

JAN 21 2026

A BILL FOR AN ACT

RELATING TO MENTAL ILLNESS.

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

1 PART I

2 SECTION 1. The legislature finds that existing laws are
3 woefully inadequate when it comes to addressing the unique
4 challenges posed by severely mentally ill or substance addicted
5 habitual misdemeanor and petty misdemeanor offenders.

6 The legislature further finds that under the United States
7 Constitution, unless a person is proved to be imminently
8 dangerous to self, others, or property, they have the right to
9 refuse psychiatric care or substance abuse treatment. The
10 constitutional calculus completely changes if a person's mental
11 illness leads them to commit a crime. Mentally ill persons
12 convicted of serious felonies but found to lack penal
13 responsibility because they are incapable of understanding the
14 wrongfulness or consequences of their acts, are routinely
15 ordered to undergo compulsory psychiatric treatment instead of
16 punishment. They are also frequently ordered to live in
17 appropriate settings, such as a psychiatric facility, a group



1 home, or permanent supportive housing. This is constitutionally
2 permissible because their crimes provide sufficient proof of
3 imminent dangerousness, and psychiatric care is performed under
4 the least restrictive settings possible for that particular
5 individual.

6 The legislature finds, however, that the State's laws fail
7 to adequately address mentally ill habitual misdemeanor and
8 petty misdemeanor offenders. One reason is that viewed in
9 isolation, a single low-level crime is not "dangerous". For
10 example, someone who steals a bag of potato chips from a
11 convenience store can hardly be thought of as dangerous, but a
12 habitual offender who commits hundreds or thousands of petty
13 thefts clearly poses a danger to property, particularly if the
14 person's self-control has been overborne by mental illness.

15 The legislature also finds that it is common for severely
16 mentally ill habitual offenders to commit hundreds of offences
17 in their lifetimes. The most common are petty theft,
18 shoplifting, property damage, creating public disturbances,
19 littering, illegal dumping, camping in prohibited areas, or
20 violating park closure rules. Given there are literally
21 thousands of severely mentally ill offenders, each committing



1 hundreds of low-level offenses, the impact on the State's
2 communities has been devastating. For example, in 2016, trash,
3 vandalism, harassment, and more serious crimes committed by
4 mentally ill residents of a homeless camp in Kakaako caused a
5 thirty per cent drop in revenue for the Children's Discovery
6 Center, which almost had to close. The legislature also finds
7 that national data comports with local experience. In 2021, the
8 Louis de la Parte Florida Mental Health Institute at the
9 University of South Florida, reported that just ninety-seven
10 individuals diagnosed with schizophrenia, most of whom were
11 chronically homeless, accounted for two thousand two hundred
12 jail bookings, twenty-seven thousand total days in jail, and
13 thirteen thousand days in crisis units, hospitals and emergency
14 rooms.

15 The legislature additionally finds that the vast majority
16 of mentally ill persons who habitually commit low-level crimes,
17 are doing so as the product of severe cognitive impairment, not
18 free will. It is therefore just and proper for them to avoid
19 penal responsibility. However, the current legal framework
20 allows them to refuse treatment and other services, while
21 simultaneously avoiding penal responsibility, an absurd



1 contradiction that is not required by the United States
2 Constitution.

3 The legislature believes there is a need to address the
4 "unfit to proceed" paradox. This paradox occurs when a mentally
5 ill person convicted of a crime can be compelled to undergo
6 psychiatric care because the crime itself constitutes sufficient
7 evidence of "imminent dangerousness". However, a person found
8 "unfit to proceed" cannot be tried, and therefore cannot be
9 convicted of a crime. The absurd result of this paradox is that
10 mentally ill defendants who can understand the proceedings are
11 tried and ordered to receive treatment instead of punishment,
12 but defendants who are more severely mentally ill than those who
13 are fit to proceed are released back to the streets without any
14 treatment whatsoever. Invariably, they re-offend, are
15 re-arrested, are again found unfit to proceed, and are again
16 released, whereupon the entire cycle repeats over again.

17 Accordingly, the purpose of this Act is to address the
18 revolving "unfit to proceed paradox" of habitual mentally ill
19 criminal offenders remaining untreated by:

- 20 (1) Clarifying the procedures for assisted
21 community-treatment, examination, and hospitalization



1 for individuals who may be mentally ill or suffering
2 from substance abuse who are imminently dangerous to
3 self, others, or property;

4 (2) Amending the procedures for involuntary
5 hospitalizations and assisted community treatment
6 petitions; and

7 (3) Amending the Hawaii Penal Code to streamline the
8 determination process for penal responsibility and
9 fitness to proceed for individuals with mental
10 illness.

11 PART II

12 SECTION 2. Section 334-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding one new definition to be appropriately
15 inserted and to read:

16 "Imminently dangerous to self, others, or property" means
17 that, without intervention, the person will more likely than not
18 cause harm to self, others, or property within the next
19 forty-five days."

20 2. By amending the definition of "dangerous to others" to
21 read:



1 "'Dangerous to others" means likely to [~~do substantial~~
2 ~~physical or emotional injury on another,~~] commit or attempt to
3 commit, or threaten to commit an assault upon others, creating a
4 reasonable apprehension of harm by others, or committing a
5 battery upon others, whether or not the battery results in a
6 physical or emotional injury, or committing any other act that
7 constitutes a crime against others as defined by state law, as
8 evidenced by a recent act, attempt, or threat."

9 SECTION 3. Section 334-121, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§334-121 Criteria for assisted community treatment. (a)**

12 An individual may be ordered to obtain assisted community
13 treatment if the family court finds, based on the professional
14 opinion of a qualified psychiatric examiner that:

15 (1) The individual is mentally ill or suffering from
16 substance abuse;

17 (2) The individual is unlikely to live safely in the
18 community without available supervision, is now in
19 need of treatment in order to prevent a relapse or
20 deterioration that would predictably result in the
21 individual becoming imminently dangerous to self [~~or~~],



1 others, or property, and the individual's current
2 mental status or the nature of the individual's
3 disorder limits or negates the individual's ability to
4 make an informed decision to voluntarily seek or
5 comply with recommended treatment;

6 (3) The individual has a:

7 (A) Mental illness that has caused that individual to
8 refuse needed and appropriate mental health
9 services in the community; or

10 (B) History of lack of adherence to treatment for
11 mental illness or substance abuse that resulted
12 in the individual becoming dangerous to self
13 [~~or~~], others, or property and that now would
14 predictably result in the individual becoming
15 imminently dangerous to self [~~or~~], others, or
16 property; and

17 (4) Considering less intrusive alternatives, assisted
18 community treatment is essential to prevent the danger
19 posed by the individual, is medically appropriate, and
20 is in the individual's medical interests.



(b) In determining whether an individual poses a danger to self, others, or property, the court shall consider clear and convincing evidence of the individual's history of repeatedly harming others, including but not limited to the individual's criminal record, and whether the individual suffers from a mental illness or defect making it difficult to comport their conduct to the requirements of law."

PART III

SECTION 4. Section 701-118, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

"Act charged" means one or more criminal acts alleged to
have been committed by a defendant in a criminal proceeding.

"Criminal act" means one or more acts constituting any criminal offense, whether or not the defendant is found guilty of committing those acts or found to have committed those acts and found not guilty by reason of severe cognitive impairment.

"Harm" means damage to self or the person or property of another, including physical or emotional injury, whether minor or severe.



1 "Hospitalization" means the admission of a person to a
2 psychiatric or other medical facility. "Hospitalization"
3 includes the administration of all forms of appropriate
4 psychiatric, psychological, or medical treatment, including
5 medication.

6 "Imminently dangerous to self, others, or property" has the
7 same meaning as defined in section 334-1.

8 "Severe cognitive impairment" means a mental disease,
9 disorder, or other defect of sufficient severity that the person
10 lacks substantial capacity to either understand the wrongfulness
11 of the person's conduct or is unable to conform the person's
12 conduct to the requirements of law. "Severe cognitive
13 impairment" does not include an abnormality manifested only by
14 repeated criminal act.

15 "Involuntary treatment" means all forms of psychiatric,
16 mental health, drug addiction, or medical treatment, including
17 medication, administered on an involuntary basis, whether as an
18 outpatient in the community, or under custodial confinement as
19 an inpatient at any facility or hospital.

20 "Offense" means one or more acts in violation of any law,
21 whether or not the defendant is found guilty of committing those



1 acts, or found to have committed those acts, but adjudged not
2 guilty by reason of severe cognitive impairment."

