

JAN 28 2015

A BILL FOR AN ACT

RELATING TO RECORDS OF FORENSIC EXAMINATIONS.

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

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

3 "(1) If the court determines that the defendant lacks
4 fitness to proceed, the proceeding against the defendant shall
5 be suspended, except as provided in section 704-407, and the
6 court shall commit the defendant to the custody of the director
7 of health to be placed in an appropriate institution for
8 detention, care, and treatment; provided that the commitment
9 shall be limited in certain cases as follows:

10 (a) When the defendant is charged with a petty misdemeanor
11 not involving violence or attempted violence, the
12 commitment shall be limited to no longer than sixty
13 days from the date the court determines the defendant
14 lacks fitness to proceed; and

15 (b) When the defendant is charged with a misdemeanor not
16 involving violence or attempted violence, the
17 commitment shall be limited to no longer than one

1 hundred twenty days from the date the court determines
2 the defendant lacks fitness to proceed.

3 If the court is satisfied that the defendant may be released on
4 conditions without danger to the defendant or to the person or
5 property of others, the court shall order the defendant's
6 release, which shall continue at the discretion of the court, on
7 conditions the court determines necessary; provided that the
8 release on conditions of a defendant charged with a petty
9 misdemeanor not involving violence or attempted violence shall
10 continue for no longer than sixty days, and the release on
11 conditions of a defendant charged with a misdemeanor not
12 involving violence or attempted violence shall continue for no
13 longer than one hundred twenty days. A copy of the [~~report~~]
14 reports filed pursuant to section 704-404 shall be attached to
15 the order of commitment or order of release on conditions. When
16 the defendant is committed to the custody of the director of
17 health for detention, care, and treatment, the county police
18 departments shall provide to the director of health and the
19 defendant copies of all police reports from cases filed against
20 the defendant that have been adjudicated by the acceptance of a
21 plea of guilty or nolo contendere, a finding of guilt,
22 acquittal, acquittal pursuant to section 704-400, or by the
23 entry of a plea of guilty or nolo contendere made pursuant to

1 chapter 853, so long as the disclosure to the director of health
2 and the defendant does not frustrate a legitimate function of
3 the county police departments; provided that expunged records,
4 records of or pertaining to any adjudication or disposition
5 rendered in the case of a juvenile, or records containing data
6 from the United States National Crime Information Center shall
7 not be provided. The county police departments shall segregate
8 or sanitize from the police reports information that would
9 result in the [+]likely[+] or actual identification of
10 individuals who furnished information in connection with the
11 investigation or who were of investigatory interest. Records
12 shall not be re-disclosed except to the extent permitted by
13 law."

14 SECTION 2. Section 704-411, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) When a defendant is acquitted on the ground of
17 physical or mental disease, disorder, or defect excluding
18 responsibility, the court, on the basis of the report made
19 pursuant to section 704-404, if uncontested, or the medical or
20 psychological evidence given at the trial or at a separate
21 hearing, shall order that:

22 (a) The defendant shall be committed to the custody of the
23 director of health to be placed in an appropriate

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1 institution for custody, care, and treatment if the
2 court finds that the defendant:

3 (i) Is affected by a physical or mental disease,
4 disorder, or defect;

5 (ii) Presents a risk of danger to self or others; and
6 (iii) Is not a proper subject for conditional release;
7 provided that the director of health shall place
8 defendants charged with misdemeanors or felonies
9 not involving violence or attempted violence in
10 the least restrictive environment appropriate in
11 light of the defendant's treatment needs and the
12 need to prevent harm to the person confined and
13 others. The county police departments shall
14 provide to the director of health and the
15 defendant copies of all police reports from cases
16 filed against the defendant that have been
17 adjudicated by the acceptance of a plea of guilty
18 or nolo contendere, a finding of guilt, acquittal,
19 acquittal pursuant to section 704-400, or by the
20 entry of a plea of guilty or nolo contendere made
21 pursuant to chapter 853, so long as the disclosure
22 to the director of health and the defendant does
23 not frustrate a legitimate function of the county

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1 police departments; provided that expunged
2 records, records of or pertaining to any
3 adjudication or disposition rendered in the case
4 of a juvenile, or records containing data from the
5 United States National Crime Information Center
6 shall not be provided. The county police
7 departments shall segregate or sanitize from the
8 police reports information that would result in
9 the likelihood or actual identification of
10 individuals who furnished information in
11 connection with the investigation or who were of
12 investigatory interest. Records shall not be re-
13 disclosed except to the extent permitted by law;

14 (b) The defendant shall be granted conditional release
15 with conditions as the court deems necessary if the
16 court finds that the defendant is affected by physical
17 or mental disease, disorder, or defect and that the
18 defendant presents a danger to self or others, but
19 that the defendant can be controlled adequately and
20 given proper care, supervision, and treatment if the
21 defendant is released on condition. For any defendant
22 granted conditional release pursuant to this
23 paragraph, and who was charged with a petty

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Report Title:

Fitness to Proceed; Hawaii State Hospital; Court Examinations

Description:

Creates consistency between statutes pertaining to Unfit to Proceed and Acquit and Commit regarding the Hawaii State Hospital receiving copies of court examinations upon commitment to the hospital.

JUSTIFICATION SHEET

REVISED: October 17, 2014
1ST DRAFT DATE: October 1, 2014

DEPARTMENT: Health

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

PURPOSE: To create consistency between statutes with respect to the Hawaii State Hospital receiving copies of court ordered examination reports upon commitment to the hospital, thus assuring necessary patient information is available to hospital staff in a timely manner.

MEANS: Amend subsection 704-406(1) and section 704-411(1), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Under subsection 704-406(1), HRS, the Department of Health (DOH) is required to receive the order of commitment accompanied by copies of the court ordered examination reports regarding the physical and mental condition of the defendant pursuant to section 704-404.

Under section 704-411(1), HRS, DOH receives only the court order and not copies of the court examination reports.

Section 704-406, HRS, states: "A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions."

Same or similar language is proposed for section 704-411(1)(a), HRS, including changing section 704-406, HRS, from "report" to "reports."

At the Hawaii State Hospital, the treatment teams and forensic coordinator review copies of the court examinations.

Access to court examinations will contribute to assessment, treatment planning, care coordination and Hawaii State Hospital discharge planning.

Impact on the public: None.

Impact on the department and other agencies: Minor administrative burden of including an examiner's report with orders of commitment or order for conditional release.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 495.

OTHER AFFECTED
AGENCIES: Department of the Attorney General;
Department of Budget and Finance; Counties
of Hawaii, Honolulu, Kauai, and Maui Offices
of the Prosecuting Attorney.

EFFECTIVE DATE: Upon approval.