

JAN 17 2014

S.B. NO. 2654

A BILL FOR AN ACT

RELATING TO ACQUITTAL ON THE GROUND OF PHYSICAL OR MENTAL
DISEASE, DISORDER, OR DEFECT EXCLUDING RESPONSIBILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§706- Term of placement of persons acquitted on the
5 ground of physical or mental disease, disorder, or defect
6 excluding responsibility; violent felonies; high security
7 correctional facility. (1) A person who has been acquitted of
8 a violent felony on the ground of physical or mental disease,
9 disorder, or defect excluding responsibility may be placed in an
10 appropriate high security correctional facility for custody,
11 care, and treatment pursuant to section 704-411 for a term that
12 shall be the same as the indeterminate term of imprisonment for
13 the violent felony that the defendant is acquitted.

14 (2) As used in this section, "violent felony" means a
15 felony including but not limited to:

16 (a) Murder in the first degree under section 707-701;

17 (b) Murder in the second degree under section 707-701.5;



- 1 (c) Manslaughter under section 707-702;
- 2 (d) Negligent homicide in the first degree under section
- 3 707-702.5;
- 4 (e) Assault in the first degree under section 707-710;
- 5 (f) Kidnapping under section 707-720;
- 6 (g) Sexual assault in the first degree under section 707-
- 7 730; and
- 8 (h) Sexual assault in the second degree under section 707-
- 9 731."

10 SECTION 2. Section 334-16, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"[+]§334-16[+] Annual report; forensic patient data.** The
13 department of health shall submit an annual report to the
14 legislature no later than twenty days prior to the convening of
15 each regular session which, at a minimum, shall summarize yearly
16 data on forensic patients, including:

- 17 (1) Gross numbers for admissions to and discharges from
- 18 the Hawaii state hospital;
- 19 (2) The number of admissions to, discharges from, and
- 20 lengths of stays in the Hawaii state hospital, broken
- 21 down by the following commitment categories:
- 22 (A) Original order under section 704-411(1)(a);

- 1 (B) Pending examination under section [~~704-411(3);~~]
- 2 704-411(4);
- 3 (C) Maximum seventy-two-hour recommitment pending
- 4 examination under section 704-413(1);
- 5 (D) Original order under section 704-404; and
- 6 (E) Original order under section 704-406;
- 7 (3) Number of persons committed to the Hawaii state
- 8 hospital by each court and county;
- 9 (4) Gross lengths of stay in the Hawaii state hospital
- 10 for:
- 11 (A) Patients discharged during the fiscal year; and
- 12 (B) Individuals remaining as inpatients at the end of
- 13 the fiscal year; and
- 14 (5) Number of patients in the Hawaii state hospital on
- 15 forensic status, broken down by categories of
- 16 underlying crimes, such as by crimes against the
- 17 person, sex offenses, and property crimes, and by
- 18 grade of offense."

19 SECTION 3. Section 353-7, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) The facility shall:



- 1 (1) Provide extensive control and correctional programs
- 2 for categories of persons who cannot be held or
- 3 treated in other correctional facilities including,
- 4 but not limited to:
- 5 (A) Individuals committed because of serious
- 6 predatory or violent crimes against the person;
- 7 (B) Intractable recidivists;
- 8 (C) Persons characterized by varying degrees of
- 9 personality disorders;
- 10 (D) Recidivists identified with organized crime;
- 11 [and]
- 12 (E) Violent and dangerously deviant persons; and
- 13 (F) Individuals who are acquitted of a violent felony
- 14 on the ground of physical or mental disease,
- 15 disorder, or defect excluding responsibility,
- 16 including but not limited to:
- 17 (i) Murder in the first degree under section
- 18 707-701;
- 19 (ii) Murder in the second degree under section
- 20 707-701.5;
- 21 (iii) Manslaughter under section 707-702;



1 (iv) Negligent homicide in the first degree under
2 section 707-702.5;

3 (v) Assault in the first degree under section
4 707-710;

5 (vi) Kidnapping under section 707-720;

6 (vii) Sexual assault in the first degree under
7 section 707-730; or

8 (viii) Sexual assault in the second degree under
9 section 707-731,

10 and the court has determined pursuant to section
11 704-411 that custody and treatment is appropriate
12 at the facility rather than to be placed in the
13 custody of the director of health for care and
14 treatment;

15 (2) Provide correctional services including, but not
16 limited to, psychiatric and psychological evaluation,
17 social inventory, correctional programming, and
18 medical and dental services; and

19 (3) Provide recreational, educational, occupational
20 training, and social adjustment programs."

21 SECTION 4. Section 353-13.3, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~§~~353-13.3~~§~~ **Mental health care.** The department shall
2 be responsible for providing mental health services in community
3 correctional centers~~[-]~~ under section 353-6 and high security
4 correctional facilities under section 353-7. The department
5 shall collaborate with the department of health for appropriate
6 mental health treatment and have access to the list of certified
7 mental health examiners determined by the department of health
8 to evaluate and report on the physical and mental conditions of
9 persons in custody."