3 SECTION 5. Chapter 704, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 **"§704- Order for treatment.** (1) Notwithstanding any
7 law to the contrary, a defendant found not guilty by reason of
8 severe cognitive impairment, or otherwise entitled to avoid
9 penal responsibility due to a mental disease, disorder, or
10 defect, shall be subject to an order for treatment. The order
11 shall employ the least restrictive means necessary to ensure the
12 defendant will not pose an imminent danger to self, others, or
13 property, and promote their successful reentry into their
14 communities. The court shall have broad discretion to customize
15 the terms of the order to the defendant's circumstances, based
16 on any evidence the court deems relevant, including the
17 examination reports produced pursuant to 704-404. The court's
18 order may include but not be limited to:

19 (a) If the court determines the defendant poses an
20 imminent danger to self, others, or property, the
21 court may:



1 (i) Commit the defendant to the director of
2 health, or another facility of the court's
3 choosing for involuntary treatment,
4 including the involuntary administration of
5 medication if medically appropriate;

6 (ii) Order the defendant to undergo treatment
7 under less restrictive settings, including
8 as an outpatient in the community; provided
9 that the defendant can be medically
10 compliant and will not pose an imminent
11 danger to self, others, or property;

12 (iii) Order the defendant to perform certain
13 activities if appropriate, including but not
14 limited to attending addiction treatment
15 programs, participating in individual or
16 group therapy sessions, and enrolling in job
17 training programs;

18 (iv) Order the defendant to reside in permanent
19 supportive housing, a group home, kauhale
20 projects, shelter, or any other place the
21 court deems prudent;



1 (v) Order the defendant to refrain from spending
2 time or residing in places the court deems
3 inappropriate, or likely to illicit aberrant
4 behavior;

5 (vi) Include any other terms and conditions in
6 the order for treatment the court deems
7 appropriate; and

8 (vii) Modify the order for treatment at any time
9 for good cause shown.

10 (b) If at any time, the court determines the defendant
11 does not pose an imminent danger but is nonetheless
12 struggling with a condition that could reasonably
13 cause the defendant to become imminently dangerous to
14 self, others, or property, the court can order that
15 the defendant be subject to a non-compulsory assisted
16 community treatment order, as provided under part VIII
17 of chapter 334.

18 (2) An order for treatment issued under this section may
19 be issued as part of the defendant's conditional release or
20 probation.



1 (3) The court may appoint a guardian ad litem and attorney
2 for the defendant.

3 (4) The court shall schedule hearings every one hundred
4 twenty days, or as soon as practicable, to determine if the
5 conditions for the order for treatment persists and if the order
6 for treatment should be modified or terminated. For the
7 purposes of hearings, the court may order new examinations under
8 section 704-404.

9 (5) At any time, a defendant subject to an order for
10 treatment under this section, or a medical professional, social
11 worker, caregiver, guardian, family member, defense attorney,
12 prosecutor, or any other interested party acting on the
13 defendant's behalf, may petition the court for modification or
14 termination of the order for treatment for good cause shown.
15 The burden of proof shall be on the petitioner to prove, based
16 on a preponderance of evidence, that the order for treatment
17 should be modified or terminated. For the purposes of hearings
18 on petitions, the court may order new examinations under section
19 704-404. The court may grant the petition, in whole or in part,
20 or deny the petition. Subsequent petitions may be filed for



1 good cause shown, including new evidence for the court to
2 consider.

3 (6) A defendant who remains arrest-free for at least five
4 years after the order for treatment under this section becomes
5 effective may petition the court to expunge any prior petty
6 misdemeanor or misdemeanor convictions. The burden of proof
7 shall be on the petitioner, under the preponderance of evidence
8 standard, to prove the defendant is likely to continue acting
9 within the requirements of law, and not become an imminent
10 danger to self, others, or property. If the petition to expunge
11 is denied in whole or in part, the defendant may file subsequent
12 petitions if there is new evidence for the court to consider. A
13 medical professional, social worker, caregiver, guardian, family
14 member, defense attorney, prosecutor, or any other interested
15 party acting on the defendant's behalf may file the petition for
16 expungement on the defendant's behalf."

17 SECTION 6. Section 704-402, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§704-402 Physical or mental disease, disorder, or defect**
20 **excluding responsibility is an affirmative defense; form of**
21 **verdict and judgment when finding of irresponsibility is made.**



1 (1) Physical or mental disease, disorder, or defect, which may
2 be collectively referred to as severe cognitive impairment,
3 excluding penal responsibility, is an affirmative defense. If
4 there is probable cause for the court to suspect the defendant
5 has a severe cognitive impairment, the court may raise the issue
6 on its own motion, or the issue may be raised by the defendant,
7 the defendant's counsel, or the prosecutor. When the issue of
8 severe cognitive impairment is raised, the court shall order an
9 examination of the defendant under section 704-404.

10 (2) The court shall determine whether the defendant, due
11 to a severe cognitive impairment, did not have the required
12 state of mind under section 701-114(1)(b) to be found guilty of
13 a crime for the offense charged, and thereby entitled to avoid
14 penal responsibility, and whether the defendant is unfit to
15 proceed. The court's determination may be based on the
16 following criteria, in addition to any other criteria the court
17 deems relevant:

18 (a) All relevant and material information in the
19 examiner's report, submitted according to section
20 704-404, including but not limited to the defendant's
21 diagnosis and prognosis;



1 (b) Whether the defendant suffers from delusions and is
2 incapable of correctly perceiving reality;

3 (c) The defendant's prior arrest and conviction record for
4 non-violent misdemeanors, petty misdemeanors, violent
5 crimes, and felonies;

6 (d) The defendant's history of being found unfit to
7 proceed;

8 (e) Whether the severity of the defendant's mental
9 impairments makes it difficult or impossible to
10 control the defendant's conduct; and

11 (f) The court's observations of the defendant's conduct
12 during the proceedings, including a defendant's
13 demonstrated inability to understand or participate in
14 the proceedings.

15 [~~+2~~] (3) When the defense provided for by subsection (1)
16 is submitted to a jury, the court shall~~[, if requested by the~~
17 ~~defendant,~~] instruct the jury as to the consequences to the
18 defendant of an acquittal on the ground of ~~[physical or mental~~
19 ~~disease, disorder, or defect]~~ severe cognitive impairment
20 excluding penal responsibility.



1 ~~[-3-]~~ (4) When the defendant is acquitted on the ground of
2 ~~[physical or mental disease, disorder, or defect]~~ severe
3 cognitive impairment excluding penal responsibility, the verdict
4 and the judgment shall ~~[-]~~ state the reasons.

5 (5) If the defendant's severe cognitive impairment
6 persists, the court shall issue an order for treatment pursuant
7 to section §704- , which shall also be included in the verdict.

8 (6) If the defendant's severe cognitive impairment was
9 temporary or no longer exists because of successful treatments
10 or other means, and the court determines the defendant no longer
11 poses an imminent danger to self, others, or property, the court
12 may release the defendant."

13 SECTION 7. Section 704-404, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§704-404 Examination of defendant with respect to**
16 **physical or mental disease, disorder, or defect ~~[excluding]~~ to**
17 **assess penal responsibility and fitness to proceed.** (1)

18 Whenever there is reason to doubt the defendant's mental
19 condition and whether the defendant had the required state of
20 mind under section 701-114(1)(b) to be convicted or found guilty
21 of a crime for the act charged, or a reason to question

1 defendant's mental condition, cognitive capacity, or physical
2 disease or defect affecting the defendant's fitness to proceed,
3 the court may immediately suspend all further proceedings in the
4 prosecution[+] or sentencing; provided that for any defendant
5 not subject to an order of commitment to the director of health
6 or other facility or professional for the purpose of the
7 examination, neither the right to bail nor proceedings pursuant
8 to chapter 804 shall be suspended. If a trial jury has been
9 empaneled, it shall be discharged or retained at the discretion
10 of the court. The discharge of the trial jury shall not be a
11 bar to further prosecution.

12 (2) Upon suspension of further proceedings in the
13 prosecution[+] or sentencing, the court shall commit the
14 defendant to the director of health, or other mental health
15 facilities or professionals at the discretion of the court, for
16 custodial care and examination, who shall provide the court with
17 one or more reports containing the following information:

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

19 (b) A determination of whether the defendant is afflicted
20 with a mental disease, physical defect, or addiction,



1 including diagnosis and a description of the
2 impairments caused by the defendant's condition;

3 (c) A determination of whether the defendant is self-aware
4 of the defendant's impairments;

5 (d) A determination of whether the defendant's diagnosis,
6 addiction, undiagnosed impairment, or diminished
7 cognitive ability:

8 (i) Interferes with the defendant's ability to
9 organize thoughts or think rationally or
10 understanding of the wrongfulness or consequences
11 of the crimes defendant is charged with, and to
12 what degree;

13 (ii) Renders the defendant incapable of understanding
14 the charges in legal proceedings or participating
15 in the defendant's own defense;

16 (iii) Interferes with the defendant's ability to
17 control the defendant's own conduct;

18 (iv) Poses a risk of the defendant causing harm to
19 self, others, or property, and whether the
20 defendant has a propensity for violence; or



1 (v) Causes delusions of such severity that they
2 impair the defendant's ability to correctly
3 perceive reality;

4 (e) The examiner's determination for:

5 (i) Protocols to treat defendant's diagnosed or
6 undiagnosed mental illness or addiction, and the
7 prognosis if treated with respect to each of the
8 assessments in paragraphs (a) through (d);

9 (ii) The least restrictive setting necessary for
10 effective treatment adherence;

11 (iii) Whether the criminal acts described in the
12 defendant's criminal record are caused by the
13 defendant's mental impairments;

14 (iv) Whether the amount of criminal offenses provides
15 insight into the severity of defendant's
16 impairments;

17 (v) The likelihood that the defendant would commit an
18 offense against others or property within
19 forty-five days if the defendant is not treated
20 or confined in a psychiatric facility;



1 (vi) The likelihood that the defendant would commit an
2 offense against others or property within
3 forty-five days if the defendant is treated but
4 not confined in a psychiatric facility; and

5 (vii) The prognosis if defendant is treated and
6 confined;

7 (f) Any other information or observations the examiner
8 deems relevant; and

9 (g) Where more than one examiner is appointed, a statement
10 that the opinion rendered was arrived at independently
11 of any other examiner, unless there is a showing to
12 the court of a clear need for communication between or
13 among the examiners for clarification. A description
14 of the communication shall be included in the report.
15 After all reports are submitted to the court,
16 examiners may confer without restriction.

