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# 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 regular session of 2013 and the fiscal year 2014-2015 budget  
9 cycle.

10           The special action team comprised representatives from the  
11 office of the governor, the department of health adult mental  
12 health division, the department of public safety, the department  
13 of human services, the department of the attorney general, the  
14 department of human resources development, the department of  
15 budget and finance, the office of the prosecutors of each  
16 county, the office of the public defender, and the chief of  
17 police of each county. These representatives worked together to  
18 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 the 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 an  
17 inpatient hospital level of care, based on utilization  
18 management illness severity indexes. Further discussion  
19 revealed that under current Hawaii law, there is no time limit  
20 on how long a person may remain on conditional release based on  
21 a charge amounting to a misdemeanor or less. However, if the  
22 same person, as a defendant in a court case, either pled or was



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

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

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

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



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

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

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



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

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



1 upon the physical and mental condition of the defendant  
2 independently from the other examiners, and the examiners, upon  
3 approval of the court, may secure the services of clinical  
4 psychologists and other medical or paramedical specialists to  
5 assist in the examination and diagnosis.

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

8 (a) A description of the nature of the examination;

9 (b) A diagnosis of the physical or mental condition of the  
10 defendant;

11 (c) An opinion as to the defendant's capacity to  
12 understand the proceedings against the defendant and  
13 to assist in the defendant's own defense;

14 (d) An opinion as to the extent, if any, to which the  
15 capacity of the defendant to appreciate the  
16 wrongfulness of the defendant's conduct or to conform  
17 the defendant's conduct to the requirements of law was  
18 impaired at the time of the conduct alleged;

19 (e) When directed by the court, an opinion as to the  
20 capacity of the defendant to have a particular state  
21 of mind that is required to establish an element of  
22 the offense charged; and



1 (f) Where more than one examiner is appointed, a statement  
2 that the diagnosis and opinion rendered were arrived  
3 at independently of any other examiner, unless there  
4 is a showing to the court of a clear need for  
5 communication between or among the examiners for  
6 clarification. A description of the communication  
7 shall be included in the report. After all reports  
8 are submitted to the court, examiners may confer  
9 without restriction.

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

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

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



1           (8) The court shall obtain all existing medical, mental  
2 health, social, police, and juvenile records, including those  
3 expunged, and other pertinent records in the custody of public  
4 agencies, notwithstanding any other statutes, and make such  
5 records available for inspection by the examiners. If, pursuant  
6 to this section, the court orders the defendant committed to a  
7 hospital or other suitable facility under the control of the  
8 director of health, then the county police departments shall  
9 provide to the director of health and the defendant copies of  
10 all police reports from cases filed against the defendant which  
11 have been adjudicated by the acceptance of a plea of guilty or  
12 no contest, a finding of guilt, acquittal, acquittal pursuant to  
13 section 704-400, or by the entry of plea of guilty or no contest  
14 made pursuant to chapter 853, so long as the disclosure to the  
15 director of health and the defendant does not frustrate a  
16 legitimate function of the county police departments, with the  
17 exception of expunged records, records of or pertaining to any  
18 adjudication or disposition rendered in the case of a juvenile,  
19 or records containing data from the United States National Crime  
20 Information Center. The county police departments shall  
21 segregate or sanitize from the police reports information that  
22 would result in the likelihood or actual identification of





1 individuals who furnished information in connection with its  
2 investigation, or who were of investigatory interest. Records  
3 shall not be re-disclosed except to the extent permitted by law.

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

9 [~~9~~] (10) The compensation of persons making or assisting  
10 in the 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 SECTION 3. Section 704-411, Hawaii Revised Statutes, is  
16 amended as follows:

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

18 "(1) When a defendant is acquitted on the ground of  
19 physical or mental disease, disorder, or defect excluding  
20 responsibility, the court, on the basis of the report made  
21 pursuant to section 704-404, if uncontested, or the medical or



1 psychological evidence given at the trial or at a separate  
2 hearing, shall order that:

3 (a) The defendant shall be committed to the custody of the  
4 director of health to be placed in an appropriate  
5 institution for custody, care, and treatment if the  
6 court finds that the defendant:

7 (i) Is affected by a physical or mental disease,  
8 disorder, or defect;

9 (ii) Presents a risk of danger to self or others; and

10 (iii) Is not a proper subject for conditional release;  
11 provided that the director of health shall place  
12 defendants charged with misdemeanors or felonies  
13 not involving violence or attempted violence in  
14 the least restrictive environment appropriate in  
15 light of the defendant's treatment needs and the  
16 need to prevent harm to the person confined and  
17 others. The county police departments shall  
18 provide to the director of health and the  
19 defendant copies of all police reports from cases  
20 filed against the defendant that have been  
21 adjudicated by the acceptance of a plea of guilty  
22 or nolo contendere, a finding of guilt,



1 acquittal, acquittal pursuant to section 704-400,  
2 or by the entry of a plea of guilty or nolo  
3 contendere made pursuant to chapter 853, so long  
4 as the disclosure to the director of health and  
5 the defendant does not frustrate a legitimate  
6 function of the county police departments;  
7 provided that expunged records, records of or  
8 pertaining to any adjudication or disposition  
9 rendered in the case of a juvenile, or records  
10 containing data from the United States National  
11 Crime Information Center shall not be provided.  
12 The county police departments shall segregate or  
13 sanitize from the police reports information that  
14 would result in the likelihood or actual  
15 identification of individuals who furnished  
16 information in connection with the investigation  
17 or who were of investigatory interest. Records  
18 shall not be re-disclosed except to the extent  
19 permitted by law;

