H.B. NO. 3147

A BILL FOR AN ACT

RELATING TO RECORDS OF DEFENDANTS COMMITTED TO A HOSPITAL CONTROLLED BY THE DIRECTOR OF HEALTH OR TO CUSTODY OF DIRECTOR OF HEALTH.

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

SECTION 1. Section 704-404, Hawaii Revised Statutes, is amended by amending subsection (8) to read as follows:

"(8) The court shall obtain all existing[~~,~~] medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners. <u>If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the court shall provide copies of all aforementioned records to the director of health with the exception of those expunged.</u>"

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the

1 court shall commit the defendant to the custody of the director
2 of health to be placed in an appropriate institution for
3 detention, care, and treatment. If the court is satisfied that
4 the defendant may be released on condition without danger to the
5 defendant or to the person or property of others, the court
6 shall order the defendant's release, which shall continue at the
7 discretion of the court on conditions the court determines
8 necessary. A copy of the report filed pursuant to section 704-
9 404 shall be attached to the order of commitment or order of
10 release on conditions. When the defendant is committed to the
11 custody of the director of health for detention, care, and
12 treatment, unless already provided pursuant to section 704-
13 404(8), the court shall provide the director of health copies of
14 all existing medical, mental health, social, police, and
15 juvenile records, including other pertinent records in the
16 custody of public agencies obtained pursuant to section 704-
17 404(8), with the exception of expunged records. Records shall
18 not be re-disclosed except to the extent permitted by law."
19 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
20 amended by amending subsection (1) to read as follows:
21 "(1) When a defendant is acquitted on the ground of
22 physical or mental disease, disorder, or defect excluding

1 responsibility, the court, on the basis of the report made
2 pursuant to section 704-404, if uncontested, or the medical or
3 psychological evidence given at the trial or at a separate
4 hearing, shall make an order as follows:
5 (a) The court shall order the defendant to be committed to
6 the custody of the director of health to be placed in
7 an appropriate institution for custody, care, and
8 treatment if the court finds that the defendant:
9 (i) Is affected by a physical or mental disease,
10 disorder, or defect;
11 (ii) Presents a risk of danger to self or others; and
12 (iii) Is not a proper subject for conditional
13 release;
14 provided that the director of health shall place
15 defendants charged with misdemeanors or felonies not
16 involving violence or attempted violence in the least
17 restrictive environment appropriate in light of the
18 defendant's treatment needs and the need to prevent
19 harm to the person confined and others[~~;~~]. Unless
20 already provided pursuant to sections 704-404(8) or
21 704-406(1), the court shall provide the director of
22 health copies of all existing medical, mental health,

social, police, and juvenile records, including other pertinent records in the custody of public agencies that have been obtained pursuant to section 704-404(8), with the exception of expunged records. Records shall not be re-disclosed except to the extent permitted by law; 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 the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3147

Report Title:
Records of Defendants Committed to a Hospital Controlled by the Director of Health or to Custody of Director of Health

Description:
Requires the courts to provide the Director of the Department of Health (DOH) records of defendants court-ordered to the State Hospital or related facility under the cognizance of the Department.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO RECORDS OF DEFENDANTS COMMITTED TO A HOSPITAL CONTROLLED BY THE DIRECTOR OF HEALTH OR TO CUSTODY OF DIRECTOR OF HEALTH.

PURPOSE: Requires the courts to provide the Director of the Department of Health (DOH) records of defendants committed to the custody of the Director or to a hospital controlled by the Director.

MEANS: Amend sections 704-404(8), 704-406(1), and 704-411(1), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department of Health (DOH), including Hawaii State Hospital (HSH), does not receive copies of records collected by the court pursuant to HRS section 704-404(8) when a criminal defendant is ordered to undergo a mental health examination. The records enumerated by the statute are collected by the Adult Client Services Branch of the Court in which the action is pending, and are seen only by the forensic examiner(s) appointed by the Court at the Adult Client Services Branch office.

Information contained in the court-collected records might assist clinical personnel in treating defendants committed to a hospital controlled by the director of health for their forensic examinations, as well as those defendants later committed to the custody of the director of health either while they are unfit to proceed or after acquittal on account of physical or mental disease, disorder or defect.

The information may also be useful in the completion of the risk assessments conducted upon admission to HSH and prior to discharge to community care. In fact, evidence based

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practice standards for risk assessment call for review of as much relevant background information as possible.

Impact on the public: To the extent that access to the court-collected records expands the background information available to clinicians responsible for treatment, risk assessment and discharge recommendations, requiring the court to provide copies of the court-collected records to DOH may impact the public in that additional background information may help DOH clinical personnel:

(1) Make more effective clinical decisions while the patient is confined to hospital care, thereby increasing the likelihood that treatments offered will more readily meet the patients' needs, perhaps allowing shorter courses of hospital care;
(2) Discern the appropriate level of community care needed after discharge, and thereby help with the discharge planning process, perhaps allowing more effective discharge placements; and
(3) Make more informed risk assessments, and thereby help with the risk reduction and risk management planning processes, perhaps improving public safety.

Impact on the department and other agencies: Requiring the courts to provide to DOH copies of defendants' existing records at the time of commitment to the hospital for a forensic examination or upon commitment to DOH custody when unfit or acquitted will centralize and streamline DOH's efforts to collect background information which will then be available to more quickly inform hospital treatment, discharge planning and risk assessment. Community providers, including state operated Community Mental Health Centers that obtain their clients' consent to review the records produced to

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DOH by the courts will, similarly, be more informed.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-420.

OTHER AFFECTED AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.