
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 the spring of 2012, the Hawaii state
2 hospital experienced a significant and unprecedented increase in
3 the number of admissions. In June 2012, a special action team
4 was commissioned by the governor to analyze causes and identify
5 ideas to address the systemic factors that contribute to the
6 increased rate of admissions to the Hawaii state hospital, and
7 factors that increase the length of stay at the Hawaii state
8 hospital. Further, the team was tasked with considering
9 possible solutions, and making recommendations to the governor
10 and the legislature. The special action team comprised
11 representatives from the office of the governor, the department
12 of health's adult mental health division, the department of
13 public safety, the department of human services, the department
14 of the attorney general, the department of human resource
15 development, the department of budget and finance, the offices
16 of the prosecuting attorneys of each county, the office of the
17 public defender, and the chiefs of police from each county.
18 They joined together to examine data and to develop a plan to



1 revitalize adult mental health services in the community and
2 more effectively address the increased admission rates in the
3 Hawaii state hospital.

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

8 Analysis of the Hawaii state hospital admission status
9 statistics reveals that the second most common category of
10 admissions to the Hawaii state hospital are persons who were
11 placed there by conditional release and who then violated the
12 requirement of their conditional release. The court will place
13 a person on conditional release when the person:

- 14 (1) Has been acquitted of a crime on the grounds of
15 physical or mental disease, disorder, or defect;
- 16 (2) Presents no danger to self or others; and
- 17 (3) Can be controlled adequately in the community given
18 proper care, supervision, and treatment under
19 specified conditions.

20 If the supervising probation officer has probable cause to
21 believe the person on conditional release is in violation of
22 these conditions, the probation officer may order the person to



1 be hospitalized. In fiscal year 2012-2013, there were one
2 hundred twenty-two persons placed in the Hawaii state hospital
3 for violating terms of a conditional release. Of those, forty-
4 six had been acquitted by reason of mental condition for a
5 misdemeanor, petty misdemeanor, or violation. Moreover, eighty
6 per cent of the individuals admitted to the hospital do not
7 require an inpatient hospital level of care when analyzed using
8 a management illness severity index.

9 Further discussion revealed that Act 99, Session Laws of
10 Hawaii 2011, was intended to amend the law to establish a one-
11 year time limit for an order of post-acquittal conditional
12 release when the defendant is charged with a petty misdemeanor,
13 misdemeanor, or violation. However, an inadvertent drafting
14 error resulted in the effect that only defendants placed on
15 conditional release at the same hearing in which the defendants
16 are acquitted are eligible for the one-year time limit. Under
17 Act 99, once a defendant is committed to the Hawaii state
18 hospital, they are no longer eligible for a limited conditional
19 release.

20 Moreover, if the same person, as a defendant in a criminal
21 case, either pled or was found guilty of the charge, that person
22 would receive a prison sentence or a probation limited to a



1 length of one year or less. During the special action team
2 meetings, some members expressed concerns that if a conditional
3 release ends in one year, a person may no longer receive needed
4 treatment and services. These concerns appear unfounded. The
5 department of health's adult mental health division's policy is
6 to continue the same services for the person's post-conditional
7 release status for a period of six months. Thereafter, if the
8 person continues to meet eligibility requirements, those
9 services will continue. If unable to meet these requirements,
10 the person is transitioned to an insurance plan's services,
11 often provided by MedQUEST and providing services similar to
12 those provided by the department of health. The only factor
13 that changes is that a probation officer will no longer follow
14 the person or return the person to the Hawaii state hospital.

15 Accordingly, the purpose of this Act is to limit the length
16 of conditional release to one year for all defendants acquitted
17 by reason of mental disease, disorder, or defect for a
18 misdemeanor, petty misdemeanor, or violation, not involving
19 violence or attempted violence. It also clarifies when the one-
20 year conditional release may be tolled, including potential
21 consequences of the revocation of a conditional release. This
22 Act is intended to create parity between the state criminal



1 justice and the mental health systems. Limitations on the
2 length of the conditional release in this manner will focus the
3 resources of the Hawaii state hospital on those who pose a
4 greater risk to public safety and who need inpatient hospital
5 services the most.

