

## ACT 100

S.B. NO. 2396

A Bill for an Act Relating to Mental Health.

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

## PART I

SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1, H.D. 1, adopted by the twenty-third Hawaii state legislature in 2006 called for the governor to convene a task force to “evaluate and recommend possible procedural, statutory, and public policy changes to minimize the census at Hawaii State Hospital and promote community based health services for forensic patients.” The purpose of this part is to enact the recommendations made by that task force.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§334- 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) Original order under section 704-404; and
  - (E) 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 3. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

**“§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.** (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

- (a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:
  - (i) Is affected by a physical or mental disease, disorder, or defect;
  - (ii) Presents a risk of danger to self or others; and
  - (iii) Is not a proper subject for conditional release;
 provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant’s treatment needs and the need to prevent harm to the person confined and others;
- (b) The court shall order the defendant to be ~~[released on such conditions]~~ 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 court shall order the defendant discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents

a danger to self or others and is not in need of care, supervision, or treatment.

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

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

- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and
- (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

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

(5) The director of health may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of a person who is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. The director shall make this application 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 order was issued.

(6) Any person committed pursuant to this chapter may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of the committed person acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. 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 circuit from which

the order was issued. The person shall transmit a copy of the application and letter or affidavit to the prosecuting attorney of the county from which the order was issued.

(7) Upon application to the court by either the director of health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the court may extend the sixty day time frame upon the request of the director of health or the person.

~~[(5)]~~ (8) In any proceeding governed by this section, the defendant's fitness shall not be an issue."

SECTION 4. Section 704-412, Hawaii Revised Statutes, is amended to read as follows:

**“§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person.** (1) After the expiration of at least ninety days following ~~[the]~~ an original order of commitment pursuant to ~~[section 704-411,]~~ 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 ~~[to the director's custody]~~ is still affected by a physical or mental disease, disorder, or defect and may be ~~[released on condition]~~ 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 ~~[the discharge or conditional release of the person in]~~ either the conditional release or discharge of the person, as appropriate. In such a case, the director shall submit a report to the court [from] by which the person was ordered committed and shall transmit [a copy] copies of the application and report to the prosecuting attorney of the county from which the person was committed[-The] and to the person [shall be given notice of such application.] 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 committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for ~~[discharge or conditional release]~~ conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the ~~[defendant]~~ person was committed. If the ~~[determination of the court is adverse to the application,]~~ court denies the application, the person shall not be permitted to file ~~[a further]~~ another application for either conditional release or discharge until one year ~~[has elapsed from]~~ after the date of ~~[any preceding hearing on an application for the person's discharge or conditional release.]~~ the hearing held on the immediate prior application."

SECTION 5. Section 704-413, Hawaii Revised Statutes, is amended to read as follows:

**“§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment.** (1) Any person ~~[released]~~ granted conditional release pursuant to ~~[section 704-411]~~ this chapter shall continue to receive mental health or other treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to

the instructions of the person's treating mental health professional. If ~~[any]~~ a mental health professional who is treating ~~[any conditionally released]~~ a person granted conditional release believes that either the person is not complying with the requirements of this section or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the ~~[conditionally released person.]~~ person granted conditional release. The probation officer may order the ~~[conditionally released]~~ person granted conditional release to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the ~~[seventy-two hour]~~ seventy-two-hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection ~~[(3-)]~~ (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.

~~[(2)]~~ (3) Any person [released] granted conditional release pursuant to [section 704-411] 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 [determination of the] court [is adverse to] denies the application, the person shall not be permitted to file [further] another application for either discharge or modification of conditional release until one year [has elapsed from] after the date of [any preceding hearing on an application for modification of conditions of release or for discharge.] the denial.

(3) (4) If, at any time after the order pursuant to [section 704-411] this chapter granting conditional release, the court determines, after hearing evidence, that:

- (a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or
- (b) For the safety of the person or others, the person's conditional release should be revoked,

the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release ~~only~~ in accordance with the procedure prescribed in section 704-412.

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

PART II

SECTION 6. Patient to staff assault at Hawaii state hospital has recently been an area of heightened organizational focus and public scrutiny. Hawaii state hospital monitors and follows up on all instances of patient to patient and patient to staff assault, monitors patient and staff injuries, and has a number of continuing monitoring, supervisory and training processes focused on decreasing the instances and severity of assault, and staff or patient injury.

Although most of the assaults on staff are quite minor, not causing any injury and not requiring any treatment, a very small number can be serious. In addition, while most of the assaults are committed by patients during the first part of their hospitalization or when they are acutely psychotic, a very small number seem to be the result of behavior by an individual who has adequate self control and who knows what he or she is doing. It is with respect to this latter group that this part is directed.

The purpose of this part is to establish criminal charges against a person who intentionally or knowingly causes bodily injury to a person employed in a state-operated or -contracted mental health facility as a class C felony. Currently, such an assault would generally be a misdemeanor.

SECTION 7. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of assault in the second degree if:

- (a) The person intentionally or knowingly causes substantial bodily injury to another;
- (b) The person recklessly causes serious or substantial bodily injury to another;
- (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
- (d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;
- (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, “educational worker” means: any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; ~~or~~
- (f) The person intentionally or knowingly causes bodily injury to any emergency medical services personnel who is engaged in the performance of

- duty. For the purposes of this paragraph, “emergency medical services personnel” shall have the same meaning as in section 321-222[-]; or
- (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, “a person employed at a state-operated or -contracted mental health facility” includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility.”

SECTION 8. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

### PART III

SECTION 9. 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, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.