17 ~~[(a)]~~ (3) In cases where the defendant is charged with a
18 petty misdemeanor not involving violence or attempted violence,
19 ~~[if a court-based certified examiner is available,]~~ the court
20 shall have discretion to appoint the court-based certified
21 examiner, if one is available, to examine ~~[and provide an~~



~~expedited report solely upon the issue of the defendant's capacity to understand the proceedings against the defendant and defendant's ability to assist in the defendant's own defense. The court-based certified examiner shall file the examiner's report with the court within two days of the appointment of the examiner, or as soon thereafter is practicable. A hearing shall be held to determine if the defendant is fit to proceed within two days of the filing of the report, or as soon thereafter as is practicable;]~~ the defendant pursuant to subsection (2);

~~[(b)]~~ (4) In all other nonfelony cases, and where a court-based certified examiner is not available ~~[in cases under paragraph (a)]~~, the court shall appoint one, or more at the court's discretion, qualified examiner to examine ~~[and report upon the defendant's fitness to proceed.]~~ the defendant to produce the examination under subsection (2). The court may appoint as the examiner either a psychiatrist or a licensed psychologist designated by the director of health from within the department of health~~[, and]~~ or any other qualified professionals at the discretion of the court;

~~[(e)]~~ (5) In felony cases, the court shall appoint three, or more at the court's discretion, qualified licensed



1 psychiatrists, psychologists, or physicians as examiners to
2 ~~[examine and report upon the defendant's fitness to proceed.~~
3 ~~The court shall appoint as examiners psychiatrists, licensed~~
4 ~~psychologists, or qualified physicians; provided that one of the~~
5 ~~three examiners shall be a psychiatrist or licensed psychologist~~
6 ~~designated by the director of health from within the department~~
7 ~~of health.] independently conduct separate examinations, and~~
8 produce separate examinations reports, each containing the
9 information required by subsection (2).
10 ~~[All examiners shall be appointed from a list of certified~~
11 ~~examiners as determined by the department of health. The court,~~
12 ~~in appropriate circumstances, may appoint an additional examiner~~
13 ~~or examiners.] The examination may be conducted while the~~
14 ~~defendant is in custody or on release or, in the court's~~
15 ~~discretion, when necessary, the court may order the defendant to~~
16 ~~be committed to a hospital or other suitable facility for the~~
17 ~~purpose of the examination for [a period not exceeding thirty~~
18 ~~days, or a longer period as] the least amount of time the court~~
19 ~~determines to be necessary for the purpose[-], not to exceed~~
20 three months. The court may direct that one or more qualified
21 physicians or psychologists retained by the defendant be



1 permitted to witness the examination. As used in this section,
2 the term "licensed psychologist" includes psychologists exempted
3 from licensure by section 465-3(a)(3) and "qualified physician"
4 means a physician qualified by the court for the specific
5 evaluation ordered.

6 ~~[(3)]~~ (6) An examination performed under this section may
7 employ any method that is accepted by the professions of
8 medicine or psychology for the examination of those alleged to
9 be affected by a physical or mental disease, disorder, or
10 defect; provided that each examiner shall ~~[form and render an~~
11 ~~opinion upon the defendant's fitness to proceed]~~ conduct their
12 examinations independently and write their reports independently
13 from the other examiners~~[, and the examiners, upon approval of~~
14 ~~the court,]~~. The examiners may secure the services of clinical
15 psychologists and other medical or paramedical specialists to
16 assist in the examination. The court may order the examiners'
17 reports to be submitted as separate reports or as a combined
18 report, where in the absence of a specific court order, the
19 examiners shall have discretion to submit a combined report or
20 separate reports.



1 ~~[(4) For defendants charged with felonies, the~~
2 ~~examinations for fitness to proceed under this section and penal~~
3 ~~responsibility under section 704-407.5 shall be conducted~~
4 ~~separately unless a combined examination has been ordered by the~~
5 ~~court upon a request by the defendant or upon a showing of good~~
6 ~~cause to combine the examinations. The report of the~~
7 ~~examination for fitness to proceed shall be separate from the~~
8 ~~report of the examination for penal responsibility unless a~~
9 ~~combined examination has been ordered. For defendants charged~~
10 ~~with offenses other than felonies, a combined examination is~~
11 ~~permissible when ordered by the court.~~

12 ~~(5) Except in the case of an examination pursuant to~~
13 ~~subsection (2)(a), the report of the examination for fitness to~~
14 ~~proceed shall include the following:~~

- 15 ~~(a) A description of the nature of the examination;~~
16 ~~(b) A diagnosis of the physical or mental condition of the~~
17 ~~defendant;~~
18 ~~(c) An opinion as to the defendant's capacity to~~
19 ~~understand the proceedings against the defendant and~~
20 ~~to assist in the defendant's own defense;~~



1 ~~(d) An assessment of the risk of danger to the defendant~~
2 ~~or to the person or property of others for~~
3 ~~consideration and determination of the defendant's~~
4 ~~release on conditions; and~~

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

13 ~~[(6)]~~ (7) If the examination cannot be conducted by reason
14 of the unwillingness of the defendant to participate in the
15 examination, the report shall so state and shall include, if
16 possible, an opinion as to whether the unwillingness of the
17 defendant was the result of physical or mental disease,
18 disorder, or defect.

19 ~~[(7)]~~ (8) A copy of the report of the examination,
20 including any supporting documents, shall be filed with the
21 clerk of the court.

1 [~~(8)~~] (9) Any examiner shall be permitted to make a
2 separate explanation reasonably serving to clarify the
3 examiner's opinion.

4 [~~(9)~~] (10) [The] Within a reasonable amount of time before
5 the examiners' reports are due, the court shall obtain all
6 existing relevant medical, mental health, social, police, and
7 juvenile records, including those expunged, and other pertinent
8 records in the custody of public agencies, notwithstanding any
9 other statute, and make the records available for inspection by
10 the examiners in hard copy or digital format. The court may
11 order that the records so obtained be made available to the
12 prosecuting attorney and counsel for the defendant in either
13 format, subject to conditions the court determines appropriate;
14 provided that juvenile records shall not be made available
15 unless constitutionally required. No further disclosure of
16 records shall be made except as permitted by law. If, pursuant
17 to this section, the court orders the defendant committed to a
18 hospital or other suitable facility under the control of the
19 director of health, then the county police departments shall
20 provide to the director of health and the defendant copies of
21 all police reports from cases filed against the defendant that



1 have been adjudicated by the acceptance of a plea of guilty or
2 no contest, a finding of guilt, acquittal, acquittal pursuant to
3 section 704-400, or by the entry of plea of guilty or no contest
4 made pursuant to chapter 853; provided that the disclosure to
5 the director of health and the defendant does not frustrate a
6 legitimate function of the county police departments, with the
7 exception of expunged records, records of or pertaining to any
8 adjudication or disposition rendered in the case of a juvenile,
9 or records containing data from the United States National Crime
10 Information Center. The county police departments shall
11 segregate or sanitize from the police reports information that
12 would result in the likely or actual identification of
13 individuals who furnished information in connection with its
14 investigation, or who were of investigatory interest. No
15 further disclosure of records shall be made except as provided
16 by law.

17 ~~[(10)]~~ (11) All public agencies in possession of relevant
18 medical, mental health, social, police, and juvenile records,
19 and any other pertinent records of a defendant ordered to be
20 examined under this chapter, shall provide those records to the
21 court, notwithstanding any other state statute.



1 ~~[+11+]~~ (12) The compensation of persons making or
2 assisting in the examination, other than those retained by a
3 nonindigent defendant, who are not undertaking the examination
4 upon designation by the director of health as part of their
5 normal duties as employees of the State or a county, shall be
6 paid by the judiciary in the amount of \$2,000, which amount
7 includes compensation for the examination, the drafting of the
8 report, and any consultation, preparation, testimony, and
9 attendance in court."

10 SECTION 8. Section 704-406, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§704-406 Effect of finding of unfitness to proceed and**
13 **regained fitness to proceed.** ~~[(1) If the court determines that~~
14 ~~the defendant lacks fitness to proceed, the proceeding against~~
15 ~~the defendant shall be suspended, except as provided in sections~~
16 ~~704-407 and 704-421, and the court shall commit the defendant to~~
17 ~~the custody of the director of health to be placed in an~~
18 ~~appropriate institution for detention, assessment, care, and~~
19 ~~treatment, provided that:~~

20 ~~(a) When the defendant is charged with a petty misdemeanor~~
21 ~~not involving violence or attempted violence, the~~



~~defendant shall be diverted from the criminal justice system pursuant to section 704-421; and~~

~~(b) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed.~~

~~If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to another or risk of substantial danger to property of others, the court shall order the defendant's release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days.]~~

(1) For defendants charged with petty misdemeanors and misdemeanors, once the court finds the defendant is unfit to proceed pursuant to sections 704-402, 704-403, and 704-405, the court shall determine whether or not there is a reasonable chance the defendant will become fit to proceed within four

1 months. In making the determination, the court may rely upon
2 the examiners' reports submitted pursuant to section 704-404,
3 and any other relevant evidence.

