

# S .B. NO. 2868

JAN 23 2014

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## A BILL FOR AN ACT

RELATING TO RECORDS FOR FORENSIC EXAMINATIONS.

**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 the systemic factors  
5 that contribute to the increased rate of admissions to the  
6 Hawaii state hospital and factors that increase the length of  
7 stay at the Hawaii state hospital. Further, the team was tasked  
8 with considering possible solutions and making recommendations  
9 to the governor and the legislature. The special action team  
10 comprised representatives from the office of the governor, the  
11 department of health's adult mental health division, the  
12 department of public safety, the department of human services,  
13 the department of the attorney general, the department of human  
14 resource development, the department of budget and finance, the  
15 offices of the prosecutors of each county, the office of the  
16 public defender, and the chiefs of police from each county.  
17 They joined together to examine data and to develop a plan to  
18 revitalize adult mental health services in the community, and

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

3 Over eighty per cent of the individuals admitted to the  
4 hospital do not require inpatient hospital level of care, based  
5 on utilization management illness severity indexes. The special  
6 action team's analysis revealed that, in addition to the issue  
7 of high numbers of admissions to the Hawaii state hospital for  
8 completion of court ordered examinations to evaluate a  
9 defendant's fitness to proceed under section 704-404 or 704-406,  
10 Hawaii Revised Statutes, such examinations are frequently  
11 delayed or incomplete because required information from other  
12 public agencies is not provided in a timely way to the examiners  
13 who are ordered to perform these evaluations and report to the  
14 court. They are not often provided because of confidentiality  
15 laws that prevent the agencies that maintain the information  
16 from sharing it with the Judiciary, which in turn shares it with  
17 the examiners. The special action team reached a consensus that  
18 changes to chapter 704, Hawaii Revised Statutes, should be  
19 proposed to address these issues, without adverse impact on  
20 defendants' rights, the provision of effective mental health  
21 services, or public safety. The purpose of this Act is to  
22 require public agencies to share information they maintain about  
23 the defendants for whom forensic examinations are ordered by the

1 court, with the adult probation offices, so that the forensic  
2 examiners have the relevant history of the defendants before  
3 they conduct their examinations. This may not reduce the number  
4 of defendants ordered to be held at the Hawaii state hospital  
5 pending forensic examination, but it should reduce significantly  
6 the length of their stays at the 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  
23 in felony cases and one qualified examiner in nonfelony cases to

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

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

11           (4) The report of the examination shall include the  
12 following:

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

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

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

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

19 (6) Three copies of the report of the examination,  
20 including any supporting documents, shall be filed with the  
21 clerk of the court, who shall cause copies to be delivered to  
22 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  
23 Information Center. The county police departments shall

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

6 (9) Upon request of the court, all public agencies in  
7 possession of medical, mental health, social, police, and  
8 juvenile records, including those expunged, and any other  
9 pertinent records of a defendant ordered to be examined under  
10 this chapter, shall provide those records to the court,  
11 notwithstanding any other statutes.

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 upon its approval.

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INTRODUCED BY:



23

BY REQUEST



S . B . N O . 2568

**Report Title:**

Records for Forensic Examination

**Description:**

Amends the Hawaii Penal Code with respect to forensic evaluations of defendants when there is a concern about fitness to proceed or penal responsibility, to require public agencies to provide records about the defendants to the Judiciary, irrespective of confidentiality laws.

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

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## JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO RECORDS FOR FORENSIC EXAMINATIONS.

PURPOSE: To make statutory changes to require public agencies in possession of information about a defendant about whom fitness to proceed or penal responsibility is an issue, to provide that information to the court which in turn provides it to the forensic examiners as background for their evaluations. These amendments are to assist in reducing the length of stay for defendants ordered to the Hawaii State Hospital for evaluation.

MEANS: Amend section 704-404, Hawaii Revised Statutes.

JUSTIFICATION: This measure is based on recommendations from the Governor's Special Action Team to analyze the systemic factors that contribute to the increased rate of admissions, as well as factors that increase the length of stay at the Hawaii State Hospital. Further, the team was tasked with considering possible solutions and making recommendations to the governor and the Legislature. The Special Action Team consisted of representatives from the Office of the Governor, Department of Health's Adult Mental Health Division, the Department of Public Safety, the Department of Human Services, the Department of the Attorney General, the Department of Human Resource Development, the Department of Budget and Finance, the offices of the prosecuting attorneys from each county, the Office of the Public Defender, and the chiefs of police from each county. The Special Action Team analysis found that, in addition to the issue of high numbers of admissions to the Hawaii State Hospital for

completion of court-ordered examinations to evaluate a defendant's fitness to proceed under chapter 704, Hawaii Revised Statutes, such examinations are frequently delayed or incomplete because required information from public agencies is not provided in a timely way to the examiners who are ordered to perform these evaluations and report to the court. Often the information cannot be disclosed due to state and federal confidentiality statutes. This measure addresses those obstacles, by making the disclosure required by law.

Impact on the public: Statutory changes would not compromise defendants' rights, mental health services or public safety. It is expected that changes to the statutes would minimize the defendants' time in the hospital while awaiting examinations.

Impact on the department and other agencies: Allowing the Department of Health's forensic examiners timely access to a defendant's medical, mental health, social, police, and all other pertinent records will enhance the examiners' ability to complete forensic evaluations in a timely manner.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH 495.

OTHER AFFECTED  
AGENCIES: Judiciary, City and County of Honolulu; County Prosecuting Attorneys; Department of the Attorney General; Office of the Public Defender; Department of Public Safety; Department of Human Services; Chiefs of Police from each county.

EFFECTIVE DATE: Upon approval.