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# 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,



1 acquittal, acquittal pursuant to section 704-400, or by the  
2 entry of a plea of guilty or nolo contendere made pursuant to  
3 chapter 853, so long as the disclosure to the director of health  
4 and the defendant does not frustrate a legitimate function of  
5 the county police departments; provided that expunged records,  
6 records of or pertaining to any adjudication or disposition  
7 rendered in the case of a juvenile, or records containing data  
8 from the United States National Crime Information Center shall  
9 not be provided. The county police departments shall segregate  
10 or sanitize from the police reports information that would  
11 result in the [+]likely[+] or actual identification of  
12 individuals who furnished information in connection with the  
13 investigation or who were of investigatory interest. Records  
14 shall not be re-disclosed except to the extent permitted by  
15 law."

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

18 "(1) When a defendant is acquitted on the ground of  
19 physical or mental disease, disorder, or defect excluding  
20 responsibility, the court, on the basis of the report made  
21 pursuant to section 704-404, if uncontested, or the medical or



1 psychological evidence given at the trial or at a separate  
2 hearing, shall order that:

3 (a) The defendant shall be committed to the custody of the  
4 director of health to be placed in an appropriate  
5 institution for custody, care, and treatment if the  
6 court finds that the defendant:

7 (i) Is affected by a physical or mental disease,  
8 disorder, or defect;

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

10 (iii) Is not a proper subject for conditional release;  
11 provided that the director of health shall place  
12 defendants charged with misdemeanors or felonies  
13 not involving violence or attempted violence in  
14 the least restrictive environment appropriate in  
15 light of the defendant's treatment needs and the  
16 need to prevent harm to the person confined and  
17 others. The county police departments shall  
18 provide to the director of health and the  
19 defendant copies of all police reports from cases  
20 filed against the defendant that have been  
21 adjudicated by the acceptance of a plea of guilty



1 or nolo contendere, a finding of guilt,  
2 acquittal, acquittal pursuant to section 704-400,  
3 or by the entry of a plea of guilty or nolo  
4 contendere made pursuant to chapter 853, so long  
5 as the disclosure to the director of health and  
6 the defendant does not frustrate a legitimate  
7 function of the county police departments;  
8 provided that expunged records, records of or  
9 pertaining to any adjudication or disposition  
10 rendered in the case of a juvenile, or records  
11 containing data from the United States National  
12 Crime Information Center shall not be provided.  
13 The county police departments shall segregate or  
14 sanitize from the police reports information that  
15 would result in the likelihood or actual  
16 identification of individuals who furnished  
17 information in connection with the investigation  
18 or who were of investigatory interest. Records  
19 shall not be re-disclosed except to the extent  
20 permitted by law;



1           provided that a copy of the reports filed pursuant to  
2           section 704-404 shall be attached to the order of  
3           commitment;

4           (b) The defendant shall be granted conditional release  
5           with conditions as the court deems necessary if the  
6           court finds that the defendant is affected by physical  
7           or mental disease, disorder, or defect and that the  
8           defendant presents a danger to self or others, but  
9           that the defendant can be controlled adequately and  
10          given proper care, supervision, and treatment if the  
11          defendant is released on condition. For any defendant  
12          granted conditional release pursuant to this  
13          paragraph, and who was charged with a petty  
14          misdemeanor, misdemeanor, or violation, the period of  
15          conditional release shall be no longer than one year;  
16          provided that a copy of the reports filed pursuant to  
17          section 704-404 shall be attached to the order for  
18          conditional release; or

19          (c) The defendant shall be discharged if the court finds  
20          that the defendant is no longer affected by physical  
21          or mental disease, disorder, or defect or, if so



1           affected, that the defendant no longer presents a  
2           danger to self or others and is not in need of care,  
3           supervision, or treatment."

4           SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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



**Report Title:**

Fitness to Proceed; Hawaii State Hospital; Court Ordered  
Examination Reports

**Description:**

Creates consistency between statutes pertaining to unfit to  
proceed and acquit and commit regarding the Hawaii state  
hospital receiving copies of court ordered examination reports  
upon commitment to the hospital or conditional release. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