4 (a) If the court determines that there is not a reasonable
5 chance the defendant will become fit to proceed within
6 four months, the court shall dismiss the case and
7 issue an ex parte order pursuant to section and
8 334-59(a)(2).

9 (b) If the court determines there's a reasonable chance
10 the defendant will become fit to proceed in four
11 months or less, the court shall suspend the
12 proceedings until the defendant becomes fit. If the
13 defendant does not become fit within the required
14 time, the court shall dismiss the case and issue an ex
15 parte order per section 334-59(a)(2).

16 (2) A copy of all reports filed pursuant to section
17 704-404 shall be attached to the order of commitment or order of
18 release on conditions that is provided to the department of
19 health[-] or other facilities or care personnel as appropriate.
20 When the defendant is committed to the custody of the director
21 of health, or other facility or care personnel as appropriate,



1 for detention, assessment, care, and treatment, the county
2 police departments shall provide to the director of health, or
3 other facilities or care personnel as appropriate, and the
4 defendant copies of all police reports from cases filed against
5 the defendant that have been adjudicated by the acceptance of a
6 plea of guilty or nolo contendere, a finding of guilt,
7 acquittal, acquittal pursuant to section 704-400, or by the
8 entry of a plea of guilty or nolo contendere made pursuant to
9 chapter 853; provided that the disclosure to the director of
10 health, or other facilities or care personnel as appropriate,
11 and the defendant does not frustrate a legitimate function of
12 the county police departments; provided further that expunged
13 records, records of or pertaining to any adjudication or
14 disposition rendered in the case of a juvenile, or records
15 containing data from the United States National Crime
16 Information Center shall not be provided. The county police
17 departments shall segregate or sanitize from the police reports
18 information that would result in the likely or actual
19 identification of individuals who furnished information in
20 connection with the investigation or who were of investigatory



1 interest. No further disclosure of records shall be made except
2 as provided by law.

3 ~~[(2)]~~ (3) When the defendant is released on conditions
4 after a finding of unfitness to proceed, the department of
5 health, or other facilities or care personnel as appropriate,
6 shall establish and monitor a fitness restoration ~~[program]~~
7 protocol consistent with conditions set by the court order of
8 release, and shall inform the prosecuting attorney of the county
9 that charged the defendant of the program and report the
10 defendant's compliance therewith.

11 (4) For a defendant charged with a misdemeanor involving
12 violence or attempted violence, a felony, except murder in the
13 first or second degree, or attempted murder in the first or
14 second degree, or a class A felony, when the court on its own
15 motion, or upon the application of the director of health, the
16 prosecuting attorney, or the defendant, or an examiner's report,
17 has reason to believe the defendant regained fitness to proceed,
18 then the court may order the prosecution of defendant to resume.
19 If the defendant is not found fit to proceed within four months,
20 the court shall initiate proceedings under the applicable
21 provisions of chapter 334, as applicable.



1 [~~3~~] (5) When the court, on its own motion or upon the
2 application of the director of health, the prosecuting attorney,
3 or the defendant, or an examiner's report, has reason to believe
4 that the defendant has regained fitness to proceed, for a
5 defendant charged with the offense of murder in the first or
6 second degree, attempted murder in the first or second degree,
7 or a class A felony, the court shall appoint three qualified
8 examiners and may appoint in all other cases one qualified
9 examiner, to examine and report upon the physical and mental
10 condition of the defendant. In cases in which the defendant has
11 been charged with murder in the first or second degree,
12 attempted murder in the first or second degree, or a class A
13 felony, the court shall appoint as examiners at least one
14 psychiatrist and at least one licensed psychologist. The third
15 examiner may be a psychiatrist, licensed psychologist, or
16 qualified physician. One of the three examiners shall be a
17 psychiatrist or licensed psychologist designated by the director
18 of health from within the department of health. In all other
19 cases, the one qualified examiner shall be a psychiatrist or
20 licensed psychologist designated by the director of health from
21 within the department of health. The court, in appropriate



1 circumstances, may appoint an additional examiner or examiners.
2 All examiners shall be appointed from a list of certified
3 examiners as determined by the department of health. After a
4 hearing, if a hearing is requested, if the court determines that
5 the defendant has regained fitness to proceed, the penal
6 proceeding shall be resumed [~~and the defendant shall no longer~~
7 ~~be committed to the custody of the director of health~~]. In
8 cases where a defendant is charged with the offense of murder in
9 the first or second degree, attempted murder in the first or
10 second degree, or a class A felony, upon the request of the
11 prosecuting attorney or the defendant, or upon the court's own
12 motion, and in consideration of information provided by the
13 defendant's psychiatric examiners or clinical team, the court
14 may order that the defendant remain in the custody of the
15 director of health, for good cause shown, subject to bail or
16 until a judgment on the verdict or a finding of guilt after a
17 plea of guilty or nolo contendere. Thereafter, the court may
18 consider a request from the director of health to rescind its
19 order maintaining the defendant in the director's custody, for
20 good cause shown. As used in this section, the term "qualified
21 physician" means a physician qualified by the court for the



1 specific evaluation ordered. If, however, the court is of the
2 view that so much time has elapsed since the commitment or
3 release on conditions of the defendant that it would be unjust
4 to resume the proceeding, the court may dismiss the charge and:

5 (a) Order the defendant to be discharged;

6 (b) Subject to section 334-60.2 regarding involuntary
7 hospitalization criteria, order the defendant to be
8 committed to the custody of the director of health to
9 be placed in an appropriate institution for detention,
10 care, and treatment; or

11 (c) Subject to section 334-121 regarding assisted
12 community treatment criteria, order the defendant to
13 be released on conditions the court determines
14 necessary.

15 [~~4~~] (6) An examination for regained fitness to proceed
16 performed under this section may employ any method that is
17 accepted by the professions of medicine or psychology for the
18 examination of those alleged to be affected by a physical or
19 mental disease, disorder, or defect, and shall include a review
20 of records where the defendant, while under the custody of the
21 director of health, was placed; provided that each examiner



1 shall form and render an opinion on the defendant's regained
2 fitness to proceed independently from the other examiners and
3 the examiners [~~7~~ ~~upon approval of the court,~~] may secure the
4 services of clinical psychologists and other medical or
5 paramedical specialists to assist in the examination.

6 [~~(5)~~] (7) The report of the examination for regained
7 fitness to proceed shall include the following:

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

9 (b) An opinion as to the defendant's capacity to
10 understand the proceedings against the defendant and
11 to assist in the defendant's own defense; and

12 (c) Where more than one examiner is appointed, a statement
13 that the opinion rendered was arrived at independently
14 of any other examiner, unless there is a showing to
15 the court of a clear need for communication between or
16 among the examiners for clarification. A description
17 of the communication shall be included in the report.

18 After all reports are submitted to the court,
19 examiners may confer without restriction.

20 [~~(6)~~] (8) [~~All~~] At the discretion of the court, any of the
21 other procedures as set out in section 704-404 [~~(6)~~ ~~through~~ ~~(11)~~]



1 shall be followed for the completion of the report of the
2 examination for regained fitness to proceed performed under this
3 section.

4 ~~[(7) If a defendant committed to the custody of the~~
5 ~~director of health for a limited period pursuant to subsection~~
6 ~~(1) is not found fit to proceed prior to the expiration of the~~
7 ~~commitment, the charge for which the defendant was committed for~~
8 ~~a limited period shall be dismissed. Upon dismissal of the~~
9 ~~charge, the defendant shall be released from custody unless the~~
10 ~~defendant is subject to prosecution for other charges or subject~~
11 ~~to section 334-60.2 regarding involuntary hospitalization~~
12 ~~criteria, in which case the court shall order the defendant's~~
13 ~~commitment to the custody of the director of health to be placed~~
14 ~~in an appropriate institution for detention, care, and~~
15 ~~treatment. Within a reasonable time following any other~~
16 ~~commitment under subsection (1), the director of health shall~~
17 ~~report to the court on whether the defendant presents a~~
18 ~~substantial likelihood of becoming fit to proceed in the future.~~
19 ~~The court, in addition, may appoint a panel of three qualified~~
20 ~~examiners in felony cases or one qualified examiner in nonfelony~~
21 ~~eases to make a report. If, following the report, the court~~



~~determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:~~

~~(a) Release the defendant; or~~

~~(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.~~

~~(8) If a defendant released on conditions for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the release on conditions order, the charge for which the defendant was released on conditions for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be discharged from the release on conditions unless the defendant is subject to prosecution for other charges or subject to section 334-60.2 regarding involuntary hospitalization criteria, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (1),~~

1 ~~the court shall appoint a panel of three qualified examiners in~~
2 ~~felony cases or one qualified examiner in nonfelony cases to~~
3 ~~report to the court on whether the defendant presents a~~
4 ~~substantial likelihood of becoming fit to proceed in the future.~~
5 ~~If, following the report, the court determines that the~~
6 ~~defendant probably will remain unfit to proceed, the court may~~
7 ~~dismiss the charge and:~~

8 ~~(a) Release the defendant; or~~

9 ~~(b) Subject to section 334-60.2 regarding involuntary~~
10 ~~hospitalization criteria, order the defendant to be~~
11 ~~committed to the custody of the director of health to~~
12 ~~be placed in an appropriate institution for detention,~~
13 ~~care, and treatment.] "~~

14 PART IV

15 SECTION 9. Section 704-407, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§704-407 Special hearing following commitment or release~~
18 ~~on conditions. (1) At any time after commitment as provided in~~
19 ~~section 704-406, the defendant or the defendant's counsel or the~~
20 ~~director of health may apply for a special post-commitment or~~
21 ~~post-release hearing. If the application is made by or on~~