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

8 1. By amending subsection (2) to read:

9 "(2) Upon suspension of further proceedings in the
10 prosecution, the court shall appoint from one to three qualified
11 examiners in class A felony cases and shall appoint one
12 qualified examiner in class B and C felony and nonfelony cases
13 to ~~[examine and report upon]~~ perform an examination of the
14 physical and mental condition of the defendant[-] and provide a
15 report of related findings. In class A felony cases the court
16 shall appoint at least one psychiatrist and ~~[at least one~~
17 ~~licensed psychologist. The third member may]~~ any other examiner
18 may be either a psychiatrist, licensed psychologist, or
19 qualified physician. ~~[One of the three shall be a psychiatrist~~
20 ~~or licensed psychologist designated by the director of health~~
21 ~~from within the department of health.]~~ In class B and C felony
22 cases and in nonfelony cases the court may appoint either a



1 psychiatrist or a licensed psychologist. One of the examiners
2 for all classes of felony cases shall be a psychiatrist or
3 licensed psychologist designated by the director of health from
4 within the department of health. All examiners shall be
5 appointed from a list of certified examiners as determined by
6 the department of health. The court, in appropriate
7 circumstances, may appoint an additional examiner or
8 examiners[-] at its discretion. The examination may be
9 conducted on an out-patient basis or [~~, in the court's~~
10 ~~discretion, when necessary~~] the court may order the defendant to
11 be [~~committed to a hospital or other suitable facility~~] held
12 over to the custody of the department of public safety for the
13 limited purpose of the examination for a period not exceeding
14 thirty days, or such longer period as the court determines to be
15 necessary for the purpose. The department of public safety may
16 apply to transfer a defendant, who requires a higher level of
17 mental health care than the department of public safety can
18 provide, to a facility operated by the department of health
19 pursuant to section 334-74. The court may direct that one or
20 more qualified physicians or psychologists retained by the
21 defendant be permitted to witness the examination[-] performed
22 by other court appointed examiners. As used in this section,



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

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

4 "(4) The content and report of the examination [~~shall~~] may
5 include the following[+] as deemed necessary and as directed by
6 the court:

7 [~~(a)~~] ~~A description of the nature of the examination;~~

8 [~~(b)~~] ~~A diagnosis of the physical or mental condition of the~~
9 ~~defendant;~~

10 [~~(c)~~] ~~An~~] (a) The elements of fitness to stand trial,
11 including 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)~~] (b) The elements of penal responsibility, which may
15 include:

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



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, not involving
9 violence or attempted violence, the period of
10 conditional release shall be no longer than one year;
11 or

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

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

20 "(3) Upon application to the court by either the director
21 of health or the person committed, the court shall complete the
22 hearing process and render a decision within sixty days of the



1 application; provided that for good cause the court may extend
2 the sixty-day time frame upon the request of the director of
3 health or the person committed. For any defendant granted
4 conditional release pursuant to this section, and who was
5 charged with a petty misdemeanor, misdemeanor, or violation, not
6 involving violence or attempted violence, the period of
7 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 this chapter, the one year shall be tolled pending the person's
19 time of hospitalization. At any time within that period, the
20 court may determine that a hearing pursuant to subsection (4)
21 should be conducted."



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

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

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

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

10 the court may forthwith modify the conditions of release or
11 order the person to be committed to the custody of the director
12 of health, subject to discharge or release in accordance with
13 the procedure prescribed in section 704-412. If the person's
14 conditional release is revoked, the period of conditional
15 release is terminated. If the person who was charged with a
16 petty misdemeanor, misdemeanor, or violation, not involving
17 violence or attempted violence, is placed on conditional release
18 subsequently, the period of conditional release shall be no
19 longer than one year."

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



1 "(2) Any such hearing shall be deemed a civil proceeding
2 and the burden shall be upon the applicant to prove that the
3 person is no longer affected by a physical or mental disease,
4 disorder, or defect or may safely be either released on the
5 conditions applied for or discharged. According to the
6 determination of the court upon the hearing, the person shall
7 be:

8 (a) Discharged;

9 (b) Released on such conditions as the court determines to
10 be necessary; provided that for any defendant granted
11 conditional release pursuant to this section, and who
12 was charged with a petty misdemeanor, misdemeanor, or
13 violation, not involving violence or attempted
14 violence, the period of conditional release shall be
15 no longer than one year; or

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

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 8. This Act shall take effect on July 1, 2014.



Report Title:

Forensic Mental Health

Description:

Establishes limits on the length of conditional release for certain charges not involving violence, amends the number of examiners required for fitness evaluations, and specifies the circumstances under which the time-limited conditional release may be tolled, as well as what happens if the time-limited conditional release is revoked. Effective July 1, 2014.

(HB2301 HD1)

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

