

FAX Distribution to:

- ☒ Prosecutor 808 241-1758
☒ Defense Attorney
 ☐ Public Defender 808 274-3422
 ☐ Private Attorney _____
☒ Adult Probation 808 482-2652
☐ State Designate 808 832-1855
☐ 2nd Examiner Dr. _____
☐ 3rd Examiner Dr. _____
☒ KCMHC Forensics 808 241-3133
☒ AMHD Forensics 808 777-6169
☒ Sheriff Division 808 482-2389
☐ KPD Cellblock 808 241-1645
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☐ HSH Forensics 808 236-8716
☐ Kahi Mohala 808 677-2810
☐ Other _____
☐ Other _____

**IN THE _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,

vs.

Defendant.

) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
)
) **[Attach copy of Conditions of Release]**
)
) ORDER FOR EXAMINATION OF
) DEFENDANT UPON APPLICATION FOR
) MODIFICATION OF TERMS AND
) CONDITIONS OF CONDITIONAL
) RELEASE AND SETTING HEARING
) ON THE APPLICATION
)
) **[\$704-413(2), (3); 704-414; 704-415 HRS]**
)
) Hearing Date: _____
) Time: _____
) Judge: _____
)

**ORDER FOR EXAMINATION OF DEFENDANT UPON APPLICATION FOR
MODIFICATION OF TERMS AND CONDITIONS OF CONDITIONAL RELEASE AND
SETTING HEARING ON THE APPLICATION**

_____’s Application for Modification of the Terms and Conditions of Conditional Release pursuant to Sections 704-413(2) or (3) and 707-414, Hawaii Revised Statutes, came on for hearing in the above-entitled Court on _____. The State of Hawaii, represented by Deputy Prosecuting Attorney _____ and Defendant’s counsel _____, were present.

Defendant [] was physically present [] appeared by video-conference

The Court, having considered the Application, attached letter or declaration of the qualified physician or licensed psychologist, the arguments of the parties, and the records and files in this case, and for good cause appearing,

IT IS HEREBY ORDERED that:

A. APPOINTMENT OF EXAMINER(S), HRS §704-414(1)

Defendant shall be examined by:

- ☐ State Designate
Adult Mental Health Division
Court Evaluation Branch
1700 Lanakila Street
Honolulu, Hawaii 96817
- ☐ Psychiatrist’s or Psychologist’s name

- ☐ Psychiatrist’s or Psychologist’s name

B. DATABASE, HRS §704-404(9); 704-414(1)

The Adult Client Services Branch of the Fifth Judicial Circuit shall obtain and timely make available for inspection by examiner(s), 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 Rule 16 of the Hawaii Rules of Penal Procedure.

The Court further orders that any substance use disorder patient records within the scope of 42 C.F.R. part 2 that are in the custody of public agencies shall be provided to the Adult Client Services Branch for review by the examiner(s).

C. PLACE OF EXAMINATION

Defendant shall be examined at:

- ☐ A hospital or other suitable facility as deemed appropriate by the Director of Health
- ☐ The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Department of Corrections and Rehabilitation.
- ☐ The Kauai Judiciary Complex, 3970 Kaana Street, Lihue, Kauai, in a secured detention area interview room to be specified by the Department of Law Enforcement Sheriffs Division. Arrangements shall be made by contacting the Sheriffs Division at (808) 482-2470 **not less than three (3) business days before the desired examination date.**
- ☐ The place, date and time requested by the examiner(s). To arrange Defendant's appointment with the examiner(s), examiner(s) shall contact:
 - ☐ Office of the Public Defender
Deputy Public Defender _____
Telephone: (808) 241-7128
 - ☐ Defendant's Attorney _____
Telephone: _____
 - ☐ Other (please specify): _____

D. CONTENTS OF REPORT, HRS §§ 704-414(1); 704-404(3), (5)(a), (b), (d), and (e), (8); and 704-415

The examiner(s) report shall include the following:

1. A description of the nature of the examination.

2. A diagnosis of the present physical or mental condition of Defendant at the present time.
3. An opinion as to whether the present Conditions of Release contained in the Order Granting Conditional Release can be modified without danger to the Defendant or to the person or property of others, and if so, what the modifications to the Conditions of Release should be.
4. A statement that the diagnosis and opinion rendered were arrived at independently of other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
5. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

E. OTHER

F. DUE DATE OF EXAMINER'S REPORT

The examiner(s) shall file a written report with the Court no later than _____. The **original** of the report(s) of the examination(s), including any supporting documents, shall be submitted to the Clerk of the Court by either of the following methods: (1) mailing via U.S. Postal Service to 3970 Ka'ana Street, Lihue, Hawaii 96766; or (2) emailing to LegalDocs.5CC@Courts.Hawaii.Gov. As a courtesy, the examiner is encouraged to fax/email an unfiled copy of the report to the appropriate judge's chamber. FAX numbers for judges' chambers are:

District Court Chambers #2 – (808) 482-2535
Family Court Chambers #1 – (808) 482-2541
Family Court Chambers #3 – (808) 482-2655
Circuit Court Chambers #4 – (808) 482-2662
Circuit Court Chambers #6 – (808) 482-2561

The Clerk of the Court shall distribute the report, and any supporting documents, to the prosecuting attorney, Defendant's counsel, and the Adult Client Services Branch.

Any request for an extension of the due date of an examiner's report shall be made in writing and filed with the Court prior to the due date.

G. EVIDENTIARY HEARING ON APPLICATION; BURDEN OF PROOF

Pursuant to HRS Section 704-413(5), the Court shall complete the hearing process and render a decision within sixty (60) days of the filing of the application, provided that for good cause the court may extend the sixty (60) day time frame upon the request of the Director of Health or the person on conditional release.

Defendant is ordered to appear for a hearing on the Application on _____ at _____ .m. to determine whether the Conditions of Release should be modified.

Pursuant to HRS Section 704-415, the hearing on the Application shall be deemed civil in nature, and the burden shall be on the Applicant to prove that _____ the Defendant's conditions of release may be safely modified as sought in the _____ Application.

DATED: _____, Hawaii, _____

Judge

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel