
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 causes and identify
3 ideas to address the systemic factors that contribute to the
4 increased rate of admissions and factors that increase the
5 length of stay at the Hawaii state hospital. Further, the team
6 was tasked with considering possible solutions and making
7 recommendations to the governor in time to be considered by the
8 governor and the legislature during the 2013 legislative session
9 and fiscal year 2014-2015 budget cycles. The team comprised
10 representatives from the office of the governor, department of
11 health's adult mental health division, department of public
12 safety, department of human services, department of the attorney
13 general, department of human resources development, department
14 of budget and finance, offices of the prosecutors of each
15 county, office of the public defender, and chiefs of police from
16 each county. They joined together to examine data and to
17 develop a plan to revitalize adult mental health services in the



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

3 There was consensus agreement among the members of the
4 special action team that statutory changes should be proposed to
5 the legislature. The proposed changes are intended to improve
6 services and efficiency of operations, but not compromise public
7 safety, nor impinge on defendants' rights.

8 Analysis of the Hawaii state hospital admission legal
9 status statistics revealed that the second most common forensic
10 commitment status to the care and custody of the director of
11 health and subsequent admission to Hawaii state hospital is
12 related to conditional release status. Conditional release
13 means that the person has been acquitted of the crime on the
14 ground of mental disease or disorder excluding responsibility
15 but that the person can be controlled adequately and given
16 proper care, supervision, and treatment in the community under
17 specified conditions. However, if the supervising probation
18 officer has probable cause to believe the person is in violation
19 of those conditions, the probation officer may order the person
20 on conditional release to be hospitalized. Over eighty per cent
21 of the individuals admitted to the hospital do not require
22 inpatient hospital level of care, based on utilization



1 management illness severity indexes. Further discussion
2 revealed that under current Hawaii law, there is effectively no
3 time limit on how long a person may remain on conditional
4 release, pursuant to a charge of misdemeanor or less. However,
5 if the same person, as a defendant in a court case, either pled
6 or was found guilty of the charge, that person would receive a
7 sentence or a period of probation that would be limited to one
8 year or less.

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

18 The special action team reached a consensus that changes to
19 chapter 704, Hawaii Revised Statutes, should be proposed to
20 address these issues, without adverse impact on defendants'
21 rights, the provision of effective mental health services, or
22 public safety. Accordingly, the purpose of this Act is to



1 address the areas identified by the special action team as in
2 need of legislative remedy, by modifying the relevant statutes
3 to include the consensus recommendations made by the group. It
4 is intended to improve the State's public sector forensic mental
5 health services and thereby assist in reducing the census at the
6 Hawaii state hospital.

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

21 (2) Upon suspension of further proceedings in the
22 prosecution, the court shall appoint three qualified examiners



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



1 the term "licensed psychologist" includes psychologists exempted
2 from licensure by section 465-3(a)(3).

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

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

- 15 (a) A description of the nature of the examination;
- 16 (b) A diagnosis of the physical or mental condition of the
17 defendant;
- 18 (c) An opinion as to the defendant's capacity to
19 understand the proceedings against the defendant and
20 to assist in the defendant's own defense;
- 21 (d) An opinion as to the extent, if any, to which the
22 capacity of the defendant to appreciate the



1 wrongfulness of the defendant's conduct or to conform
2 the defendant's conduct to the requirements of law was
3 impaired at the time of the conduct alleged;

4 (e) When directed by the court, an opinion as to the
5 capacity of the defendant to have a particular state
6 of mind that is required to establish an element of
7 the offense charged; and

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

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



1 (6) Three copies of the report of the examination,
2 including any supporting documents, shall be filed with the
3 clerk of the court, who shall cause copies to be delivered to
4 the prosecuting attorney and to counsel for the defendant.

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

8 (8) The court shall obtain all existing medical, mental
9 health, social, police, and juvenile records, including those
10 expunged, and other pertinent records in the custody of public
11 agencies, notwithstanding any other statutes, and make such
12 records available for inspection by the examiners. If, pursuant
13 to this section, the court orders the defendant committed to a
14 hospital or other suitable facility under the control of the
15 director of health, then the county police departments shall
16 provide to the director of health and the defendant copies of
17 all police reports from cases filed against the defendant which
18 have been adjudicated by the acceptance of a plea of guilty or
19 no contest, a finding of guilt, acquittal, acquittal pursuant to
20 section 704-400, or by the entry of plea of guilty or no contest
21 made pursuant to chapter 853, so long as the disclosure to the
22 director of health and the defendant does not frustrate a



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

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

16 [~~9~~] (10) The compensation of persons making or assisting
17 in the examination, other than those retained by the nonindigent
18 defendant, who are not undertaking the examination upon
19 designation by the director of health as part of their normal
20 duties as employees of the State or a county, shall be paid by
21 the State."



1 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
2 amended as follows:

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

4 "(1) When a defendant is acquitted on the ground of
5 physical or mental disease, disorder, or defect excluding
6 responsibility, the court, on the basis of the report made
7 pursuant to section 704-404, if uncontested, or the medical or
8 psychological evidence given at the trial or at a separate
9 hearing, shall order that:

10 (a) The defendant shall be committed to the custody of the
11 director of health to be placed in an appropriate
12 institution for custody, care, and treatment if the
13 court finds that the defendant:

14 (i) Is affected by a physical or mental disease,
15 disorder, or defect;

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

17 (iii) Is not a proper subject for conditional release;
18 provided that the director of health shall place
19 defendants charged with misdemeanors or felonies
20 not involving violence or attempted violence in
21 the least restrictive environment appropriate in
22 light of the defendant's treatment needs and the



1 need to prevent harm to the person confined and
2 others. The county police departments shall
3 provide to the director of health and the
4 defendant copies of all police reports from cases
5 filed against the defendant that have been
6 adjudicated by the acceptance of a plea of guilty
7 or nolo contendere, a finding of guilt,
8 acquittal, acquittal pursuant to section 704-400,
9 or by the entry of a plea of guilty or nolo
10 contendere made pursuant to chapter 853, so long
11 as the disclosure to the director of health and
12 the defendant does not frustrate a legitimate
13 function of the county police departments;
14 provided that expunged records, records of or
15 pertaining to any adjudication or disposition
16 rendered in the case of a juvenile, or records
17 containing data from the United States National
18 Crime Information Center shall not be provided.
19 The county police departments shall segregate or
20 sanitize from the police reports information that
21 would result in the likelihood or actual
22 identification of individuals who furnished



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

5 (b) The defendant shall be granted conditional release
6 with conditions as the court deems necessary if the
7 court finds that the defendant is affected by physical
8 or mental disease, disorder, or defect and that the
9 defendant presents a danger to self or others, but
10 that the defendant can be controlled adequately and
11 given proper care, supervision, and treatment if the
12 defendant is released on condition. For any defendant
13 granted conditional release pursuant to this
14 [~~paragraph,~~] section, and who was charged with a petty
15 misdemeanor, misdemeanor, or violation, the period of
16 conditional release shall be no longer than one year;
17 or

18 (c) The defendant shall be discharged if the court finds
19 that the defendant is no longer affected by physical
20 or mental disease, disorder, or defect or, if so
21 affected, that the defendant no longer presents a



1 danger to self or others and is not in need of care,
2 supervision, or treatment."

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

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

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



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

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

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

21 "(3) Upon application to the court by either the director
22 of health or the person committed, the court shall complete the



1 hearing process and render a decision within sixty days of the
2 application; provided that for good cause the court may extend
3 the sixty-day time frame upon the request of the director of
4 health or the person committed. For any defendant granted
5 conditional release pursuant to this section, and who was
6 charged with a petty misdemeanor, misdemeanor, or violation, the
7 period of conditional release shall be no longer than one year."

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

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

11 "(1) Any person granted conditional release pursuant to
12 this chapter shall continue to receive mental health or other
13 treatment and care deemed appropriate by the director of health
14 until discharged from conditional release. The person shall
15 follow all prescribed treatments and take all prescribed
16 medications according to the instructions of the person's
17 treating mental health professional. If a mental health
18 professional who is treating a person granted conditional
19 release believes that either the person is not complying with
20 the requirements of this section or there is other evidence that
21 hospitalization is appropriate, the mental health professional
22 shall report the matter to the probation officer of the person



1 granted conditional release. The probation officer may order
2 the person granted conditional release to be hospitalized for a
3 period not to exceed seventy-two hours if the probation officer
4 has probable cause to believe the person has violated the
5 requirements of this subsection. No person shall be
6 hospitalized beyond the seventy-two-hour period, as computed
7 pursuant to section 1-29, unless a hearing has been held
8 pursuant to subsection (4); provided that on or before the
9 expiration of the seventy-two-hour period, a court may conduct a
10 hearing to determine whether the person would benefit from
11 further hospitalization, which may render a revocation of
12 conditional release unnecessary. If satisfied, the court may
13 order further temporary hospitalization for a period not to
14 exceed ninety days, subject to extension as appropriate, but in
15 no event for a period longer than one year. For any person
16 ordered to be hospitalized pursuant to this section, who was
17 placed on a one-year limited conditional release pursuant to
18 section 704-411(1)(b), the one year shall be tolled pending the
19 person's time of hospitalization. At any time within that
20 period, the court may determine that a hearing pursuant to
21 subsection (4) should be conducted."

22 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. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2050.

17



Report Title:

Forensic Mental Health; Conditional Release; Hawaii State
Hospital

Description:

Establishes a one-year limit on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation. Clarifies under what circumstances the one-year conditional release status may be tolled pending an individual's hospitalization. Requires public agencies in possession of information related to a defendant's fitness to proceed to provide the information to the court. Effective 07/01/50. (SD2)

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

