

H.B. NO. 910

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 causes and identify
3 ideas to address the systemic factors that contribute to the
4 increased rate of admissions and factors that increase the
5 length of stay at the Hawaii state hospital. Further the team
6 was tasked with considering possible solutions, and making
7 recommendations to the governor in time to be considered by the
8 governor and the legislature during the 2013 legislative session
9 and fiscal year 2014-2015 budget cycles. It comprised
10 representatives from the office of the governor, the department
11 of health's adult mental health division, the department of
12 public safety, the department of human services, the department
13 of the attorney general, the department of human resource
14 development, the department of budget and finance, the offices
15 of the prosecutors of each county, the office of the public
16 defender, and the chiefs of police from each county. They
17 joined together to examine data and to develop a plan to
18 revitalize adult mental health services in the community, and

1 more effectively address the rate of increase in the census of
2 the Hawaii state hospital.

3 There was consensus agreement among the members of the
4 special action team that statutory changes should be proposed to
5 the legislature. The proposed changes are intended to improve
6 services and efficiency of operations, but not compromise public
7 safety, nor impinge on defendants' rights.

8 Analysis of the Hawaii state hospital admission legal
9 status statistics revealed that the second most common forensic
10 commitment status to the care and custody of the director of
11 health and subsequent admission to Hawaii state hospital is
12 related to conditional release status. Conditional release
13 means that the person has been acquitted of the crime on the
14 ground of mental disease or disorder excluding responsibility
15 but that the person can be controlled adequately and given
16 proper care, supervision and treatment in the community under
17 specified conditions. However, if the supervising probation
18 officer has probable cause to believe the person is in violation
19 of those conditions the probation officer may order the person
20 on conditional release to be hospitalized. Over 80% of the
21 individuals admitted to the hospital do not require inpatient
22 hospital level of care, based on utilization management illness
23 severity indexes. Further discussion revealed that under

1 current Hawaii law, there is effectively no time limit on how
2 long a person may remain on conditional release, pursuant to a
3 charge of misdemeanor or less. However, if the same person, as
4 a defendant in a court case, either pled or was found guilty of
5 the charge, that person would receive a sentence or a period of
6 probation that would be limited to one year or less.

7 The special action team analysis also revealed that, in
8 addition to the issue of high numbers of admissions to the
9 Hawaii state hospital for completion of court ordered
10 examinations to evaluate a defendant's fitness to proceed under
11 Sections 704-404 or 704-406, Hawaii Revised Statutes, such
12 examinations are frequently delayed or incomplete because
13 required information from other public agencies is not provided
14 in a timely way to the examiners who are ordered to perform
15 these evaluations and report to the court.

16 The special action team reached a consensus that changes to
17 chapter 704, Hawaii Revised Statutes, were to be proposed to
18 address these issues, without adverse impact on defendants'
19 rights, the provision of effective mental health services, or
20 public safety. Accordingly, the purpose of this Act is to
21 address the areas identified by the special action team as in
22 need of legislative remedy, by modifying the relevant statutes
23 to include the consensus recommendations made by the group. It

1 is intended to improve the State's public sector forensic mental
2 health services and thereby assist in reducing the census at the
3 Hawaii state hospital.

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

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

18 (2) Upon suspension of further proceedings in the
19 prosecution, the court shall appoint three qualified examiners
20 in felony cases and one qualified examiner in nonfelony cases to
21 examine and report upon the physical and mental condition of the
22 defendant. In felony cases the court shall appoint at least one
23 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
23 by a physical or mental disease, disorder, or defect; provided

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

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

9 (a) A description of the nature of the examination;

10 (b) A diagnosis of the physical or mental condition of the
11 defendant;

12 (c) An opinion as to the defendant's capacity to
13 understand the proceedings against the defendant and
14 to assist in the defendant's own defense;

15 (d) An opinion as to the extent, if any, to which the
16 capacity of the defendant to appreciate the
17 wrongfulness of the defendant's conduct or to conform
18 the defendant's conduct to the requirements of law was
19 impaired at the time of the conduct alleged;

20 (e) When directed by the court, an opinion as to the
21 capacity of the defendant to have a particular state
22 of mind that is required to establish an element of
23 the offense charged; and

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

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

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

19 (7) Any examiner shall be permitted to make a separate
20 explanation reasonably serving to clarify the examiner's
21 diagnosis or opinion.

22 (8) The court shall obtain all existing medical, mental
23 health, social, police, and juvenile records, including those

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1 expunged, and other pertinent records in the custody of public
2 agencies, notwithstanding any other statutes, and make such
3 records available for inspection by the examiners. If, pursuant
4 to this section, the court orders the defendant committed to a
5 hospital or other suitable facility under the control of the
6 director of health, then the county police departments shall
7 provide to the director of health and the defendant copies of
8 all police reports from cases filed against the defendant which
9 have been adjudicated by the acceptance of a plea of guilty or
10 no contest, a finding of guilt, acquittal, acquittal pursuant to
11 section 704-400, or by the entry of plea of guilty or no contest
12 made pursuant to chapter 853, so long as the disclosure to the
13 director of health and the defendant does not frustrate a
14 legitimate function of the county police departments, with the
15 exception of 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. The county police departments shall
19 segregate or sanitize from the police reports information that
20 would result in the likelihood or actual identification of
21 individuals who furnished information in connection with its
22 investigation, or who were of investigatory interest. Records
23 shall not be re-disclosed except to the extent permitted by law.

