
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1,
2 H.D. 1, adopted by the twenty-third Hawaii state legislature in
3 2006 called for the governor to convene a task force to
4 "evaluate and recommend possible procedural, statutory, and
5 public policy changes to minimize the census at Hawaii State
6 Hospital and promote community based health services for
7 forensic patients." The purpose of this Act is to enact the
8 recommendations made by that task force.

9 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
10 amended by adding one new section to be appropriately designated
11 and to read as follows:

12 "§334- 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 legislative session which, at a minimum, shall
16 summarize yearly data on forensic patients, including:



- 1 (1) Gross numbers for admissions to and discharges from
- 2 the Hawaii state hospital;
- 3 (2) The number of admissions to, discharges from, and
- 4 lengths of stays in the Hawaii state hospital, broken
- 5 down by the following commitment categories:
- 6 (A) Original order under section 704-411(1)(a);
- 7 (B) Pending examination under section 704-413(3);
- 8 (C) Maximum seventy-two-hour recommitment pending
- 9 examination under section 704-413(1);
- 10 (D) Original order under section 704-404; and
- 11 (E) Original order under section 704-406;
- 12 (3) Number of persons committed to the Hawaii state
- 13 hospital by each court and county;
- 14 (4) Gross lengths of stay in the Hawaii state hospital
- 15 for:
- 16 (A) Patients discharged during the fiscal year; and
- 17 (B) Individuals remaining as inpatients at the end of
- 18 the fiscal year;
- 19 (5) Number of patients in the Hawaii state hospital on
- 20 forensic status, broken down by categories of
- 21 underlying crimes, such as by crimes against the

1 person, sex offenses, and property crimes, and by
2 grade of offense."

3 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§704-411 Legal effect of acquittal on the ground of**
6 **physical or mental disease, disorder, or defect excluding**
7 **responsibility; commitment; conditional release; discharge;**
8 **procedure for separate post-acquittal hearing.** (1) When a
9 defendant is acquitted on the ground of physical or mental
10 disease, disorder, or defect excluding responsibility, the
11 court, on the basis of the report made pursuant to section
12 704-404, if uncontested, or the medical or psychological
13 evidence given at the trial or at a separate hearing, shall make
14 an order as follows:

15 (a) The court shall order the defendant to be committed to
16 the custody of the director of health to be placed in
17 an appropriate institution for custody, care, and
18 treatment if the court finds that the defendant:

19 (i) Is affected by a physical or mental disease,
20 disorder, or defect;

21 (ii) Presents a risk of danger to self or others; and

22 (iii) Is not a proper subject for conditional release;



1 provided that the director of health shall place
2 defendants charged with misdemeanors or felonies not
3 involving violence or attempted violence in the least
4 restrictive environment appropriate in light of the
5 defendant's treatment needs and the need to prevent
6 harm to the person confined and others;

7 (b) The court shall order the defendant to be [~~released on~~
8 ~~such conditions~~] granted conditional release with
9 conditions as the court deems necessary if the court
10 finds that the defendant is affected by physical or
11 mental disease, disorder, or defect and that the
12 defendant presents a danger to self or others, but
13 that the defendant can be controlled adequately and
14 given proper care, supervision, and treatment if the
15 defendant is released on condition; or

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



1 (2) The court, upon its own motion or on the motion of the
2 prosecuting attorney or the defendant, shall order a separate
3 post-acquittal hearing for the purpose of taking evidence on the
4 issue of physical or mental disease, disorder, or defect and the
5 risk of danger that the defendant presents to self or others.

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

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

17 (b) In felony cases, the court shall appoint three
18 qualified examiners to examine and report upon the
19 physical and mental condition of the defendant. In
20 each case, the court shall appoint at least one
21 psychiatrist and at least one licensed psychologist.
22 The third member may be a psychiatrist, a licensed

1 psychologist, or a qualified physician. One of the
2 three shall be a psychiatrist or licensed psychologist
3 designated by the director of health from within the
4 department of health. The three examiners shall be
5 appointed from a list of certified examiners as
6 determined by the department of health.