~~1 behalf of a defendant not represented by counsel, the defendant
2 shall be afforded a reasonable opportunity to obtain counsel,
3 and if the defendant lacks funds to do so, counsel shall be
4 assigned by the court. The application shall be granted only if
5 the counsel for the defendant satisfies the court by affidavit
6 or otherwise that, as an attorney, the counsel has reasonable
7 grounds for a good faith belief that the counsel's client has an
8 objection based upon legal grounds to the charge.~~

~~9 (2) If the motion for a special post-commitment or
10 post-release hearing is granted, the hearing shall be by the
11 court without a jury. No evidence shall be offered at the
12 hearing by either party on the issue of physical or mental
13 disease, disorder, or defect as a defense to, or in mitigation
14 of, the offense charged.~~

~~15 (3) After the hearing, the court shall rule on any legal
16 objection raised by the application and, in an appropriate case,
17 may quash the indictment or other charge, find it to be
18 defective or insufficient, or otherwise terminate the
19 proceedings on the law. Unless all defects in the proceedings
20 are promptly cured, the court shall terminate the commitment or
21 release ordered under section 704-406 and:~~



- 1 ~~(a) Order the defendant to be discharged;~~
- 2 ~~(b) Subject to section 334-60.2 regarding involuntary~~
- 3 ~~hospitalization criteria, order the defendant to be~~
- 4 ~~committed to the custody of the director of health to~~
- 5 ~~be placed in an appropriate institution for detention,~~
- 6 ~~care, and treatment; or~~
- 7 ~~(c) Subject to section 334-121 regarding assisted~~
- 8 ~~community treatment criteria, order the defendant to~~
- 9 ~~be released on conditions as the court deems~~
- 10 ~~necessary."]~~

11 SECTION 10. Section 704-407.5, Hawaii Revised Statutes, is

12 repealed.

13 ~~["§704-407.5 Examination of defendant with respect to~~

14 ~~physical or mental disease, disorder, or defect excluding penal~~

15 ~~responsibility. (1) Whenever the defendant has filed a notice~~

16 ~~of intention to rely on the defense of physical or mental~~

17 ~~disease, disorder, or defect excluding penal responsibility, or~~

18 ~~there is reason to believe that the physical or mental disease,~~

19 ~~disorder, or defect of the defendant will or has become an issue~~

20 ~~in the case, the court may order an examination as to the~~



~~defendant's physical or mental disease, disorder, or defect at the time of the conduct alleged.~~

~~Whenever there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may enter into an agreement with the parties at any stage of the proceeding to divert the case into an evaluation of the defendant, treatment of the defendant, including residential or rehabilitation treatment, or any other course or procedure, including diversion into specialized courts. Such agreements may include in-court clinical evaluations.~~

~~(2) For those cases not diverted by an agreement pursuant to subsection (1), the court shall appoint three qualified examiners for class A and class B felonies, as well as for class C felonies involving violence or attempted violence, and one qualified examiner in nonfelony cases to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. For class C felonies not involving violence or attempted violence, the court may appoint one or three qualified examiners to examine and report upon the physical or mental disease, disorder, or defect of the defendant~~



~~1 at the time of the conduct. In cases where the court appoints
2 three examiners, the court shall appoint as examiners
3 psychiatrists, licensed psychologists, or qualified physicians;
4 provided that one of the three examiners shall be a psychiatrist
5 or licensed psychologist designated by the director of health
6 from within the department of health. In nonfelony cases and
7 class C felonies not involving violence or attempted violence
8 where one examiner is appointed, the court may appoint as
9 examiners either a psychiatrist or a licensed psychologist. The
10 examiner may be designated by the director of health from within
11 the department of health. All examiners shall be appointed from
12 a list of certified examiners as determined by the department of
13 health. The court, in appropriate circumstances, may appoint an
14 additional examiner or examiners. The court may direct that one
15 or more qualified physicians or psychologists retained by the
16 defendant be permitted to witness the examination. As used in
17 this section, the term "licensed psychologist" includes
18 psychologists exempted from licensure by section 465-3(a)(3) and
19 "qualified physician" means a physician qualified by the court
20 for the specific evaluation ordered.~~



1 ~~(3) An examination performed under this section may employ~~
2 ~~any method that is accepted by the professions of medicine or~~
3 ~~psychology for the examination of those alleged to be affected~~
4 ~~by a physical or mental disease, disorder, or defect; provided~~
5 ~~that each examiner shall form and render diagnoses and opinions~~
6 ~~upon the physical and mental condition of the defendant~~
7 ~~independently from the other examiners, and the examiners, upon~~
8 ~~approval of the court, may secure the services of clinical~~
9 ~~psychologists and other medical or paramedical specialists to~~
10 ~~assist in the examination and diagnosis.~~

11 ~~(4) For defendants charged with felonies, the examinations~~
12 ~~for fitness to proceed under section 704.404 and penal~~
13 ~~responsibility under this section shall be conducted separately~~
14 ~~unless a combined examination has been ordered by the court upon~~
15 ~~a request by the defendant or upon a showing of good cause to~~
16 ~~combine the examinations. The report of the examination for~~
17 ~~fitness to proceed shall be separate from the report of the~~
18 ~~examination for penal responsibility unless a combined~~
19 ~~examination has been ordered. For defendants charged with~~
20 ~~offenses other than felonies, a combined examination is~~
21 ~~permissible when ordered by the court.~~



1 ~~(5) The court may order the examination to occur no sooner~~
2 ~~than one hundred twenty days of a finding of unfit to proceed~~
3 ~~under section 704 404 upon a showing of good cause.~~

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

6 ~~(a) A description of the nature of the examination;~~

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

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

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

18 ~~(e) Where more than one examiner is appointed, a statement~~
19 ~~that the diagnosis and opinion rendered were arrived~~
20 ~~at independently of any other examiner, unless there~~
21 ~~is a showing to the court of a clear need for~~



1 ~~communication between or among the examiners for~~
2 ~~clarification. A description of the communication~~
3 ~~shall be included in the report. After all reports~~
4 ~~are submitted to the court, examiners may confer~~
5 ~~without restriction.~~

6 ~~(7) If the examination cannot be conducted by reason of~~
7 ~~the unwillingness of the defendant to participate in the~~
8 ~~examination, the report shall so state and shall include, if~~
9 ~~possible, an opinion as to whether the unwillingness of the~~
10 ~~defendant was the result of physical or mental disease,~~
11 ~~disorder, or defect.~~

12 ~~(8) Three copies of the report of the examination,~~
13 ~~including any supporting documents, shall be filed with the~~
14 ~~clerk of the court, who shall cause copies to be delivered to~~
15 ~~the prosecuting attorney and to counsel for the defendant.~~

16 ~~(9) Any examiner shall be permitted to make a separate~~
17 ~~explanation reasonably serving to clarify the examiner's~~
18 ~~diagnosis or opinion.~~

19 ~~(10) The court shall obtain all existing relevant medical,~~
20 ~~mental health, social, police, and juvenile records, including~~
21 ~~those expunged, and other pertinent records in the custody of~~



~~public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. No further disclosure of records shall be made except as permitted by law.~~

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

~~(12) The compensation of persons making or assisting in the examination, other than those retained by a nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the judiciary in the amount of \$2,000, which amount includes compensation for the examination, the drafting of the report,~~



1 ~~and any consultation, preparation, testimony, and attendance in~~
2 ~~court.~~

3 ~~(13) The time during which completion of an examination~~
4 ~~pursuant to this section is pending shall be excluded in~~
5 ~~computing the time for trial commencement."]~~

6 SECTION 11. Section 704-411, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§704-411 Legal effect of acquittal on the ground of~~
9 ~~physical or mental disease, disorder, or defect excluding~~
10 ~~responsibility; commitment; conditional release; discharge;~~
11 ~~procedure for separate post-acquittal hearing. (1) When a~~
12 ~~defendant is acquitted on the ground of physical or mental~~
13 ~~disease, disorder, or defect excluding responsibility, the~~
14 ~~court, on the basis of the report made pursuant to section~~
15 ~~704404, if uncontested, or the medical or psychological evidence~~
16 ~~given at the trial or at a separate hearing, shall order that:~~

17 ~~(a) The defendant shall be committed to the custody of the~~
18 ~~director of health to be placed in an appropriate~~
19 ~~institution for custody, care, and treatment if the~~
20 ~~court finds that the defendant:~~



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1 ~~(i) Is affected by a physical or mental disease,~~
2 ~~disorder, or defect;~~
3 ~~(ii) Presents a risk of danger to self or others; and~~
4 ~~(iii) Is not a proper subject for conditional release,~~
5 ~~provided that the director of health shall place~~
6 ~~defendants charged with misdemeanors or felonies not~~
7 ~~involving violence or attempted violence in the least~~
8 ~~restrictive environment appropriate in light of the~~
9 ~~defendant's treatment needs and the need to prevent~~
10 ~~harm to the person confined and others. The county~~
11 ~~police departments shall provide to the director of~~
12 ~~health and the defendant copies of all police reports~~
13 ~~from cases filed against the defendant that have been~~
14 ~~adjudicated by the acceptance of a plea of guilty or~~
15 ~~nolo contendere, a finding of guilt, acquittal,~~
16 ~~acquittal pursuant to section 704400, or by the entry~~
17 ~~of a plea of guilty or nolo contendere made pursuant~~
18 ~~to chapter 853; provided that the disclosure to the~~
19 ~~director of health and the defendant does not~~
20 ~~frustrate a legitimate function of the county police~~
21 ~~departments; provided further that expunged records,~~



