
A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH.

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

1 SECTION 1. In June 2012, a special action team was
2 commissioned by the governor to analyze the causes and identify
3 ideas to address systemic factors that increased the rate of
4 admissions and increased the length of stay at the Hawaii state
5 hospital. The team was tasked with considering possible
6 solutions and making recommendations to the governor in time for
7 consideration by the governor and the legislature during the
8 2013 regular session and the fiscal year 2014-2015 budget cycle.

9 The special action team comprised representatives from the
10 office of the governor, department of health adult mental health
11 division, the department of public safety, the department of
12 human services, the department of the attorney general, the
13 department of human resource development, the department of
14 budget and finance, the offices of the prosecutors of each
15 county, the office of the public defender, and the chiefs of
16 police from each county. These representatives joined together
17 to examine data and develop a plan to revitalize adult mental



1 health services in the community and more effectively address
2 the rate of increase in the census of the Hawaii state hospital.

3 Analysis of the Hawaii state hospital admission legal
4 status statistics revealed that the second most common forensic
5 commitment status to the care and custody of the director of
6 health and subsequent admission to Hawaii state hospital is
7 related to conditional release status. Conditional release
8 means that a person has been acquitted of a crime on the ground
9 of mental disease or disorder, excluding responsibility, but can
10 be controlled adequately and given proper care, supervision, and
11 treatment in the community under specified conditions. However,
12 if the supervising probation officer has probable cause to
13 believe a person is in violation of those conditions the
14 probation officer may order a person on conditional release to
15 be hospitalized. Over eighty per cent of the individuals so
16 admitted to the Hawaii state hospital do not require inpatient
17 hospital level of care, based on utilization management illness
18 severity indexes. Further discussion revealed that under
19 current Hawaii law, there is no time limit on how long a person
20 may remain on conditional release, pursuant to a charge of
21 misdemeanor or less. However, if the same person, as a
22 defendant in a court case, either pled or was found guilty of



1 the charge, that person would receive a sentence or a period of
2 probation that would be limited to one year or less.

3 The special action team analysis also revealed that, in
4 addition to the occurrence of high numbers of admissions to the
5 Hawaii state hospital for completion of court ordered
6 examinations to evaluate a defendant's fitness to proceed and
7 forensic commitments under section 704-404 or 704-406, Hawaii
8 Revised Statutes, required examinations are frequently delayed
9 or incomplete because required information from other public
10 agencies is not provided in a timely way to the examiners who
11 perform these evaluations and report to the court.

12 The special action team reached a consensus to propose
13 changes to chapter 704, Hawaii Revised Statutes, to address
14 these issues without adversely impacting defendants' rights, the
15 provision of effective mental health services, or public safety.

16 The purpose of this Act is to modify the relevant statutes
17 to include the special action team consensus recommendations.
18 These modifications are intended to improve the State's public
19 sector forensic mental health services, thereby assisting in
20 reducing the census at the Hawaii state hospital.

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



1 **"§704-404 Examination of defendant with respect to**
2 **physical or mental disease, disorder, or defect.** (1) Whenever
3 the defendant has filed a notice of intention to rely on the
4 defense of physical or mental disease, disorder, or defect
5 excluding responsibility, or there is reason to doubt the
6 defendant's fitness to proceed, or reason to believe that the
7 physical or mental disease, disorder, or defect of the defendant
8 will or has become an issue in the case, the court may
9 immediately suspend all further proceedings in the prosecution.
10 If a trial jury has been empanelled, it shall be discharged or
11 retained at the discretion of the court. The discharge of the
12 trial jury shall not be a bar to further prosecution.

