

ACT 99

S.B. NO. 3069

A Bill for an Act Relating to Records of Defendants Committed to a Hospital Controlled by the Director of Health or to Custody of Director of Health.

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

SECTION 1. Section 704-404, Hawaii Revised Statutes, is amended by amending subsection (8) to read as follows:

“(8) The court shall obtain all existing[7] medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of 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. 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 its investigation, or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.”

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or 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. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of 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. 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 of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.”

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

“(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[;]. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquit-

tal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of 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. 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 of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

- (b) The court shall order the defendant to be released on such 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.”

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

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

(Approved May 23, 2008.)