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1 (9) All public agencies in possession of medical, mental
2 health, social, police, and juvenile records, including those
3 expunged and any other pertinent records of a defendant ordered
4 to be examined under this chapter, shall provide those records
5 to the court, notwithstanding any other state statute.

6 [~~9~~](10) The compensation of persons making or assisting
7 in the examination, other than those retained by the nonindigent
8 defendant, who are not undertaking the examination upon
9 designation by the director of health as part of their normal
10 duties as employees of the State or a county, shall be paid by
11 the State."

12 SECTION 3. Section 704-411, Hawaii Revised Statutes, is
13 amended by changing subsection (1) to read as follows:

14 "**§704-411 Legal effect of acquittal on the ground of**
15 **physical or mental disease, disorder, or defect excluding**
16 **responsibility; commitment; conditional release; discharge;**
17 **procedure for separate post-acquittal hearing.** (1) When a
18 defendant is acquitted on the ground of physical or mental
19 disease, disorder, or defect excluding responsibility, the
20 court, on the basis of the report made pursuant to section 704-
21 404, if uncontested, or the medical or psychological evidence
22 given at the trial or at a separate hearing, shall order that:

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- 1 (a) The defendant shall be committed to the custody of the
2 director of health to be placed in an appropriate
3 institution for custody, care, and treatment if the
4 court finds that the defendant:
- 5 (i) Is affected by a physical or mental disease,
6 disorder, or defect;
- 7 (ii) Presents a risk of danger to self or others; and
- 8 (iii) Is not a proper subject for conditional release;
9 provided that the director of health shall place
10 defendants charged with misdemeanors or felonies
11 not involving violence or attempted violence in
12 the least restrictive environment appropriate in
13 light of the defendant's treatment needs and the
14 need to prevent harm to the person confined and
15 others. The county police departments shall
16 provide to the director of health and the
17 defendant copies of all police reports from cases
18 filed against the defendant that have been
19 adjudicated by the acceptance of a plea of guilty
20 or nolo contendere, a finding of guilt,
21 acquittal, acquittal pursuant to section 704-400,
22 or by the entry of a plea of guilty or nolo
23 contendere made pursuant to chapter 853, so long

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

17 (b) The defendant shall be granted conditional release
18 with conditions as the court deems necessary if the
19 court finds that the defendant is affected by physical
20 or mental disease, disorder, or defect and that the
21 defendant presents a danger to self or others, but
22 that the defendant can be controlled adequately and
23 given proper care, supervision, and treatment if the

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1 defendant is released on condition. For any defendant
2 granted conditional release pursuant to this
3 ~~[paragraph,]~~ section, and who was charged with a petty
4 misdemeanor, misdemeanor, or violation, the period of
5 conditional release shall be no longer than one year;
6 or

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

13 SECTION 4. Section 704-412, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) Upon application to the court by either the director
16 of health or the person committed, the court shall complete the
17 hearing process and render a decision within sixty days of the
18 application; provided that for good cause the court may extend
19 the sixty-day time frame upon the request of the director of
20 health or the person committed. For any defendant granted
21 conditional release pursuant to this section, and who was
22 charged with a petty misdemeanor, misdemeanor, or violation, the
23 period of conditional release shall be no longer than one year."

1 SECTION 5. Section 704-413, Hawaii Revised Statutes, is
2 amended (1) By amending subsection (1) to read as follows:
3 "(1) Any person granted conditional release pursuant to
4 this chapter shall continue to receive mental health or other
5 treatment and care deemed appropriate by the director of health
6 until discharged from conditional release. The person shall
7 follow all prescribed treatments and take all prescribed
8 medications according to the instructions of the person's
9 treating mental health professional. If a mental health
10 professional who is treating a person granted conditional
11 release believes that either the person is not complying with
12 the requirements of this section or there is other evidence that
13 hospitalization is appropriate, the mental health professional
14 shall report the matter to the probation officer of the person
15 granted conditional release. The probation officer may order
16 the person granted conditional release to be hospitalized for a
17 period not to exceed seventy-two hours if the probation officer
18 has probable cause to believe the person has violated the
19 requirements of this subsection. No person shall be
20 hospitalized beyond the seventy-two-hour period, as computed
21 pursuant to section 1-29, unless a hearing has been held
22 pursuant to subsection (4); provided that on or before the
23 expiration of the seventy-two-hour period, a court may conduct a

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1 hearing to determine whether the person would benefit from
2 further hospitalization, which may render a revocation of
3 conditional release unnecessary. If satisfied, the court may
4 order further temporary hospitalization for a period not to
5 exceed ninety days, subject to extension as appropriate, but in
6 no event for a period longer than one year. For any person
7 ordered to be hospitalized pursuant to this section, who was
8 placed on a one-year limited conditional release pursuant to
9 section 704-411(1)(b), the one year shall be tolled pending the
10 person's time of hospitalization. At any time within that
11 period, the court may determine that a hearing pursuant to
12 subsection (4) should be conducted."