13 (2) Upon suspension of further proceedings in the
14 prosecution, the court shall appoint three qualified examiners
15 in felony cases and one qualified examiner in nonfelony cases to
16 examine and report upon the physical and mental condition of the
17 defendant. In felony cases the court shall appoint at least one
18 psychiatrist and at least one licensed psychologist. The third
19 member may be a psychiatrist, licensed psychologist, or
20 qualified physician. One of the three shall be a psychiatrist
21 or licensed psychologist designated by the director of health
22 from within the department of health. In nonfelony cases the



1 court may appoint either a psychiatrist or a licensed
2 psychologist. All examiners shall be appointed from a list of
3 certified examiners as determined by the department of health.
4 The court, in appropriate circumstances, may appoint an
5 additional examiner or examiners. The examination may be
6 conducted on an out-patient basis or, in the court's discretion,
7 when necessary the court may order the defendant to be committed
8 to a hospital or other suitable facility for the purpose of the
9 examination for a period not exceeding thirty days, or such
10 longer period as the court determines to be necessary for the
11 purpose. The court may direct that one or more qualified
12 physicians or psychologists retained by the defendant be
13 permitted to witness the examination. As used in this section,
14 the term "licensed psychologist" includes psychologists exempted
15 from licensure by section 465-3(a)(3).

16 (3) An examination performed under this section may employ
17 any method that is accepted by the professions of medicine or
18 psychology for the examination of those alleged to be affected
19 by a physical or mental disease, disorder, or defect; provided
20 that each examiner shall form and render diagnoses and opinions
21 upon the physical and mental condition of the defendant
22 independently from the other examiners, and the examiners, upon



1 approval of the court, may secure the services of clinical
2 psychologists and other medical or paramedical specialists to
3 assist in the examination and diagnosis.

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

- 6 (a) A description of the nature of the examination;
- 7 (b) A diagnosis of the physical or mental condition of the
8 defendant;
- 9 (c) An opinion as to the defendant's capacity to
10 understand the proceedings against the defendant and
11 to assist in the defendant's own defense;
- 12 (d) An opinion as to the extent, if any, to which the
13 capacity of the defendant to appreciate the
14 wrongfulness of the defendant's conduct or to conform
15 the defendant's conduct to the requirements of law was
16 impaired at the time of the conduct alleged;
- 17 (e) When directed by the court, an opinion as to the
18 capacity of the defendant to have a particular state
19 of mind that is required to establish an element of
20 the offense charged; and
- 21 (f) Where more than one examiner is appointed, a statement
22 that the diagnosis and opinion rendered were arrived



1 at independently of any other examiner, unless there
2 is a showing to the court of a clear need for
3 communication between or among the examiners for
4 clarification. A description of the communication
5 shall be included in the report. After all reports
6 are submitted to the court, examiners may confer
7 without restriction.

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

13 (6) Three copies of the report of the examination,
14 including any supporting documents, shall be filed with the
15 clerk of the court, who shall cause copies to be delivered to
16 the prosecuting attorney and to counsel for the defendant.

17 (7) Any examiner shall be permitted to make a separate
18 explanation reasonably serving to clarify the examiner's
19 diagnosis or opinion.

20 (8) The court shall obtain all existing medical, mental
21 health, social, police, and juvenile records, including those
22 expunged, and other pertinent records in the custody of public



1 agencies, notwithstanding any other statutes, and make such
2 records available for inspection by the examiners. If, pursuant
3 to this section, the court orders the defendant committed to a
4 hospital or other suitable facility under the control of the
5 director of health, then the county police departments shall
6 provide to the director of health and the defendant copies of
7 all police reports from cases filed against the defendant which
8 have been adjudicated by the acceptance of a plea of guilty or
9 no contest, a finding of guilt, acquittal, acquittal pursuant to
10 section 704-400, or by the entry of plea of guilty or no contest
11 made 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 its
21 investigation, or who were of investigatory interest. Records
22 shall not be re-disclosed except to the extent permitted by law.



1 (9) All public agencies in possession of medical, mental
 2 health, social, police, and juvenile records, including those
 3 expunged and any other pertinent records of a defendant ordered
 4 to be examined under this chapter, shall provide those records
 5 to the court, notwithstanding any other state statute.