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

~~(b) The defendant shall be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or~~

~~(c) The defendant shall be discharged if the court finds that the defendant is no longer affected by physical~~



1 ~~or mental disease, disorder, or defect or, if so~~
2 ~~affected, that the defendant no longer presents a~~
3 ~~danger to self or others and is not in need of care,~~
4 ~~supervision, or treatment.~~

5 ~~(2) The court, upon its own motion or on the motion of the~~
6 ~~prosecuting attorney or the defendant, shall order a separate~~
7 ~~post-acquittal hearing for the purpose of taking evidence on the~~
8 ~~issue of physical or mental disease, disorder, or defect and the~~
9 ~~risk of danger that the defendant presents to self or others.~~

10 ~~(3) When ordering a hearing pursuant to subsection (2):~~

11 ~~(a) In nonfelony cases, the court shall appoint a~~
12 ~~qualified examiner to examine and report upon the~~
13 ~~physical and mental condition of the defendant. The~~
14 ~~court may appoint either a psychiatrist or a licensed~~
15 ~~psychologist. The examiner may be designated by the~~
16 ~~director of health from within the department of~~
17 ~~health. The examiner shall be appointed from a list~~
18 ~~of certified examiners as determined by the department~~
19 ~~of health. The court, in appropriate circumstances,~~
20 ~~may appoint an additional examiner or examiners; and~~



1 ~~(b) In felony cases, the court shall appoint three~~
2 ~~qualified examiners to examine and report upon the~~
3 ~~physical and mental condition of the defendant. In~~
4 ~~each case, the court shall appoint as examiners~~
5 ~~psychiatrists, licensed psychologists, or qualified~~
6 ~~physicians; provided that one of the three shall be a~~
7 ~~psychiatrist or licensed psychologist designated by~~
8 ~~the director of health from within the department of~~
9 ~~health. The three examiners shall be appointed from a~~
10 ~~list of certified examiners as determined by the~~
11 ~~department of health.~~

12 ~~To facilitate the examination and the proceedings thereon, the~~
13 ~~court may cause the defendant, if not then confined, to be~~
14 ~~committed to a hospital or other suitable facility for the~~
15 ~~purpose of examination for a period not exceeding thirty days or~~
16 ~~a longer period as the court determines to be necessary for the~~
17 ~~purpose upon written findings for good cause shown. The court~~
18 ~~may direct that qualified physicians or psychologists retained~~
19 ~~by the defendant be permitted to witness the examination. The~~
20 ~~examination and report and the compensation of persons making or~~
21 ~~assisting in the examination shall be in accordance with section~~



1 ~~704-404(3), (5)(a), (b), (d), and (e), (7), (8), (9), (10), and~~
2 ~~(11). As used in this section, the term "licensed psychologist"~~
3 ~~includes psychologists exempted from licensure by section~~
4 ~~4653(a)(3) and "qualified physician" means a physician qualified~~
5 ~~by the court for the specific evaluation ordered.~~

6 ~~(4) Whether the court's order under subsection (1) is made~~
7 ~~on the basis of the medical or psychological evidence given at~~
8 ~~the trial, or on the basis of the report made pursuant to~~
9 ~~section 704-404, or the medical or psychological evidence given~~
10 ~~at a separate hearing, the burden shall be upon the State to~~
11 ~~prove, by a preponderance of the evidence, that the defendant is~~
12 ~~affected by a physical or mental disease, disorder, or defect~~
13 ~~and may not safely be discharged and that the defendant should~~
14 ~~be either committed or conditionally released as provided in~~
15 ~~subsection (1).~~

16 ~~(5) In any proceeding governed by this section, the~~
17 ~~defendant's fitness shall not be an issue."]~~

18 SECTION 12. Section 704-412, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§704-412 Committed person; application for conditional~~
21 ~~release or discharge; by the director of health; by the person.~~



~~(1) After the expiration of at least ninety days following an original order of commitment pursuant to section 704-411(1)(a), or after the expiration of at least sixty days following the revocation of conditional release pursuant to section 704-413, if the director of health is of the opinion that the person committed is still affected by a physical or mental disease, disorder, or defect and may be granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make an application for either the conditional release or discharge of the person, as appropriate. In such a case, the director shall submit a report to the court by which the person was ordered committed and shall transmit copies of the application and report to the prosecuting attorney of the county from which the person was committed and to the person committed.~~

~~(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, or after the expiration of sixty days following the revocation of conditional release pursuant to section 704-413, the person committed may apply to the court from which the person was~~



~~1 committed for an order of discharge upon the ground that the
2 person is no longer affected by a physical or mental disease,
3 disorder, or defect. The person committed may apply for
4 conditional release or discharge upon the ground that, though
5 still affected by a physical or mental disease, disorder, or
6 defect, the person may be released without danger to self or to
7 the person or property of others. A copy of the application
8 shall be transmitted to the prosecuting attorney of the county
9 from which the person was committed. If the court denies the
10 application, the person shall not be permitted to file another
11 application for either conditional release or discharge until
12 one year after the date of the hearing held on the immediate
13 prior application.~~

~~14 (3) Upon application to the court by either the director
15 of health or the person committed, the court shall complete the
16 hearing process and render a decision within sixty days of the
17 application; provided that for good cause the court may extend
18 the sixty-day time frame upon the request of the director of
19 health or the person committed."]~~

20 SECTION 13. Section 704-413, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§704-413 Conditional release; application for~~
2 ~~modification or discharge; termination of conditional release~~
3 ~~and commitment. (1) Any person granted conditional release~~
4 ~~pursuant to this chapter shall continue to receive mental health~~
5 ~~or other treatment and care deemed appropriate by the director~~
6 ~~of health until discharged from conditional release. The person~~
7 ~~shall 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~~



~~pursuant to subsection (4); provided that on or before the expiration of the seventy two hour period, a court may conduct a hearing to determine whether the person would benefit from further hospitalization, which may render a revocation of conditional release unnecessary. If satisfied, the court may order further temporary hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period longer than one year. At any time within that period, the court may determine that a hearing pursuant to subsection (4) should be conducted.~~

~~(2) The director of health may apply to the court ordering any person released pursuant to this chapter, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives community-based mental health services from or contracted by the department of health, and the director is of the opinion that the person on conditional release is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The director shall make an application for the discharge from, or modification of, the order of conditional~~



~~release in a report to the circuit from which the order was issued. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the conditional release order was issued, to the person's treating mental health professionals, and to the probation officer supervising the conditional release. The person on conditional release shall be given notice of the application.~~

~~(3) Any person granted conditional release pursuant to this chapter may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the circuit from which the order issued and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the court denies the application, the person shall not be~~



1 ~~permitted to file another application for either discharge or~~
2 ~~modification of conditional release until one year after the~~
3 ~~date of the denial.~~

4 ~~(4) If, at any time after the order pursuant to this~~
5 ~~chapter granting conditional release, the court determines,~~
6 ~~after hearing evidence, that:~~

7 ~~(a) The person is still affected by a physical or mental~~
8 ~~disease, disorder, or defect, and the conditions of~~
9 ~~release have not been fulfilled; or~~

10 ~~(b) For the safety of the person or others, the person's~~
11 ~~conditional release should be revoked,~~
12 ~~the court may forthwith modify the conditions of release or~~
13 ~~order the person to be committed to the custody of the director~~
14 ~~of health, subject to discharge or release in accordance with~~
15 ~~the procedure prescribed in section 704-412; provided that, if~~
16 ~~satisfied that the person would benefit from temporary~~
17 ~~hospitalization that may render a revocation of conditional~~
18 ~~release unnecessary, the court, in lieu of revocation, may order~~
19 ~~hospitalization for a period not to exceed ninety days, subject~~
20 ~~to extension as appropriate, but in no event for a period~~
21 ~~exceeding a total of one year, and may reinstate or revoke~~



1 conditional release at any time during the temporary
2 hospitalization.

