
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS OF A PERSON
FOUND UNFIT TO STAND TRIAL.

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

1 SECTION 1. The purpose of this Act is to amend the law to
2 establish a compliance reporting mechanism for persons found
3 unfit to stand trial who are released on conditions to the
4 community.

5 SECTION 2. Section 704-406, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§704-406 Effect of finding of unfitness to proceed. (1)

8 If the court determines that the defendant lacks fitness to
9 proceed, the proceeding against the defendant shall be
10 suspended, except as provided in section 704-407, and the court
11 shall commit the defendant to the custody of the director of
12 health to be placed in an appropriate institution for detention,
13 care, and treatment. If the court is satisfied that the
14 defendant may be released on [~~condition~~] conditions without
15 danger to the defendant or to the person or property of others,
16 the court shall order the defendant's release, which shall
17 continue at the discretion of the court on conditions the court



1 determines necessary. A copy of the report filed pursuant to
2 section 704-404 shall be attached to the order of commitment or
3 order of release on conditions. When the defendant is committed
4 to the custody of the director of health for detention, care,
5 and treatment, the county police departments shall provide to
6 the director of health and the defendant copies of all police
7 reports from cases filed against the defendant which have been
8 adjudicated by [~~the acceptance of a plea of guilty or no~~
9 ~~contest,~~] a finding of guilt, acquittal, acquittal pursuant to
10 section 704-400, or by the entry of a plea of guilty or [~~no~~
11 ~~contest~~] nolo contendere made pursuant to chapter 853 [~~so long~~
12 ~~as~~]; provided that the disclosure to the director of health and
13 the defendant does not frustrate a legitimate function of the
14 county police departments [~~, with the exception of~~]; provided
15 further that expunged records, records of or pertaining to any
16 adjudication or disposition rendered in the case of a juvenile,
17 or records containing data from the United States National Crime
18 Information Center [~~-~~] shall not be disclosed pursuant to this
19 section. The county police departments shall segregate or
20 [~~sanitize~~] redact from the police reports information that would
21 result in the [~~likelihood~~] likely or actual identification of
22 individuals who furnished information in connection with the



1 investigation ~~[of]~~ or who were of investigatory interest.
2 Records shall not be re-disclosed except to the extent permitted
3 by law.

4 (2) When the defendant is released on conditions after a
5 finding of unfitness to proceed, the department of health shall
6 establish and monitor a fitness restoration program consistent
7 with conditions set by the court order of release, and shall
8 inform the prosecuting attorney of the county that charged the
9 defendant of the program and report the defendant's compliance
10 therewith.

11 ~~[(2)]~~ (3) When the court, on its own motion or upon the
12 application of the director of health, the prosecuting attorney,
13 or the defendant, determines, after a hearing if a hearing is
14 requested, that the defendant has regained fitness to proceed,
15 the penal proceeding shall be resumed. If, however, the court
16 is of the view that so much time has elapsed since the
17 commitment or release on conditions of the defendant that it
18 would be unjust to resume the proceeding, the court may dismiss
19 the charge and:

- 20 (a) Order the defendant to be discharged;
21 (b) Subject to the law governing the involuntary civil
22 commitment of persons affected by physical or mental



1 disease, disorder, or defect, order the defendant to
2 be committed to the custody of the director of health
3 to be placed in an appropriate institution for
4 detention, care, and treatment; or

5 (c) Subject to the law governing involuntary outpatient
6 treatment, order the defendant to be released on
7 conditions the court determines necessary.

8 [~~3~~] (4) Within a reasonable time following any commitment
9 under subsection (1), the director of health shall report to the
10 court on whether the defendant presents a substantial likelihood
11 of becoming fit to proceed in the future. The court, in
12 addition, may appoint a panel of three qualified examiners in
13 felony cases or one qualified examiner in nonfelony cases to
14 make a report. If, following a report, the court determines
15 that the defendant probably will remain unfit to proceed, the
16 court may dismiss the charge and:

17 (a) Release the defendant; or

18 (b) Subject to the law governing involuntary civil
19 commitment, order the defendant to be committed to the
20 custody of the director of health to be placed in an
21 appropriate institution for detention, care, and
22 treatment.



1 [~~4~~] (5) Within a reasonable time following any release
2 under subsection (1), the court shall appoint a panel of three
3 qualified examiners in felony cases or one qualified examiner in
4 nonfelony cases to report to the court on whether the defendant
5 presents a substantial likelihood of becoming fit to proceed in
6 the future. If, following the report, the court determines that
7 the defendant probably will remain unfit to proceed, the court
8 may dismiss the charge and:

- 9 (a) Release the defendant; or
- 10 (b) Subject to the law governing involuntary civil
11 commitment, order the defendant to be committed to the
12 custody of the director of health to be placed in an
13 appropriate institution for detention, care, and
14 treatment."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Mental Health Release on Conditions of a Person Found Unfit to Stand Trial

Description:

Requires the Department of Health to provide a fitness restoration program for defendants unfit to proceed with court proceedings and on conditional release, and to report information regarding defendant's program and compliance to the prosecutor of the county where the defendant was charged. (SD1)

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