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

21 (4) Whether the court's order under subsection (1) is made
22 on the basis of the medical or psychological evidence given at



1 the trial, or on the basis of the report made pursuant to
2 section 704-404, or the medical or psychological evidence given
3 at a separate hearing, the burden shall be upon the State to
4 prove, by a preponderance of the evidence, that the defendant is
5 affected by a physical or mental disease, disorder, or defect
6 and may not safely be discharged and that the defendant should
7 be either committed or conditionally released as provided in
8 subsection (1).

9 (5) For each individual who is acquitted of a felony on
10 the ground of physical or mental disease, disorder, or defect
11 excluding responsibility, and is the subject of inpatient
12 hospitalization, the court shall conduct hearings to assess any
13 need for further inpatient hospitalization beginning one
14 calendar year after the date of commitment. If the person
15 remains subject to inpatient hospitalization, a status hearing
16 shall be held once per year for the next four years, and then in
17 biennial intervals thereafter.

18 [~~5~~] (6) In any proceeding governed by this section, the
19 defendant's fitness shall not be an issue."

20 SECTION 4. Section 704-412, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§704-412 Committed person; application for conditional**
2 **release or discharge; by the director of health; by the person.**

3 (1) After the expiration of at least ninety days following
4 ~~[the]~~ an original order of commitment pursuant to [section
5 ~~704-411,]~~ section 704-411(1)(a), or after the expiration of at
6 least thirty days following the revocation of conditional
7 release pursuant to section 704-413(3), if the director of
8 health is of the opinion that the person committed ~~[to the~~
9 ~~director's custody]~~ is still affected by a physical or mental
10 disease, disorder, or defect and may be ~~[released on condition]~~
11 granted conditional release or discharged without danger to self
12 or to the person or property of others or that the person is no
13 longer affected by a physical or mental disease, disorder, or
14 defect, the director shall make application for ~~[the discharge~~
15 ~~or conditional release of the person in]~~ either the conditional
16 release or discharge of the person, as appropriate. In such a
17 case, the director shall submit a report to the court ~~[from]~~ by
18 which the person was ordered committed and shall transmit ~~[a~~
19 ~~copy]~~ copies of the application and report to the prosecuting
20 attorney of the county from which the person was committed~~[-~~
21 ~~The]~~ and to the person ~~[shall be given notice of such~~
22 ~~application.]~~ committed.



1 (2) After the expiration of ninety days from the date of
2 the order of commitment pursuant to section 704-411, or after
3 the expiration of thirty days following the revocation of
4 conditional release pursuant to section 704-413(3), the person
5 committed may apply to the court from which the person was
6 committed for an order of discharge upon the ground that the
7 person is no longer affected by a physical or mental disease,
8 disorder, or defect. The person committed may apply for
9 ~~[discharge or conditional release]~~ conditional release or
10 discharge upon the ground that, though still affected by a
11 physical or mental disease, disorder, or defect, the person may
12 be released without danger to self or to the person or property
13 of others. A copy of the application shall be transmitted to
14 the prosecuting attorney of the county from which the
15 ~~[defendant]~~ person was committed. If the ~~[determination of the~~
16 ~~court is adverse to the application,]~~ court denies the
17 application, the person shall not be permitted to file [a
18 ~~further]~~ another application for either conditional release or
19 discharge until one year ~~[has elapsed from]~~ after the date of
20 ~~[any preceding hearing on an application for the person's~~
21 ~~discharge or conditional release.]~~ the hearing held on the
22 immediate prior application."



1 SECTION 5. Section 704-413, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§704-413 Conditional release; application for**
4 **modification or discharge; termination of conditional release**

