

JAN 26 2011

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## 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 to 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  
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~~] Four copies of the report of the examination,  
7 including any supporting documents, shall be filed with the  
8 clerk of the court, who shall cause copies to be delivered to  
9 the prosecuting attorney and to counsel for the defendant.

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

13          (8) The court shall obtain all existing medical, mental  
14 health, social, police, and juvenile records, including those  
15 expunged, and other pertinent records in the custody of public  
16 agencies, notwithstanding any other statutes, and make such  
17 records available for inspection by the examiners. If, pursuant  
18 to this section, the court orders the defendant committed to a  
19 hospital or other suitable facility under the control of the  
20 director of health, then the clerk of the court shall cause the  
21 third copy of the report filed under subsection (6) along with  
22 all dispositive orders and any available supporting documents,



1 to be delivered to the director of health and the county police  
2 departments shall provide to the director of health and the  
3 defendant copies of all police reports from cases filed against  
4 the defendant which have been adjudicated by the acceptance of a  
5 plea of guilty or no contest, a finding of guilt, acquittal,  
6 acquittal pursuant to section 704-400, or by the entry of plea  
7 of guilty or no contest made pursuant to chapter 853, so long as  
8 the disclosure to the director of health and the defendant does  
9 not frustrate a legitimate function of the county police  
10 departments, with the exception of expunged records, records of  
11 or pertaining to any adjudication or disposition rendered in the  
12 case of a juvenile, or records containing data from the United  
13 States National Crime Information Center. The county police  
14 departments shall segregate or sanitize from the police reports  
15 information that would result in the likelihood or actual  
16 identification of individuals who furnished information in  
17 connection with its investigation, or who were of investigatory  
18 interest. Records shall not be re-disclosed except to the  
19 extent permitted by law. As used in this subsection, the term  
20 "dispositive orders" includes any orders that affect the legal  
21 status of the defendant, including orders for examination,  
22 orders finding defendant fit to proceed, orders finding



1 defendant unfit to proceed, orders acquitting defendant pursuant  
2 to section 704-411, orders concerning discharge, conditional  
3 release and modification of conditional release, after acquittal  
4 and commitment pursuant to sections 704-412, 704-413, 704-414,  
5 and 704-415, and orders of civil commitment in lieu of  
6 prosecution or sentence pursuant to section 706-607.

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

13 (10) Except as provided in this section, or by court order  
14 allowing disclosure of mental health examination reports to  
15 persons or entities other than those identified in this section,  
16 all mental health examination reports submitted to the court  
17 pursuant to section 704-404, including the original report,  
18 shall be kept confidential and shall not be disclosed by any  
19 person. The court may direct disclosure of a mental health  
20 examination report or reports to persons or entities other than  
21 those identified in this section upon its determination that  
22 disclosure is necessary for the conduct of proceedings before it



1 and that failure to make the disclosure would be contrary to the  
2 public interest."

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

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

6 (a) In nonfelony cases, the court shall appoint a  
7 qualified examiner to examine and report upon the  
8 physical and mental condition of the defendant. The  
9 court may appoint either a psychiatrist or a licensed  
10 psychologist. The examiner may be designated by the  
11 director of health from within the department of  
12 health. The examiner shall be appointed from a list  
13 of certified examiners as determined by the department  
14 of health. The court, in appropriate circumstances,  
15 may appoint an additional examiner or examiners; and

16 (b) In felony cases, the court shall appoint three  
17 qualified examiners to examine and report upon the  
18 physical and mental condition of the defendant. In  
19 each case, the court shall appoint at least one  
20 psychiatrist and at least one licensed psychologist.  
21 The third member may be a psychiatrist, a licensed  
22 psychologist, or a qualified physician. One of the





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

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

20 SECTION 4. Section 704-414, Hawaii Revised Statutes, is  
21 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. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.  
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**Report Title:**

Forensic Mental Health Examination Reports; Confidentiality

**Description:**

Requires courts to give copies of orders and mental health examination reports to the director of health when defendant is committed by court order. Specifies that mental health examination reports are confidential, subject to certain exceptions.

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