3 ~~(5) Upon application for discharge from, or modification~~
4 ~~of, the order of conditional release by either the director of~~
5 ~~health or the person, the court shall complete the hearing~~
6 ~~process and render a decision within sixty days of the~~
7 ~~application, provided that for good cause the court may extend~~
8 ~~the sixty day time frame upon the request of the director of~~
9 ~~health or the person."]~~

10 SECTION 14. Section 704-414, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§704-414 Procedure upon application for discharge,~~
13 ~~conditional release, or modification of conditions of release.~~
14 ~~(1) Upon filing of an application pursuant to section 704-412~~
15 ~~for discharge or conditional release, or upon the filing of an~~
16 ~~application pursuant to section 704-413 for discharge, the court~~
17 ~~shall appoint three qualified examiners in felony cases, and one~~
18 ~~qualified examiner in nonfelony cases, to examine and report~~
19 ~~upon the physical and mental condition of the defendant. In~~
20 ~~felony cases, the court shall appoint as examiners~~
21 ~~psychiatrists, licensed psychologists, or qualified physicians;~~



1 ~~provided that one of the three shall be a psychiatrist or~~
2 ~~licensed psychologist designated by the director of health from~~
3 ~~within the department of health. The examiners shall be~~
4 ~~appointed from a list of certified examiners as determined by~~
5 ~~the department of health. To facilitate the examination and the~~
6 ~~proceedings thereon, the court may cause the defendant, if not~~
7 ~~then confined, to be committed to a hospital or other suitable~~
8 ~~facility for the purpose of the examination and may direct that~~
9 ~~qualified physicians or psychologists retained by the defendant~~
10 ~~be permitted to witness the examination. The examination and~~
11 ~~report and the compensation of persons making or assisting in~~
12 ~~the examination shall be in accordance with section 704-404(3),~~
13 ~~(5)(a), (b), (d), and (e), (7), (8), (9), (10), and (11). As~~
14 ~~used in this section, the term "licensed psychologist" includes~~
15 ~~psychologists exempted from licensure by section 465-3(a)(3) and~~
16 ~~"qualified physician" means a physician qualified by the court~~
17 ~~for the specific evaluation ordered.~~

18 ~~(2) Upon the filing of an application pursuant to section~~
19 ~~704-413 for modification of conditions of release, the court may~~
20 ~~proceed as provided in subsection (1)."]~~



1 SECTION 15. Section 704-415, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§704-415 Disposition of application for discharge,~~
4 ~~conditional release, or modification of conditions of release.~~
5 ~~(1) If the court is satisfied from the report filed pursuant to~~
6 ~~section 704-414, and such testimony of the reporting examiners~~
7 ~~as the court deems necessary, that:~~

8 ~~(a) The person is affected by a physical or mental~~
9 ~~disease, disorder, or defect and the discharge,~~
10 ~~conditional release, or modification of conditions of~~
11 ~~release applied for may be granted without danger to~~
12 ~~the committed or conditionally released person or to~~
13 ~~the person or property of others; or~~

14 ~~(b) The person is no longer affected by a physical or~~
15 ~~mental disease, disorder, or defect,~~
16 ~~the court shall grant the application and order the relief. If~~
17 ~~the court is not so satisfied, it shall promptly order a~~
18 ~~hearing.~~

19 ~~(2) Any such hearing shall be deemed a civil proceeding~~
20 ~~and the burden shall be upon the applicant to prove that the~~
21 ~~person is no longer affected by a physical or mental disease,~~



1 ~~disorder, or defect or may safely be either released on the~~
2 ~~conditions applied for or discharged. According to the~~
3 ~~determination of the court upon the hearing, the person shall~~
4 ~~be:~~

5 (a) ~~Discharged;~~

6 (b) ~~Released on such conditions as the court determines to~~
7 ~~be necessary; or~~

8 (c) ~~Recommitted to the custody of the director of health,~~
9 ~~subject to discharge or release only in accordance~~
10 ~~with the procedure prescribed in section 704-412."]~~

11 SECTION 16. Section 704-421, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§704-421 Proceedings for defendants charged with petty~~
14 ~~misdemeanors not involving violence or attempted violence;~~
15 ~~criminal justice diversion program. (1) In cases where the~~
16 ~~defendant is charged with a petty misdemeanor not involving~~
17 ~~violence or attempted violence, if, at the hearing held pursuant~~
18 ~~to section 704-404(2)(a) or at a further hearing held after the~~
19 ~~appointment of an examiner pursuant to section 704-404(2)(b),~~
20 ~~the court determines that the defendant is fit to proceed, then~~
21 ~~the proceedings against the defendant shall resume. In all~~



1 ~~other cases under this section where fitness remains an~~
2 ~~outstanding issue, the court shall continue the suspension of~~
3 ~~the proceedings and either commit the defendant to the custody~~
4 ~~of the director of health to be placed in a hospital or other~~
5 ~~suitable facility, including an outpatient facility, for further~~
6 ~~examination and assessment or, in cases where the defendant was~~
7 ~~not subject to an order of commitment to the director of health~~
8 ~~for the purpose of the fitness examination under section 704-~~
9 ~~404(2), the court may order that the defendant remain released~~
10 ~~on conditions the court determines necessary for placement in a~~
11 ~~group home, residence, or other facility prescribed by the~~
12 ~~director of health for further assessment by a clinical team~~
13 ~~pursuant to subsection (3).~~

14 ~~(2) In cases under this section where the defendant's~~
15 ~~fitness to proceed remains an outstanding issue at the hearing~~
16 ~~held pursuant to section 704-404(2)(a) or a further hearing held~~
17 ~~after the appointment of an examiner pursuant to section 704-~~
18 ~~404(2)(b), as applicable, the director of health, within~~
19 ~~fourteen days of that hearing or as soon thereafter as is~~
20 ~~practicable, shall report to the court on the following:~~



~~(a) The defendant's current capacity to understand the proceedings against the defendant and the defendant's current ability to assist in the defendant's own defense;~~

~~(b) Whether, after assessment of the defendant pursuant to subsection (3) (a) or (b), the defendant's clinical team believes that the defendant meets the criteria for involuntary hospitalization under section 334-60.2 or assisted community treatment under section 334-121, and~~

~~(c) The date that the director of health filed a petition for involuntary hospitalization or assisted community treatment on behalf of the defendant pursuant to subsection (3) (a) or (b), as applicable.~~

~~If, following the report, the court finds the defendant fit to proceed, the proceedings against the defendant shall resume. In all other cases, the court shall dismiss the charge with or without prejudice in the interest of justice.~~

~~(3) During the defendant's commitment to the custody of the director of health or release on conditions pursuant to subsection (1);~~



1 ~~(a) If the defendant's clinical team determines that the~~
2 ~~defendant meets the criteria for involuntary~~
3 ~~hospitalization set forth in section 334-60.2, the~~
4 ~~director of health, within seven days of the clinical~~
5 ~~team's determination, shall file with the family court~~
6 ~~a petition for involuntary hospitalization pursuant to~~
7 ~~section 334-60.3. If the petition is granted, the~~
8 ~~defendant shall remain hospitalized for a period of~~
9 ~~time as provided by section 334-60.6; or~~

10 ~~(b) If the defendant's clinical team determines that the~~
11 ~~defendant does not meet the criteria for involuntary~~
12 ~~hospitalization, or the court denies the petition for~~
13 ~~involuntary hospitalization, the defendant's clinical~~
14 ~~team shall determine whether an assisted community~~
15 ~~treatment plan is appropriate pursuant to part VIII of~~
16 ~~chapter 334. If the clinical team determines that an~~
17 ~~assisted community treatment plan is appropriate, the~~
18 ~~psychiatrist or advanced practice registered nurse~~
19 ~~from the clinical team shall prepare the certificate~~
20 ~~for assisted community treatment specified by section~~
21 ~~334-123, including a written treatment plan for the~~



~~provision of mental health services to the defendant.~~
~~The clinical team shall identify a community mental~~
~~health outpatient program that agrees to provide~~
~~mental health services to the defendant as the~~
~~designated mental health program under the assisted~~
~~community treatment order. The clinical team shall~~
~~provide the defendant with a copy of the certificate.~~
~~Within ten days of provision of the certificate to the~~
~~defendant by the clinical team, the director of health~~
~~shall file with the family court the assisted~~
~~community treatment petition described in section 334-~~
~~123. When a petition for assisted community treatment~~
~~has been filed for a defendant, the defendant~~
~~committed to the custody of the director of health~~
~~shall remain in custody until the family court issues~~
~~a decision on the petition; provided that the judge~~
~~may order that the subject be released during the~~
~~pendency of that action.~~

~~(4) This section shall not apply to any case under the~~
~~jurisdiction of the family court unless the presiding judge~~
~~orders otherwise."]~~



PART V

SECTION 17. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall own, possess, or control any firearm or ammunition if the person:

- (1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;
- (2) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section [~~704-411~~] 704-402 or any similar provision under federal law, or the law of another state, a United States territory, or the District of Columbia;
- (3) Is or has been diagnosed with or treated for a medical, behavioral, psychological, emotional, or mental condition or disorder that causes or is likely to cause impairment in judgment, perception, or impulse control to an extent that presents an unreasonable risk to public health, safety, or welfare



1 if the person were in possession or control of a
 2 firearm; or
 3 (4) Has been adjudged to:
 4 (A) Meet the criteria for involuntary hospitalization
 5 under section 334-60.2; or
 6 (B) Be an "incapacitated person", as defined in
 7 section 560:5-102,
 8 unless the person establishes, with appropriate medical
 9 documentation, that the person is no longer adversely affected
 10 by the criteria or statuses identified in this subsection."

11 SECTION 18. Section 134-86, Hawaii Revised Statutes, is
 12 amended by amending subsection (c) to read as follows:

13 "(c) No person who:

14 (1) Is or has been under treatment or counseling for
 15 addiction to, abuse of, or dependence upon any
 16 dangerous, harmful, or detrimental drug; intoxicating
 17 compound as defined in section 712-1240; or
 18 intoxicating liquor;
 19 (2) Has been acquitted of a crime on the grounds of mental
 20 disease, disorder, or defect pursuant to section ~~[704-~~
 21 ~~411,]~~ 704-402;



(3) Is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association; or

(4) Is under treatment for an organic brain syndrome; shall own, possess, or control an electric gun, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, syndrome, or mental disease, disorder, or defect."