5 **and commitment.** (1) Any person [~~released~~] granted conditional

6 release pursuant to [~~section 704-411~~] chapter 704 shall continue

7 to receive mental health or other treatment and care deemed

8 appropriate by the director of health until discharged from

9 conditional release. The person shall follow all prescribed

10 treatments and take all prescribed medications according to the

11 instructions of the person's treating mental health

12 professional. If [~~any~~] a mental health professional who is

13 treating [~~any conditionally released~~] a person granted

14 conditional release believes that either the person is not

15 complying with the requirements of this section or there is

16 other evidence that hospitalization is appropriate, the mental

17 health professional shall report the matter to the probation

18 officer of the [~~conditionally released person.~~] person granted

19 conditional release. The probation officer may order the

20 [~~conditionally released~~] person granted conditional release to

21 be hospitalized for a period not to exceed seventy-two hours if

22 the probation officer has probable cause to believe the person



1 has violated the requirements of this subsection. No person
2 shall be hospitalized beyond the [~~seventy-two hour~~] seventy-two-
3 hour period, as computed pursuant to section 1-29, unless a
4 hearing has been held pursuant to subsection [~~(3)-~~] (4);
5 provided that on or before the expiration of the seventy-two-
6 hour period, a court may conduct a hearing to determine whether
7 the person would benefit from further hospitalization, which may
8 render a revocation unnecessary. If satisfied, the court may
9 order further temporary hospitalization for a period not to
10 exceed ninety days, subject to extension as appropriate, but in
11 no event for a period longer than one year. At any time within
12 that period, the court may determine that a hearing pursuant to
13 subsection (4) should be conducted.

14 (2) The director of health may apply to the court ordering
15 any person released pursuant to chapter 704, for the person's
16 discharge from, or modification of, the order granting
17 conditional release; provided that the person receives
18 community-based mental health services from or contracted by the
19 department of health, and the director is of the opinion that
20 the person on conditional release is no longer affected by a
21 physical or mental disease, disorder, or defect and may be
22 discharged, or the order may be modified, without danger to the



1 person or to others. The director shall make application for
2 the discharge from, or modification of, the order of conditional
3 release in a report to the court. The director shall transmit a
4 copy of the application and report to the prosecuting attorney
5 of the county from which the conditional release order was made,
6 to the person's treating mental health professionals, and to the
7 probation officer supervising the conditional release. The
8 person on conditional release shall be given notice of the
9 application.

10 [~~2~~] (3) Any person [~~released~~] granted conditional
11 release pursuant to [~~section 704-411~~] chapter 704 may apply to
12 the court ordering the conditional release for discharge from,
13 or modification of, the order granting conditional release on
14 the ground that the person is no longer affected by a physical
15 or mental disease, disorder, or defect and may be discharged, or
16 the order may be modified, without danger to the person or to
17 others. The application shall be accompanied by a letter from
18 or supporting affidavit of a qualified physician or licensed
19 psychologist. A copy of the application and letter or affidavit
20 shall be transmitted to the prosecuting attorney of the circuit
21 from which the order issued and to any persons supervising the
22 release, and the hearing on the application shall be held



1 following notice to such persons. If the [~~determination of the~~
2 court [~~is adverse to~~] denies the application, the person shall
3 not be permitted to file [~~further~~] another application for
4 either discharge or modification of conditional release until
5 one year [~~has elapsed from~~] after the date of [~~any preceding~~
6 ~~hearing on an application for modification of conditions of~~
7 ~~release or for discharge.~~] the denial.

8 [~~(3)~~] (4) If, at any time after the order pursuant to
9 [~~section 704-411~~] chapter 704 granting conditional release, the
10 court determines, after hearing evidence, that:

11 (a) The person is still affected by a physical or mental
12 disease, disorder, or defect, and the conditions of
13 release have not been fulfilled; or

14 (b) For the safety of the person or others, the person's
15 conditional release should be revoked,

16 the court may forthwith modify the conditions of release or
17 order the person to be committed to the custody of the director
18 of health, subject to discharge or release [~~only~~] in accordance
19 with the procedure prescribed in section 704-412.

20 (5) For each individual who is granted conditional release
21 under chapter 704, the court shall conduct hearings to assess
22 any need to continue or modify the conditions beginning one



1 calendar year after the date of the original court order for
2 conditional release. If the person remains subject to
3 conditional release, a status hearing shall be held once per
4 year for the next four years, and then in biennial intervals
5 thereafter."

6 SECTION 6. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2008-2009 to
9 support the operations and expansion of the mental health court.

10 The sum appropriated shall be expended by the judiciary for
11 the purposes of this Act.

12 SECTION 7. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun, before its effective date.

15 SECTION 8. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 9. This Act shall take effect on July 1, 2050.

Report Title:

Assault; Mental Health Facilities; Hawaii State Hospital;
Forensic Patients

Description:

Requires the department of health to submit an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditionally released or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations. (SB2396 HD2)