20 (b) The defendant shall be granted conditional release  
21 with conditions as the court deems necessary if the  
22 court finds that the defendant is affected by physical



1 or mental disease, disorder, or defect and that the  
2 defendant presents a danger to self or others, but  
3 that the defendant can be controlled adequately and  
4 given proper care, supervision, and treatment if the  
5 defendant is released on condition. For any defendant  
6 granted conditional release pursuant to this  
7 [~~paragraph,~~] section, and who was charged with a petty  
8 misdemeanor, misdemeanor, or violation, the period of  
9 conditional release shall be no longer than one year;  
10 or

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

17 2. By amending subsection (3) to read:

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

19 (a) In nonfelony cases, the court shall appoint a  
20 qualified examiner to examine and report upon the  
21 physical and mental condition of the defendant. The  
22 court may appoint either a psychiatrist or a licensed



1           psychologist. The examiner may be designated by the  
2           director of health from within the department of  
3           health. The examiner shall be appointed from a list  
4           of certified examiners as determined by the department  
5           of health. The court, in appropriate circumstances,  
6           may appoint an additional examiner or examiners; and

7           (b) In felony cases, the court shall appoint three  
8           qualified examiners to examine and report upon the  
9           physical and mental condition of the defendant. In  
10          each case, the court shall appoint at least one  
11          psychiatrist and at least one licensed psychologist.  
12          The third member may be a psychiatrist, a licensed  
13          psychologist, or a qualified physician. One of the  
14          three shall be a psychiatrist or licensed psychologist  
15          designated by the director of health from within the  
16          department of health. The three examiners shall be  
17          appointed from a list of certified examiners as  
18          determined by the department of health.

19        To facilitate the examination and the proceedings thereon, the  
20        court may cause the defendant, if not then confined, to be  
21        committed to a hospital or other suitable facility for the  
22        purpose of examination for a period not exceeding thirty days or



1 such longer period as the court determines to be necessary for  
2 the purpose upon written findings for good cause shown. The  
3 court may direct that qualified physicians or psychologists  
4 retained by the defendant be permitted to witness the  
5 examination. The examination and report and the compensation of  
6 persons making or assisting in the examination shall be in  
7 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),  
8 and [~~(9)~~] (10). As used in this section, the term "licensed  
9 psychologist" includes psychologists exempted from licensure by  
10 section 465-3(a)(3)."

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

13 "(3) Upon application to the court by either the director  
14 of health or the person committed, the court shall complete the  
15 hearing process and render a decision within sixty days of the  
16 application; provided that for good cause the court may extend  
17 the sixty-day time frame upon the request of the director of  
18 health or the person committed. For any defendant granted  
19 conditional release pursuant to this section, and who was  
20 charged with a misdemeanor, petty misdemeanor, or violation, the  
21 period of conditional release shall be no longer than one year."



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

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

4 "(1) Any person granted conditional release pursuant to  
5 this chapter shall continue to receive mental health or other  
6 treatment and care deemed appropriate by the director of health  
7 until discharged from conditional release. The person shall  
8 follow all prescribed treatments and take all prescribed  
9 medications according to the instructions of the person's  
10 treating mental health professional. If a mental health  
11 professional who is treating a person granted conditional  
12 release believes that either the person is not complying with  
13 the requirements of this section or there is other evidence that  
14 hospitalization is appropriate, the mental health professional  
15 shall report the matter to the probation officer of the person  
16 granted conditional release. The probation officer may order  
17 the person granted conditional release to be hospitalized for a  
18 period not to exceed seventy-two hours if the probation officer  
19 has probable cause to believe the person has violated the  
20 requirements of this subsection. No person shall be  
21 hospitalized beyond the seventy-two-hour period, as computed  
22 pursuant to section 1-29, unless a hearing has been held



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

- 15 (a) During any period of hospitalization ordered pursuant  
16 to this section; and
- 17 (b) In the case of a motion to revoke conditional release,  
18 from the filing date of the motion to the date of its  
19 determination by the court."

20 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 shall be deemed terminated. If the person who was  
15 charged with a misdemeanor, petty misdemeanor, or violation is  
16 subsequently placed on conditional release, the period of  
17 conditional 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 misdemeanor, petty 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 alleged to have been  
17 committed by defendants discharged from conditional release and  
18 whose conditional release was limited to one year, during the  
19 period beginning with the commencement of the regular session of  
20 2013 through December 1, 2014. The report shall be submitted to  
21 the legislature no later than twenty days prior to the convening  
22 of the regular session of 2015.



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2050.



**Report Title:**

Forensic Mental Health; Conditional Release; Hawaii State  
Hospital

**Description:**

Amends the Penal Code to establish limits to the length of conditional release for certain charges, clarifies circumstances under which conditional release may be tolled, and requires information-sharing among public agencies. Requires report to the Legislature. Effective July 1, 2050. (SB1141 HD2)

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