6 ~~[(9)]~~ (10) The compensation of persons making or assisting
 7 in the examination, other than those retained by the nonindigent
 8 defendant, who are not undertaking the examination upon
 9 designation by the director of health as part of their normal
 10 duties as employees of the State or a county, shall be paid by
 11 the State."

12 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
 13 amended by amending subsection (1) to read as follows:

14 "(1) When a defendant is acquitted on the ground of
 15 physical or mental disease, disorder, or defect excluding
 16 responsibility, the court, on the basis of the report made
 17 pursuant to section 704-404, if uncontested, or the medical or
 18 psychological evidence given at the trial or at a separate
 19 hearing, shall order that:

20 (a) The defendant shall be committed to the custody of the
 21 director of health to be placed in an appropriate



1 institution for custody, care, and treatment if the
2 court finds that the defendant:

- 3 (i) Is affected by a physical or mental disease,
4 disorder, or defect;
- 5 (ii) Presents a risk of danger to self or others; and
- 6 (iii) Is not a proper subject for conditional release;
7 provided that the director of health shall place
8 defendants charged with misdemeanors or felonies
9 not involving violence or attempted violence in
10 the least restrictive environment appropriate in
11 light of the defendant's treatment needs and the
12 need to prevent harm to the person confined and
13 others. The county police departments shall
14 provide to the director of health and the
15 defendant copies of all police reports from cases
16 filed against the defendant that have been
17 adjudicated by the acceptance of a plea of guilty
18 or nolo contendere, a finding of guilt,
19 acquittal, acquittal pursuant to section 704-400,
20 or by the entry of a plea of guilty or nolo
21 contendere made pursuant to chapter 853, so long
22 as the disclosure to the director of health and



1 the defendant does not frustrate a legitimate
2 function of the county police departments;
3 provided that expunged records, records of or
4 pertaining to any adjudication or disposition
5 rendered in the case of a juvenile, or records
6 containing data from the United States National
7 Crime Information Center shall not be provided.
8 The county police departments shall segregate or
9 sanitize from the police reports information that
10 would result in the likelihood or actual
11 identification of individuals who furnished
12 information in connection with the investigation
13 or who were of investigatory interest. Records
14 shall not be re-disclosed except to the extent
15 permitted by law;

16 (b) The defendant shall be granted conditional release
17 with conditions as the court deems necessary if the
18 court finds that the defendant is affected by physical
19 or mental disease, disorder, or defect and that the
20 defendant presents a danger to self or others, but
21 that the defendant can be controlled adequately and
22 given proper care, supervision, and treatment if the



1 defendant is released on condition. For any defendant
2 granted conditional release pursuant to this
3 [~~paragraph,~~] section, and who was charged with a petty
4 misdemeanor, misdemeanor, or violation, the period of
5 conditional release shall be no longer than one year;
6 or

7 (c) The defendant shall be discharged if the court finds
8 that the defendant is no longer affected by physical
9 or mental disease, disorder, or defect or, if so
10 affected, that the defendant no longer presents a
11 danger to self or others and is not in need of care,
12 supervision, or treatment."

13 SECTION 4. Section 704-412, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) Upon application to the court by either the director
16 of health or the person committed, the court shall complete the
17 hearing process and render a decision within sixty days of the
18 application; provided that for good cause the court may extend
19 the sixty-day time frame upon the request of the director of
20 health or the person committed. For any defendant granted
21 conditional release pursuant to this section, and who was



1 charged with a petty misdemeanor, misdemeanor, or violation, the
2 period of conditional release shall be no longer than one year."

