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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 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 80 per cent of  
21 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, were to 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, disorder,  
15 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 not  
20 involving violence or attempted violence in the least  
21 restrictive environment appropriate in light of the  
22 defendant's treatment needs and the need to prevent



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



1 Records shall not be re-disclosed except to the extent  
2 permitted by law;

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

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

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



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

2           (a) In nonfelony cases, the court shall appoint a  
3           qualified examiner to examine and report upon the  
4           physical and mental condition of the defendant. The  
5           court may appoint either a psychiatrist or a licensed  
6           psychologist. The examiner may be designated by the  
7           director of health from within the department of  
8           health. The examiner shall be appointed from a list  
9           of certified examiners as determined by the department  
10          of health. The court, in appropriate circumstances,  
11          may appoint an additional examiner or examiners; and

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



1 appointed from a list of certified examiners as  
2 determined by the department of health.

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

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

19 "(3) Upon application to the court by either the director  
20 of health or the person committed, the court shall complete the  
21 hearing process and render a decision within sixty days of the  
22 application; provided that for good cause the court may extend



1 the sixty-day time frame upon the request of the director of  
2 health or the person committed. For any defendant granted  
3 conditional release pursuant to this section, and who was  
4 charged with a petty misdemeanor, misdemeanor, or violation, the  
5 period of conditional release shall be no longer than one year."

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

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

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



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

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 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 upon its approval.

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.  
(SD1)

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

