the department
15 of health. The court, in appropriate circumstances,
16 may appoint an additional examiner or examiners; and
- 17 (b) In felony cases, the court shall appoint three
18 qualified examiners to examine and report upon the
19 physical and mental condition of the defendant. In
20 each case, the court shall appoint at least one
21 psychiatrist and at least one licensed psychologist.

22 The third member may be a psychiatrist, a licensed



1 psychologist, or a qualified physician. One of the
2 three shall be a psychiatrist or licensed psychologist
3 designated by the director of health from within the
4 department of health. The three examiners shall be
5 appointed from a list of certified examiners as
6 determined by the department of health.

7 To facilitate the examination and the proceedings thereon, the
8 court may cause the defendant, if not then confined, to be
9 committed to a hospital or other suitable facility for the
10 purpose of examination for a period not exceeding thirty days or
11 such longer period as the court determines to be necessary for
12 the purpose upon written findings for good cause shown. The
13 court may direct that qualified physicians or psychologists
14 retained by the defendant be permitted to witness the
15 examination. The examination and report and the compensation of
16 persons making or assisting in the examination shall be in
17 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),
18 [~~and~~] (9) [~~-~~], and (10). As used in this section, the term
19 "licensed psychologist" includes psychologists exempted from
20 licensure by section 465-3(a)(3)."

21 SECTION 4. Section 704-414, Hawaii Revised Statutes, is
22 amended to read as follows:



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) [~~-~~], and (10). As used
4 in this section, the term "licensed psychologist" includes
5 psychologists exempted from licensure by section 465-3(a)(3)."

6 SECTION 5. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.

12

INTRODUCED BY:

Calvin K. Ay
By Request

JAN 24 2011



Report Title:

Forensic Mental Health Examination Reports; Confidentiality

Description:

Requires courts to maintain mental health examination reports as confidential documents, subject to specific exemptions for limited distribution of the reports.

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