



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 1, 2014

**GOV. MSG. NO. 1295**

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

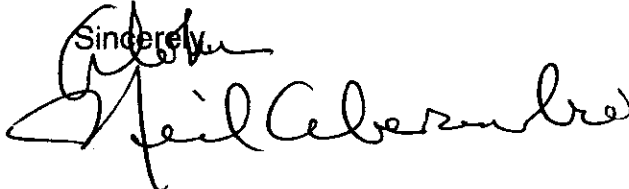
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 1, 2014, the following bill was signed into law:

SB1141 SD2 HD2 CD1

RELATING TO FORENSIC MENTAL HEALTH  
**ACT 192 (14)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

# A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH.

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

1           SECTION 1. In June 2012, a special action team was  
2    commissioned by the governor to analyze the causes and identify  
3    ideas to address systemic factors that increased the rate of  
4    admissions and increased the length of stay at the Hawaii state  
5    hospital. The team was tasked with considering possible  
6    solutions and making recommendations to the governor in time for  
7    consideration by the governor and the legislature during the  
8    regular session of 2013 and the fiscal year 2014-2015 budget  
9    cycle.

10           The special action team comprised representatives from the  
11   office of the governor, the department of health adult mental  
12   health division, the department of public safety, the department  
13   of human services, the department of the attorney general, the  
14   department of human resources development, the department of  
15   budget and finance, the office of the prosecutors of each  
16   county, the office of the public defender, and the chief of  
17   police of each county. These representatives worked together to  
18   examine data and develop measures to revitalize adult mental



1 health services in the community and more effectively address  
2 the rate of increase in the census of the Hawaii state hospital.

3 Part of the special action team's analysis revealed that,  
4 in addition to the occurrence of high numbers of admissions to  
5 the Hawaii state hospital for completion of court-ordered  
6 examinations to evaluate a defendant's fitness to proceed and  
7 forensic commitments under section 704-404 or 704-406, Hawaii  
8 Revised Statutes, required examinations are frequently delayed  
9 or incomplete because required information from other public  
10 agencies is not provided in a timely way to the examiners who  
11 perform these evaluations and report to the court.

12 The special action team reached a consensus to propose  
13 changes to chapter 704, Hawaii Revised Statutes, to address this  
14 issue. Requiring public agencies to provide defendants' records  
15 necessary for court-ordered mental health evaluations is  
16 intended to expedite these evaluations, thereby lessening the  
17 length of time of a patient's stay at Hawaii state hospital and  
18 reducing overpopulation at Hawaii state hospital.

19 The purpose of this Act is to expedite the process  
20 regarding forensic evaluations of defendants by requiring public  
21 agencies to provide to the court, records they maintain about



1 defendants for whom forensic examinations are ordered by the  
2 court.

3 SECTION 2. Section 704-404, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§704-404 Examination of defendant with respect to  
6 physical or mental disease, disorder, or defect. (1) Whenever  
7 the defendant has filed a notice of intention to rely on the  
8 defense of physical or mental disease, disorder, or defect  
9 excluding responsibility, or there is reason to doubt the  
10 defendant's fitness to proceed, or reason to believe that the  
11 physical or mental disease, disorder, or defect of the defendant  
12 will or has become an issue in the case, the court may  
13 immediately suspend all further proceedings in the prosecution.  
14 If a trial jury has been empanelled, it shall be discharged or  
15 retained at the discretion of the court. The discharge of the  
16 trial jury shall not be a bar to further prosecution.

17 (2) Upon suspension of further proceedings in the  
18 prosecution, the court shall appoint three qualified examiners  
19 in felony cases and one qualified examiner in nonfelony cases to  
20 examine and report upon the physical and mental condition of the  
21 defendant. In felony cases the court shall appoint at least one  
22 psychiatrist and at least one licensed psychologist. The third



1 member may be a psychiatrist, licensed psychologist, or  
2 qualified physician. One of the three shall be a psychiatrist  
3 or licensed psychologist designated by the director of health  
4 from within the department of health. In nonfelony cases the  
5 court may appoint either a psychiatrist or a licensed  
6 psychologist. All examiners shall be appointed from a list of  
7 certified examiners as determined by the department of health.  
8 The court, in appropriate circumstances, may appoint an  
9 additional examiner or examiners. The examination may be  
10 conducted on an out-patient basis or, in the court's discretion,  
11 when necessary the court may order the defendant to be committed  
12 to a hospital or other suitable facility for the purpose of the  
13 examination for a period not exceeding thirty days, or such  
14 longer period as the court determines to be necessary for the  
15 purpose. The court may direct that one or more qualified  
16 physicians or psychologists retained by the defendant be  
17 permitted to witness the examination. As used in this section,  
18 the term "licensed psychologist" includes psychologists exempted  
19 from licensure by section 465-3(a)(3).