SECTION 19. Section 334-16, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~**334-16** **Annual report; forensic patient data.** The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session which, at a minimum, shall summarize yearly data on forensic patients, including:

- (1) Gross numbers for admissions to and discharges from the Hawaii state hospital;
- (2) The number of admissions to, discharges from, and lengths of stays in the Hawaii state hospital, broken down by the following commitment categories:



~~[(A) Original order under section 704-411(1)(a);~~
~~(B) Pending examination under section 704-411(3);~~
~~(C) Maximum seventy-two-hour recommitment pending~~
~~examination under section 704-413(1);~~

~~(D)]~~ (A) Original order under section 704-404; and

~~[(E)]~~ (B) Original order under section 704-406;

(3) Number of persons committed to the Hawaii state
hospital by each court and county;

(4) Gross lengths of stay in the Hawaii state hospital
for:

(A) Patients discharged during the fiscal year; and

(B) Individuals remaining as inpatients at the end of
the fiscal year; and

(5) Number of patients in the Hawaii state hospital on
forensic status, broken down by categories of
underlying crimes, such as by crimes against the
person, sex offenses, and property crimes, and by
grade of offense."

SECTION 20. Section 334-60.6, Hawaii Revised Statutes, is
amended to read as follows:



1 **"§334-60.6 Period of detention.** The psychiatric facility
2 may detain a subject for a period of time ordered by the court
3 not to exceed ninety days from date of admission unless sooner
4 discharged by the facility pursuant to section 334-76 or section
5 334-74. At the end of the ninety-day period the subject shall
6 be discharged automatically except as provided in sections
7 704-406[, ~~704-411,~~] and 706-607, unless before expiration of the
8 period and by a proceeding initiated pursuant to section
9 334-60.3 the facility obtains a court order for the subject's
10 recommitment. Recommitment for a period not to exceed ninety
11 days may not be ordered unless the court determines that the
12 criteria for involuntary hospitalization set forth in section
13 334-60.2 continue to exist. If at the end of a recommitment
14 period the court finds that the criteria for involuntary
15 hospitalization set forth in section 334-60.2 continue to exist
16 and are likely to continue beyond ninety days, the court may
17 order recommitment for a period not to exceed one hundred eighty
18 days.

19 Nothing in this section shall preclude a facility from
20 accepting for voluntary inpatient treatment, in accordance with
21 the procedures in section 334-60.1, a patient, for whom the



1 facility contemplates discharge pursuant to section 334-60.7 and
2 who voluntarily agrees to further hospitalization after the
3 period of commitment has expired, or where the patient is no
4 longer a proper subject for commitment."

5 SECTION 21. Section 334-76, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Subject to any special requirements of law as
8 provided in sections 704-406[, ~~704-411,~~] and 706-607 or
9 elsewhere, with respect to patients committed on court order
10 from a criminal proceeding, the administrator of a psychiatric
11 facility, the administrator's deputy, or the attending
12 physician, pursuant to section 334-60.7, shall:

13 (1) Send a notice of intent to discharge or notice of the
14 patient's admission to voluntary inpatient treatment
15 to those persons specified in the order of commitment
16 as entitled to receive notice of intent to discharge,
17 by mail at their last known address; and

18 (2) In cases where the commitment directly resulted from
19 legal proceedings under chapter 704 or 706, send a
20 notice of intent to discharge or notice of the
21 patient's admission to voluntary inpatient treatment



1 to the prosecuting attorney of the county from which
2 the person was originally committed, by facsimile or
3 electronically."

4 SECTION 22. Section 704-410.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~+~~]**\$704-410.5**[~~+~~] **Conditional release; duration limited in**
7 **nonfelony cases.** For any defendant granted conditional release
8 in a nonfelony case pursuant to section [~~704-411(1)(b), 704-412,~~
9 ~~704-414, or 704-415,~~] 704-406, the period of conditional release
10 shall not exceed one year."

11 SECTION 23. Section 704-420, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~+~~]**\$704-420**[~~+~~] **Examination reports; provided to director**
14 **of health.** Copies of all examination reports made pursuant to
15 sections 704-404[~~7~~] and 704-406[~~7, 704-411, and 704-414~~] shall be
16 provided to the director of health."

17 SECTION 24. Section 806-73, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) All adult probation records shall be confidential and
20 shall not be deemed to be public records. As used in this
21 section, the term "records" includes but is not limited to all



1 records made by any adult probation officer in the course of
2 performing the probation officer's official duties. The
3 records, or the content of the records, shall be divulged only
4 as follows:

5 (1) A copy of any adult probation case record or of a
6 portion of it, or the case record itself, upon
7 request, may be provided to:

8 (A) An adult probation officer, court officer, social
9 worker of a Hawaii state adult probation unit, or
10 a family court officer who is preparing a report
11 for the courts; or

12 (B) A state or federal criminal justice agency, or
13 state or federal court program that:

14 (i) Is providing supervision of a defendant or
15 offender convicted and sentenced by the
16 courts of Hawaii; or

17 (ii) Is responsible for the preparation of a
18 report for a court;

19 (2) The residence address, work address, home telephone
20 number, or work telephone number of a current or
21 former defendant shall be provided only to:



- 1 (A) A law enforcement officer as defined in section
2 710-1000 to locate the probationer for the
3 purpose of serving a summons or bench warrant in
4 a civil, criminal, or deportation hearing, or for
5 the purpose of a criminal investigation; or
- 6 (B) A collection agency or licensed attorney
7 contracted by the judiciary to collect any
8 delinquent court-ordered penalties, fines,
9 restitution, sanctions, and court costs pursuant
10 to section 601-17.5;
- 11 (3) A copy of a presentence report or investigative report
12 shall be provided only to:
- 13 (A) The persons or entities named in section 706-604;
14 (B) The Hawaii paroling authority;
15 (C) Any psychiatrist, psychologist, or other
16 treatment practitioner who is treating the
17 defendant pursuant to a court order or parole
18 order for that treatment;
- 19 (D) The intake service centers;
20 (E) In accordance with applicable law, persons or
21 entities doing research; and



(F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:

(i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or

(ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;

(4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the:

(A) Name and contact information of the defendant's adult probation officer;

(B) Compliance record of the defendant with court-ordered payments;

(C) Amounts paid by the defendant;

(D) Dates of the payments made by the defendant;

(E) Payee of payments made by the defendant; and

(F) Remaining unpaid balance,



1 without the assessment of a filing fee or surcharge;

2 (5) Upon written request, the victim, or the parent or
3 guardian of a minor victim or incapacitated victim, of
4 a defendant who has been placed on probation for an
5 offense under section 580-10(d)(1), 586-4(e),
6 586-11(a), or 709-906 may be notified by the
7 defendant's probation officer when the probation
8 officer has any information relating to the safety and
9 welfare of the victim;

10 (6) Notwithstanding paragraph (3) and upon notice to the
11 defendant, records and information relating to the
12 defendant's risk assessment and need for treatment
13 services; information related to the defendant's past
14 treatment and assessments, with the prior written
15 consent of the defendant for information from a
16 treatment service provider; provided that for any
17 substance abuse records such release shall be subject
18 to title 42 Code of Federal Regulations part 2,
19 relating to the confidentiality of alcohol and drug
20 abuse patient records; and information that has



therapeutic or rehabilitative benefit, may be provided
to:

(A) A case management, assessment, or treatment
service provider assigned by adult probation to
service the defendant; provided that such
information shall be given only upon the
acceptance or admittance of the defendant into a
treatment program;

(B) Correctional case manager, correctional unit
manager, and parole officers involved with the
defendant's treatment or supervision; and

(C) In accordance with applicable law, persons or
entities doing research;

(7) Probation drug test results may be released with prior
written consent of a defendant to the defendant's
treating physician when test results indicate
substance use which may be compromising the
defendant's medical care or treatment;

(8) Records obtained pursuant to section [~~704-404(9)~~]
704-404(10) may be made available as provided in that
section;



(9) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and

(10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500.

(c) Every probation officer, within the scope of the probation officer's duties, shall have the powers of a police officer."

PART VI

SECTION 25. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 26. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the



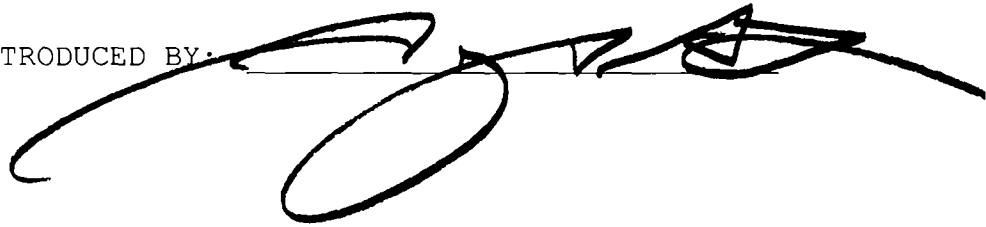
1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 27. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 28. This Act shall take effect upon its approval.

6

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around, extending to the right.

7



S.B. NO. 2288

Report Title:

Mental Illness; Severe Cognitive Impairment; Assisted Community Treatment; Involuntary Hospitalization; Hawaii Penal Code; Penal Responsibility; Fitness Proceed; Examination; Order for Treatment

Description:

Clarifies the procedures for assisted community treatment, examination, and hospitalization for individuals who may be mentally ill or suffering from substance abuse who are imminently dangerous to self, others, or property. Amends the procedures for involuntary hospitalizations and assisted community treatment petitions. Amends the Hawaii Penal Code to streamline the determination process for penal responsibility and fitness to proceed, including requiring courts to issue orders for treatment to defendants excluded from penal responsibility due to a mental disease, disorder, or defect.

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

