

A Bill for an Act Relating to Forensic Mental Health.

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

SECTION 1. In June 2012, a special action team was commissioned by the governor to analyze the causes and identify ideas to address systemic factors that increased the rate of admissions and increased the length of stay at the Hawaii state hospital. The team was tasked with considering possible solutions and making recommendations to the governor in time for consideration by the governor and the legislature during the regular session of 2013 and the fiscal year 2014-2015 budget cycle.

The special action team comprised representatives from the office of the governor, the department of health adult mental health division, the department of public safety, the department of human services, the department of the attorney general, the department of human resources development, the department of budget and finance, the office of the prosecutors of each county, the office of the public defender, and the chief of police of each county. These representatives worked together to examine data and develop measures to revitalize adult mental health services in the community and more effectively address the rate of increase in the census of the Hawaii state hospital.

Part of the special action team's analysis revealed that, in addition to the occurrence of high numbers of admissions to the Hawaii state hospital for completion of court-ordered examinations to evaluate a defendant's fitness to proceed and forensic commitments under section 704-404 or 704-406, Hawaii Revised Statutes, required examinations are frequently delayed or incomplete because required information from other public agencies is not provided in a timely way to the examiners who perform these evaluations and report to the court.

The special action team reached a consensus to propose changes to chapter 704, Hawaii Revised Statutes, to address this issue. Requiring public agencies to provide defendants' records necessary for court-ordered mental health evaluations is intended to expedite these evaluations, thereby lessening the length of time of a patient's stay at Hawaii state hospital and reducing overpopulation at Hawaii state hospital.

The purpose of this Act is to expedite the process regarding forensic evaluations of defendants by requiring public agencies to provide to the court, records they maintain about defendants for whom forensic examinations are ordered by the court.

SECTION 2. Section 704-404, Hawaii Revised Statutes, is amended to read as follows:

“§704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect. (1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt the defendant's fitness to proceed, or 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 immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, licensed psychologist, or 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. In nonfelony cases the court may appoint either a psychiatrist or a licensed psychologist. All examiners 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. The examination may be conducted on an out-patient basis or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

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

(4) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the physical or mental condition of the defendant;
- (c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;
- (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and
- (f) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(5) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

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

(7) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

(8) The court shall obtain all existing 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.

(9) All public agencies in possession of medical, mental health, social, 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.

~~[(9)]~~ (10) The compensation of persons making or assisting in the examination, other than those retained by the 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 State."

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

SECTION 4. This Act shall take effect on July 1, 2014.

(Approved July 1, 2014.)