3 SECTION 5. Section 704-413, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (1) to read:

6 "(1) Any person granted conditional release pursuant to
7 this chapter shall continue to receive mental health or other
8 treatment and care deemed appropriate by the director of health
9 until discharged from conditional release. The person shall
10 follow all prescribed treatments and take all prescribed
11 medications according to the instructions of the person's
12 treating mental health professional. If a mental health
13 professional who is treating a person granted conditional
14 release believes that either the person is not complying with
15 the requirements of this section or there is other evidence that
16 hospitalization is appropriate, the mental health professional
17 shall report the matter to the probation officer of the person
18 granted conditional release. The probation officer may order
19 the person granted conditional release to be hospitalized for a
20 period not to exceed seventy-two hours if the probation officer
21 has probable cause to believe the person has violated the
22 requirements of this subsection. No person shall be



1 hospitalized beyond the seventy-two-hour period, as computed
2 pursuant to section 1-29, unless a hearing has been held
3 pursuant to subsection (4); provided that on or before the
4 expiration of the seventy-two-hour period, a court may conduct a
5 hearing to determine whether the person would benefit from
6 further hospitalization, which may render a revocation of
7 conditional release unnecessary. If satisfied, the court may
8 order further temporary hospitalization for a period not to
9 exceed ninety days, subject to extension as appropriate, but in
10 no event for a period longer than one year. At any time within
11 that period, the court may determine that a hearing pursuant to
12 subsection (4) should be conducted. For any defendant charged
13 with a petty misdemeanor, misdemeanor, or violation and granted
14 conditional release pursuant to section 704-411(1)(b), the one-
15 year term of conditional release shall be tolled:

16 (a) During any period of hospitalization ordered pursuant
17 to this section; and

18 (b) In the case of a motion to revoke conditional release,
19 from the filing date of the motion to the date of its
20 determination by the court."

21 2. By amending subsection (4) to read:



1 "(4) If, at any time after the order pursuant to this
2 chapter granting conditional release, the court determines,
3 after hearing evidence, that:

4 (a) The person is still affected by a physical or mental
5 disease, disorder, or defect, and the conditions of
6 release have not been fulfilled; or

7 (b) For the safety of the person or others, the person's
8 conditional release should be revoked,

9 the court may forthwith modify the conditions of release or
10 order the person to be committed to the custody of the director
11 of health, subject to discharge or release in accordance with
12 the procedure prescribed in section 704-412. If the person's
13 conditional release is revoked, the period of conditional
14 release is terminated. If the person who was charged with a
15 petty misdemeanor, misdemeanor, or violation is placed on
16 conditional release subsequently, the period of conditional
17 release shall be no longer than one year."

18 SECTION 6. Section 704-415, Hawaii Revised Statutes, is
19 amended by amending subsection (2) to read as follows:

20 "(2) Any such hearing shall be deemed a civil proceeding
21 and the burden shall be upon the applicant to prove that the
22 person is no longer affected by a physical or mental disease,



1 disorder, or defect or may safely be either released on the
2 conditions applied for or discharged. According to the
3 determination of the court upon the hearing the person shall be:

4 (a) Discharged;

5 (b) Released on such conditions as the court determines to
6 be necessary; provided that for any defendant granted
7 conditional release pursuant to this section, and who
8 was charged with a petty misdemeanor, misdemeanor, or
9 violation, the period of conditional release shall be
10 no longer than one year; or

11 (c) Recommitted to the custody of the director of health,
12 subject to discharge or release only in accordance
13 with the procedure prescribed in section 704-412."

14 SECTION 7. The department of health shall submit to the
15 legislature a report detailing the number, frequency, and types
16 of criminal offenses and violations committed by defendants
17 discharged from conditional release during the period beginning
18 with the commencement of the 2013 legislative session through
19 the end of 2014 no later than twenty days prior to the convening
20 of the 2015 legislative session.

21 SECTION 8. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Forensic Mental Health; Conditional Release

Description:

Amends the Penal Code to establish limits to the length of conditional release for certain criminal charges, to clarify circumstances under which the one-year conditional release may be tolled, and to require information-sharing among public agencies. Requires report to the Legislature. (HB910 HD2)

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

