

A Bill for an Act Relating to the Insanity Defense.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 704, Hawaii Revised Statutes, is amended as follows:

1. Section 704-402 is amended by amending subsection (2) to read as follows:

“(2) When the defense provided for by subsection (1) is submitted to a jury, the court shall, if requested by the defendant, instruct the jury as to the consequences to the defendant of an acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility.”

2. Section 704-407 is amended to read as follows:

“**Sec. 704-407 Special post-commitment or post-conditional release hearing.** (1) At any time after commitment as provided in section 704-406, the defendant or his counsel or the director of health may apply for a special post-commitment hearing. If the application is made by or on behalf of a defendant not represented by counsel, he shall be afforded a reasonable opportunity to obtain counsel, and if he lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that as an attorney he has reasonable grounds for a good faith belief that his client has an objection based upon legal grounds to the charge.

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

(3) After the hearing, the court shall rule on any legal objection raised by the application and may in an appropriate case quash the indictment or other charge, or find it to be defective or insufficient, or otherwise terminate the proceedings on the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or conditional release ordered under section 704-406 and order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical

or mental disease, disorder, or defect, 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 or order the defendant to be released on such conditions as the court deems necessary.”

3. Section 704-408 is amended to read:

**“Sec. 704-408 Determination of irresponsibility.** If the report of the examiners filed pursuant to section 704-404, or the report of examiners of the defendant’s choice under section 704-409, states that the defendant at the time of the conduct alleged suffered from a physical or mental disease, disorder, or defect which substantially impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, the court shall submit the defense of physical or mental disease, disorder, or defect to the jury or the trier of fact at the trial of the charge against the defendant.”

4. Section 704-410 is amended by amending subsection (1) to read as follows:

“(1) At the hearing pursuant to section 704-405 or upon the trial, the examiners who reported pursuant to section 704-404 may be called as witnesses by the prosecution, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiners or any of them were designated by the court or by the director of health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and the defendant. Both the prosecution and the defendant may summon any other qualified physician or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the physical or mental condition of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 3. This Act shall take effect upon its approval but shall not apply to any crimes which occurred prior to its effective date.

(Approved June 7, 1980.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.