13 (2) By amending subsection (4) to read as follows:

14 "(4) If, at any time after the order pursuant to this
15 chapter granting conditional release, the court determines,
16 after hearing evidence, that:

17 (a) The person is still affected by a physical or mental
18 disease, disorder, or defect, and the conditions of
19 release have not been fulfilled; or

20 (b) For the safety of the person or others, the person's
21 conditional release should be revoked,
22 the court may forthwith modify the conditions of release or
23 order the person to be committed to the custody of the director

1 of health, subject to discharge or release in accordance with
2 the procedure prescribed in section 704-412. If the person's
3 conditional release is revoked, the period of conditional
4 release is terminated. If the person who was charged with a
5 petty misdemeanor, misdemeanor, or violation is placed on
6 conditional release subsequently, the period of conditional
7 release shall be no longer than one year."

8 SECTION 6. Section 704-415, Hawaii Revised Statutes, is
9 amended by amending subsection (2) to read as follows:

10 "(2) Any such hearing shall be deemed a civil proceeding
11 and the burden shall be upon the applicant to prove that the
12 person is no longer affected by a physical or mental disease,
13 disorder, or defect or may safely be either released on the
14 conditions applied for or discharged. According to the
15 determination of the court upon the hearing the person shall be:

16 (a) Discharged;

17 (b) Released on such conditions as the court determines to
18 be necessary; provided that for any defendant granted
19 conditional release pursuant to this section, and who
20 was charged with a petty misdemeanor, misdemeanor, or
21 violation, the period of conditional release shall be
22 no longer than one year; or

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1 (c) Recommitted to the custody of the director of health,
2 subject to discharge or release only in accordance
3 with the procedure prescribed in section 704-412."

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

8

INTRODUCED BY:



9

BY REQUEST

10

JAN 22 2013

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Report Title:

Forensic Mental Health

Description:

Amends the penal code provisions that affect adult mental health and the Hawaii State Hospital census.

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

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO FORENSIC MENTAL HEALTH.

PURPOSE: To make statutory changes to establish limits on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation. To clarify under what circumstances the one-year conditional release status may be tolled. It also would require public agencies in possession of information about the defendant to provide that information to the court. These amendments are to assist in reducing the census at the Hawaii State Hospital.

MEANS: Amend sections 704-404, 704-411, 704-412, 704-413(1) and (4), and 704-415(2), Hawaii Revised Statutes.

JUSTIFICATION: This measure is based on recommendations from the Governor's Special Action Team to analyze causes and identify ideas to address the systemic factors that contribute to the increased rate of admissions as well as factors that increase the length of stay at the Hawaii State Hospital. Further the team was tasked with considering possible solutions, and making recommendations to the governor in time to be considered by the governor and the legislature during the 2013 legislative session and fiscal year 2014-2015 budget cycles. The Special Action Team consisted of representatives from the Office of the Governor, Department of Health's Adult Mental Health Division, the Department of Public Safety, the Department of Human Services, the Department of the Attorney General, the Department of Human Resource Development, the Department of Budget and Finance, the offices of the prosecutors from each county, the Office of the Public

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Defender, and the chiefs of police from each county.

The Special Action Team revealed that under current Hawaii law, there is effectively no time limit on how long a person may remain on conditional release supervised in the community after having been acquitted by reason of mental illness excluding responsibility, pursuant to a charge of misdemeanor or less. However, it was noted that if the same person, either pled or was found guilty of the charge, that person would receive a sentence or a period of probation that would be limited to one year or less.

The Special Action Team analysis also found that, in addition to the issue of high numbers of admissions to the Hawaii State Hospital for completion of court ordered examinations to evaluate a defendant's fitness to proceed under chapter 704, Hawaii Revised Statutes, such examinations are frequently delayed or incomplete because required information from public agencies is not provided in a timely way to the examiners who are ordered to perform these evaluations and report to the court. Often the information cannot be disclosed due to confidentiality statutes. This measure addresses those obstacles.

Impact on the public: Statutory changes would not compromise defendants' rights, mental health services or public services. It is expected that changes to the statutes would minimize the defendants' time in the hospital.

Impact on the department and other agencies: Allowing the Department of Health's forensic examiners timely access to a defendant's medical, mental health, social, police, and all other pertinent records will enhance the examiners' ability to complete forensic evaluations in a timely manner.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH-495.

OTHER AFFECTED
AGENCIES: Judiciary, City and County of Honolulu;
County Prosecutors; Department of the
Attorney General; Office of the Public
Defender; Department of Public Safety;
Department of Human Services; Chiefs of
Police from each county.

EFFECTIVE DATE: Upon approval.