

ACT 54

S.B. NO. 1487-74

A Bill for an Act Relating to the Use of Psychologists as Consultants to the State Court System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 404 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code), is amended to read:

"Sec. -404 Examination of defendant with respect to physical or mental disease, disorder, or defect. (1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court shall immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The dismissal of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint a State-employed physician or certified clinical psychologist designated by the director of health from within the department of health and two additional unbiased, qualified physicians, or one qualified physician and one certified clinical psychologist, to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint no more than one certified clinical psychologist and at least one of the physicians appointed by the court shall be a psychiatrist. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians retained by the defendant be permitted to witness and participate in the examination.

(3) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from physical or mental disease, disorder, or defect and the examiners may, upon approval of the court, secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

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

- (a) A description of the nature of the examination;
- (b) A diagnosis of the physical or mental condition of the defendant;
- (c) An opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged; and
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is required to establish an element of the offense charged.

(5) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and

shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(6) The report of the examination, including any supporting documents, shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(7) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify his diagnosis or opinion.

(8) There shall be made accessible to the examiners all existing medical, social, and other pertinent records in the custody of public agencies notwithstanding any other statutes.

(9) The compensation of persons making or assisting in the examination, other than those retained by the non-indigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the State."

SECTION 2. Section 411 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code), is amended to read:

"Sec. -411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.

(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court shall, on the basis of the report made pursuant to section 404, if uncontested, or the medical evidence given at the trial or at a separate hearing, make an order as follows:

- (a) The court shall order him to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant presents a risk of danger to himself or the person or property of others and that he is not a proper subject for conditional release; or
- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that he presents a danger to himself or the person or property of others, but that he can be controlled adequately and given proper care, supervision, and treatment if he is released on condition; or
- (c) The court shall order him discharged from custody if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect, or, if so affected, that he no longer presents a danger to himself or the person or property of others and is not in need of care, supervision, or treatment.

(2) The court shall, upon its own motion or on the motion of the prosecuting attorney or the defendant, order a separate post-acquittal hearing for the purpose of taking evidence on the issue of the risk of danger which the defendant presents to himself or to the person or property of others.

(3) When ordering such a hearing the court shall appoint a state-employed physician or certified clinical psychologist designated by the director

of health from within the department of health plus two additional, unbiased, qualified physicians, or one qualified physician and one certified clinical psychologist, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the defendant and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, as to his physical and mental condition. In each case the court shall appoint no more than one certified clinical psychologist and at least one of the physicians appointed by the court shall be a psychiatrist. To facilitate such examination and the proceedings thereon, the court may cause the defendant, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404 (3), (4), (a) and (b), (6), (7), (8) and (9).

(4) Whether the court's order under subsection (1) is made on the basis of the medical evidence given at the trial or on the basis of the report made pursuant to section 404 or the medical evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant may not safely be discharged and that he should be either committed or conditionally released as provided in subsection (1)."

SECTION 3. Section 414 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code), is amended to read:

"Sec. -414 Procedure upon application for discharge, conditional release, or modification of conditions of release. Upon filing of an application pursuant to section 412 for discharge or conditional release, or upon the filing of an application pursuant to section 413 for discharge or for modification of conditions of release, the court shall appoint a State-employed physician or certified clinical psychologist designated by the director of health from within the department of health and two additional unbiased, qualified physicians, or one qualified physician and one certified clinical psychologist, including, if possible, at least one or more of the examiners who participated in the examination and report made pursuant to section 404, to examine the committed or conditionally released person and to report within thirty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his physical and mental condition. In each case the court shall appoint no more than one certified clinical psychologist and at least one of the physicians appointed by the court shall be a psychiatrist. To facilitate such examination and the proceedings thereon, the court may cause such person, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians retained by the person be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 404(3), (4)(a) and (b), (6), (7), (8), and (9)."

SECTION 4. Section 603 of Act 9, Session Laws of Hawaii 1972 (Hawaii Penal Code), is amended to read:

“Sec. -603 **Pre-sentence psychiatric and medical examination.** Before suspending or imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to psychiatric and other medical observation and examination for a period not exceeding sixty days or such longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or hospital and, in addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or certified clinical psychologists to make the examination. If a single examiner is appointed, he shall be a qualified psychiatrist. If two or more examiners are appointed, at least one shall be a qualified psychiatrist and not more than one shall be a certified clinical psychologist. The report of the examination shall be submitted to the court.”

SECTION 5. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 28, 1974.)

*Edited accordingly.