20 (3) An examination performed under this section may employ  
21 any method that is accepted by the professions of medicine or  
22 psychology for the examination of those alleged to be affected



1 by a physical or mental disease, disorder, or defect; provided  
2 that each examiner shall form and render diagnoses and opinions  
3 upon the physical and mental condition of the defendant  
4 independently from the other examiners, and the examiners, upon  
5 approval of the court, may secure the services of clinical  
6 psychologists and other medical or paramedical specialists to  
7 assist in the examination and diagnosis.

8 (4) The report of the examination shall include the  
9 following:

- 10 (a) A description of the nature of the examination;
- 11 (b) A diagnosis of the physical or mental condition of the  
12 defendant;
- 13 (c) An opinion as to the defendant's capacity to  
14 understand the proceedings against the defendant and  
15 to assist in the defendant's own defense;
- 16 (d) An opinion as to the extent, if any, to which the  
17 capacity of the defendant to appreciate the  
18 wrongfulness of the defendant's conduct or to conform  
19 the defendant's conduct to the requirements of law was  
20 impaired at the time of the conduct alleged;
- 21 (e) When directed by the court, an opinion as to the  
22 capacity of the defendant to have a particular state



1 of mind that is required to establish an element of  
2 the offense charged; and

3 (f) Where more than one examiner is appointed, a statement  
4 that the diagnosis and opinion rendered were arrived  
5 at independently of any other examiner, unless there  
6 is a showing to the court of a clear need for  
7 communication between or among the examiners for  
8 clarification. A description of the communication  
9 shall be included in the report. After all reports  
10 are submitted to the court, examiners may confer  
11 without restriction.

12 (5) If the examination cannot be conducted by reason of  
13 the unwillingness of the defendant to participate therein, the  
14 report shall so state and shall include, if possible, an opinion  
15 as to whether such unwillingness of the defendant was the result  
16 of physical or mental disease, disorder, or defect.

17 (6) Three copies of the report of the examination,  
18 including any supporting documents, shall be filed with the  
19 clerk of the court, who shall cause copies to be delivered to  
20 the prosecuting attorney and to counsel for the defendant.



1 (7) Any examiner shall be permitted to make a separate  
2 explanation reasonably serving to clarify the examiner's  
3 diagnosis or opinion.

4 (8) The court shall obtain all existing medical, mental  
5 health, social, police, and juvenile records, including those  
6 expunged, and other pertinent records in the custody of public  
7 agencies, notwithstanding any other statutes, and make such  
8 records available for inspection by the examiners. If, pursuant  
9 to this section, the court orders the defendant committed to a  
10 hospital or other suitable facility under the control of the  
11 director of health, then the county police departments shall  
12 provide to the director of health and the defendant copies of  
13 all police reports from cases filed against the defendant which  
14 have been adjudicated by the acceptance of a plea of guilty or  
15 no contest, a finding of guilt, acquittal, acquittal pursuant to  
16 section 704-400, or by the entry of plea of guilty or no contest  
17 made pursuant to chapter 853, so long as the disclosure to the  
18 director of health and the defendant does not frustrate a  
19 legitimate function of the county police departments, with the  
20 exception of expunged records, records of or pertaining to any  
21 adjudication or disposition rendered in the case of a juvenile,  
22 or records containing data from the United States National Crime





1 Information Center. The county police departments shall  
2 segregate or sanitize from the police reports information that  
3 would result in the likelihood or actual identification of  
4 individuals who furnished information in connection with its  
5 investigation, or who were of investigatory interest. Records  
6 shall not be re-disclosed except to the extent permitted by law.

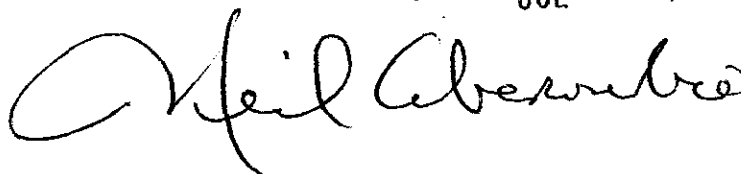
7 (9) All public agencies in possession of medical, mental  
8 health, social, and juvenile records, and any other pertinent  
9 records of a defendant ordered to be examined under this  
10 chapter, shall provide those records to the court,  
11 notwithstanding any other state statute.

12 [~~9~~] (10) The compensation of persons making or assisting  
13 in the examination, other than those retained by the nonindigent  
14 defendant, who are not undertaking the examination upon  
15 designation by the director of health as part of their normal  
16 duties as employees of the State or a county, shall be paid by  
17 the State."

18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2014.

21 APPROVED this 1 day of JUL, 2014



GOVERNOR OF THE STATE OF HAWAII