
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 measures 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 Part of the special action team's analysis revealed that,
4 in addition to the occurrence of high numbers of admissions to
5 the 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 this
14 issue. Requiring public agencies to provide defendants' records
15 necessary for court-ordered mental health evaluations is
16 intended to expedite these evaluations, thereby lessening the
17 length of time of a patient's stay at Hawaii state hospital and
18 reducing overpopulation at Hawaii state hospital.

19 The purpose of this Act is to expedite the process
20 regarding forensic evaluations of defendants by requiring public
21 agencies to provide to the court, records they maintain about



1 defendants for whom forensic examinations are ordered by the
2 court.

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

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

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



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

20 (3) An examination performed under this section may employ
21 any method that is accepted by the professions of medicine or
22 psychology for the examination of those alleged to be affected



1 by a physical or mental disease, disorder, or defect; provided
2 that each examiner shall form and render diagnoses and opinions
3 upon the physical and mental condition of the defendant
4 independently from the other examiners, and the examiners, upon
5 approval of the court, may secure the services of clinical
6 psychologists and other medical or paramedical specialists to
7 assist in the examination and diagnosis.

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

- 10 (a) A description of the nature of the examination;
- 11 (b) A diagnosis of the physical or mental condition of the
12 defendant;
- 13 (c) An opinion as to the defendant's capacity to
14 understand the proceedings against the defendant and
15 to assist in the defendant's own defense;
- 16 (d) An opinion as to the extent, if any, to which the
17 capacity of the defendant to appreciate the
18 wrongfulness of the defendant's conduct or to conform
19 the defendant's conduct to the requirements of law was
20 impaired at the time of the conduct alleged;
- 21 (e) When directed by the court, an opinion as to the
22 capacity of the defendant to have a particular state



1 of mind that is required to establish an element of
2 the offense charged; and

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

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

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



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

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



1 Information Center. The county police departments shall
2 segregate or sanitize from the police reports information that
3 would result in the likelihood or actual identification of
4 individuals who furnished information in connection with its
5 investigation, or who were of investigatory interest. Records
6 shall not be re-disclosed except to the extent permitted by law.

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

12 [~~9~~] (10) The compensation of persons making or assisting
13 in the examination, other than those retained by the nonindigent
14 defendant, who are not undertaking the examination upon
15 designation by the director of health as part of their normal
16 duties as employees of the State or a county, shall be paid by
17 the State."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2014.

21



Report Title:

Records for Mental Health Examinations; Hawaii State Hospital

Description:

Requires public agencies in possession of medical, mental health, social, and juvenile records, and any other pertinent records of a defendant ordered to be examined under chapter 704, Hawaii Revised Statutes, to provide those records to the court, notwithstanding any other state statute. (CD1)

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