

JAN 19 2018

A BILL FOR AN ACT

RELATING TO PENAL RESPONSIBILITY.

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

SECTION 1. Chapter 704, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§704- Verdict of guilty but mentally ill. (a)
Following examination of a defendant pursuant to section 704-
407.5, if the jury or trier of fact does not find that, as a
result of physical or mental disease, disorder, or defect at the
time of the conduct, a defendant lacked a particular state of
mind that is required to establish an element of the offense
charged, the jury or trial of fact may find that the defendant
is guilty of the offense charged but mentally ill.

(b) If the jury or trier of fact finds that the defendant
is guilty of the offense charged but mentally ill, the court
shall include the defendant's mental health in the court's
considerations pursuant to section 706-606."



1 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§706- Health care and mental health care for
5 incarcerated persons with mental illness. The court shall
6 appoint a psychiatrist and licensed psychologist to examine any
7 person found to be guilty of the offense charged but mentally
8 ill under section 704- who has been sentenced to a term of
9 imprisonment. Based on the results of the examination and the
10 recommendations of the examiners, the court shall order that
11 treatment facilities, health care, and mental health care
12 appropriate to the person's diagnosis be provided to the person
13 during the term of the person's imprisonment."

14 SECTION 3. Section 702-230, Hawaii Revised Statutes, is
15 amended by amending subsection (4) to read as follows:

16 "(4) Intoxication that is:
17 (a) Not self-induced; or
18 (b) Pathological,
19 is a defense if by reason of the intoxication the defendant at
20 the time of the defendant's conduct lacks ~~[substantial capacity~~
21 ~~either to appreciate its wrongfulness or to conform the~~



1 ~~defendant's conduct to the requirements of law.] a particular~~
2 state of mind that is required to establish an element of the
3 offense charged."

4 SECTION 4. Section 704-400, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

6 "(1) A person is not responsible, under this Code, for
7 conduct if at the time of the conduct as a result of physical or
8 mental disease, disorder, or defect the person lacks
9 ~~[substantial capacity either to appreciate the wrongfulness of~~
10 ~~the person's conduct or to conform the person's conduct to the~~
11 ~~requirements of law.] a particular state of mind that is~~
12 required to establish an element of the offense charged."

13 SECTION 5. Section 704-407.5, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (1) to read:

16 "(1) Whenever the defendant has filed a notice of
17 intention to rely on the defense of physical or mental disease,
18 disorder, or defect excluding penal responsibility~~[7]~~; the
19 defendant has entered a plea of guilty of the offense charged
20 but mentally ill; or there is reason to believe that the
21 physical or mental disease, disorder, or defect of the defendant



1 will or has become an issue in the case, the court may order an
2 examination as to the defendant's physical or mental disease,
3 disorder, or defect at the time of the conduct alleged."

4 2. By amending subsection (6) to read:

5 "(6) The report of the examination for penal
6 responsibility shall include the following:

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

8 (b) A diagnosis of the physical or mental condition of the
9 defendant;

10 (c) An opinion as to the ~~[extent, if any, to which the~~
11 ~~capacity of the defendant to appreciate the~~
12 ~~wrongfulness of the defendant's conduct or to conform~~
13 ~~the defendant's conduct to the requirements of law was~~
14 ~~impaired at the time of the conduct alleged;~~

15 ~~-(d) When directed by the court, an opinion as to the]~~
16 capacity of the defendant to have a particular state
17 of mind that is required to establish an element of
18 the offense charged; and

19 ~~[-(e)]~~ (d) Where more than one examiner is appointed, a
20 statement that the diagnosis and opinion rendered were
21 arrived at independently of any other examiner, unless



1 there is a showing to the court of a clear need for
2 communication between or among the examiners for
3 clarification. A description of the communication
4 shall be included in the report. After all reports
5 are submitted to the court, examiners may confer
6 without restriction."

7 SECTION 6. Section 704-408, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§704-408 Determination of irresponsibility.** If the
10 report of the examiners filed pursuant to section 704-404, or
11 the report of examiners of the defendant's choice under section
12 704-409, states that the defendant at the time of the conduct
13 alleged was affected by a physical or mental disease, disorder,
14 or defect that substantially impaired the defendant's capacity
15 to ~~[appreciate the wrongfulness of the defendant's conduct or to~~
16 ~~conform the defendant's conduct to the requirements of law,]~~
17 have a particular state of mind that is required to establish an
18 element of the offense charged, the court shall submit the
19 defense of physical or mental disease, disorder, or defect to
20 the jury or the trier of fact at the trial of the charge against
21 the defendant."



SECTION 7. Section 706-606, Hawaii Revised Statutes, is amended to read as follows:

"§706-606 Factors to be considered in imposing a sentence.

The court, in determining the particular sentence to be imposed, shall consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence imposed:

(a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

(b) To afford adequate deterrence to criminal conduct;

(c) To protect the public from further crimes of the defendant; and

(d) To provide the defendant with needed educational or vocational training, medical or mental health care, or other correctional treatment in the most effective manner;

(3) The kinds of sentences available; and



1 (4) The need to avoid unwarranted sentence disparities
2 among defendants with similar records who have been
3 found guilty of similar conduct."

4 SECTION 8. (a) The department of public safety shall
5 conduct a study concerning the cost of providing treatment
6 facilities, health care, and mental health care to persons found
7 to be guilty of the offense charged but mentally ill as required
8 by section 2 of this Act.

9 (b) Based on the study in subsection (a), the department
10 of public safety shall submit a report of its findings and
11 recommendations, including any proposed legislation, to the
12 legislature no later than twenty days prior to the convening of
13 the regular session of 2019.

14 SECTION 9. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

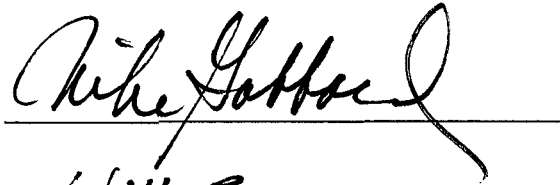
17 SECTION 10. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.



S.B. NO. 2394

1 SECTION 11. This Act shall take effect on July 1, 2020;
2 provided that section 8 of this Act shall take effect upon its
3 approval.
4

INTRODUCED BY:















S.B. NO. 2394

Report Title:

Not Guilty by Reason of Insanity; Guilty but Mentally Ill;
Criminal Defense; Department of Public Safety; Study

Description:

Establishes a verdict of guilty of the offense charged but mentally ill in criminal trials. Changes the defense of not guilty by reason of insanity to require the court to find that at the time of the conduct, the person lacked a particular state of mind that is required to establish an element of the offense charged as a result of physical or mental disease, disorder, or defect. Requires persons who are incarcerated as a result of a verdict of guilty of the offense charged but mentally ill to receive health care or mental health care appropriate to the person's diagnosis during the person's term of imprisonment. Requires the Department of Public Safety to conduct a study on the costs of providing care to incarcerated persons who have been found guilty of the offense charged but mentally ill. Effective July 1, 2020.

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