10 SECTION 5. Section 704-411, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§704-411 Legal effect of acquittal on the ground of**
13 **physical or mental disease, disorder, or defect excluding**
14 **responsibility; commitment; conditional release; discharge;**
15 **procedure for separate post-acquittal hearing.** (1) When a
16 defendant is acquitted on the ground of physical or mental
17 disease, disorder, or defect excluding responsibility, the
18 court, on the basis of the report made pursuant to section 704-
19 404, if uncontested, or the medical or psychological evidence
20 given at the trial or at a separate hearing, shall order that:

21 (a) The defendant shall be committed to the custody of the
22 director of health to be placed in an appropriate



1 institution for custody, care, and treatment if the
2 court finds that the defendant:

3 (i) Is affected by a physical or mental disease,
4 disorder, or defect;

5 (ii) Is acquitted of an offense other than a violent
6 felony;

7 [~~(iii)~~] (iii) Presents a risk of danger to self or
8 others; and

9 [~~(iii)~~] (iv) Is not a proper subject for conditional
10 release;

11 provided that the director of health shall place
12 defendants charged with misdemeanors or felonies not
13 involving violence or attempted violence in the least
14 restrictive environment appropriate in light of the
15 defendant's treatment needs and the need to prevent
16 harm to the person confined and others. The county
17 police departments shall provide to the director of
18 health and the defendant copies of all police reports
19 from cases filed against the defendant that have been
20 adjudicated by the acceptance of a plea of guilty or
21 nolo contendere, a finding of guilt, acquittal,
22 acquittal pursuant to section 704-400, or by the entry



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

16 (b) The defendant may be placed in an appropriate high
17 security correctional facility for custody, care, and
18 treatment for a term determined by the court pursuant
19 to section 706- if the court finds that the
20 defendant:

21 (i) Is affected by a physical or mental disease,
22 disorder, or defect;



1 (ii) Is acquitted of a violent felony; and

2 (iii) Presents a risk of danger to self or others.

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



1 who were of investigatory interest. Records shall not
2 be re-disclosed except to the extent permitted by law;

3 [~~b~~] (c) The defendant shall be granted conditional
4 release with conditions as the court deems necessary
5 if the court finds that the defendant is affected by
6 physical or mental disease, disorder, or defect and
7 that the defendant presents a danger to self or
8 others, but that the defendant can be controlled
9 adequately and given proper care, supervision, and
10 treatment if the defendant is released on condition.
11 For any defendant granted conditional release pursuant
12 to this paragraph, 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 [~~e~~] (d) The defendant shall be discharged if the court
17 finds that the defendant is no longer affected by
18 physical or mental disease, disorder, or defect or, if
19 so 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.



1 (2) In the case of a defendant who is acquitted of a
2 violent felony, the court shall determine whether the defendant
3 shall be committed to the custody of the director of health
4 under subsection (1)(a) or placed in an appropriate high
5 security correctional facility under subsection (1)(b) for
6 custody, care, and treatment. The court's determination is
7 subject to change based on any medical or psychological
8 evidence, evaluations, or updates received after an order is
9 made pursuant to subsection (1).

10 ~~[(2)]~~ (3) The court, upon its own motion or on the motion
11 of the prosecuting attorney or the defendant, shall order a
12 separate post-acquittal hearing for the purpose of taking
13 evidence on the issue of physical or mental disease, disorder,
14 or defect and the risk of danger that the defendant presents to
15 self or others.

16 ~~[(3)]~~ (4) When ordering a hearing pursuant to subsection
17 ~~[(2)+]~~ (3):

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



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

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



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

12 ~~[(4)]~~ (5) Whether the court's order under subsection (1)
13 is made on the basis of the medical or psychological evidence
14 given at the trial, or on the basis of the report made pursuant
15 to section 704-404, or the medical or psychological evidence
16 given at a separate hearing, the burden shall be upon the State
17 to prove, by a preponderance of the evidence, that the defendant
18 is affected by a physical or mental disease, disorder, or defect
19 and may not safely be discharged and that the defendant should
20 be either committed or conditionally released as provided in
21 subsection (1).



1 [~~5~~] (6) In any proceeding governed by this section, the
2 defendant's fitness shall not be an issue.

3 (7) As used in this section, "violent felony" means a
4 felony including but not limited to:

5 (a) Murder in the first degree under section 707-701;

6 (b) Murder in the second degree under section 707-701.5;

7 (c) Manslaughter under section 707-702;

8 (d) Negligent homicide in the first degree under section
9 707-702.5;

10 (e) Assault in the first degree under section 707-710;

11 (f) Kidnapping under section 707-720;

12 (g) Sexual assault in the first degree under section 707-
13 730; and

14 (h) Sexual assault in the second degree under section 707-
15 731."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.


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

21



1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: 



Report Title:

Acquittal on Ground of Physical or Mental Disease, Disorder, or Defect Excluding Responsibility; High Security Correctional Facility; Violent Felonies; Mental Health Treatment

Description:

Allows the court to place a defendant acquitted of a violent felony on the ground of physical or mental disease, disorder, or defect excluding responsibility in an appropriate high security correctional facility for custody, care, and treatment for a term that is the same as the indeterminate term of imprisonment for the violent felony that the defendant is acquitted.

Requires the director of public safety to include persons acquitted of a violent felony on the ground of physical or mental disease, disorder, or defect excluding responsibility for placement and treatment at high security correctional facilities. Requires the department of public safety to provide mental health services in high security correctional facilities and to collaborate with the department of health for treatment.

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

