

**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  
☐ 2<sup>nd</sup> Examiner Dr. \_\_\_\_\_  
☐ 3<sup>rd</sup> Examiner Dr. \_\_\_\_\_  
☒ KCMHC Forensics 808 241-3133  
☒ AMHD Forensics 808 777-6169  
☒ Sheriff Division 808 482-2389  
☐ KPD Cellblock 808 241-1645  
☐ KCCC 808 241-3059  
☐ OCCC 808 832-1412  
☒ 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, ) **CR. No.** \_\_\_\_\_  
 ) **FC-CR.** \_\_\_\_\_  
 ) **REP. NO(S):** \_\_\_\_\_  
 )  
 vs. )  
 ) **ORDER FINDING DEFENDANT UNFIT**  
 ) **TO PROCEED, SUSPENDING**  
 ) **PROCEEDINGS, COMMITTING**  
 ) **DEFENDANT TO THE CUSTODY OF**  
 ) **THE DIRECTOR OF HEALTH, FOR**  
 ) **PLACEMENT PENDING TRANSPORT**  
 ) **AND FOR TRANSPORT**  
 )  
 ) **[§704-406(1), HRS]**  
 )  
 ) **Hearing Date:** \_\_\_\_\_  
 ) **JUDGE:** \_\_\_\_\_  
 \_\_\_\_\_

**ORDER FINDING DEFENDANT UNFIT TO PROCEED,  
SUSPENDING PROCEEDINGS, COMMITTING DEFENDANT TO  
THE CUSTODY OF THE DIRECTOR OF HEALTH, FOR PLACEMENT  
PENDING TRANSPORT, AND FOR TRANSPORT**

The matter of Defendant's examination under Chapter 704, Hawaii Revised Statutes,

came on for hearing on \_\_\_\_\_. Defendant's counsel, \_\_\_\_\_, and Deputy Prosecuting Attorney \_\_\_\_\_, representing the State of Hawaii, were present. Defendant was:

- ☐ present in court  
☐ present via video-conference

**[Check appropriate finding below]**

- [ ] The Court, having reviewed the report(s) of Defendant's appointed examiner(s), and noting that neither the State nor Defendant's counsel contests the findings and contents of the report(s), finds by a preponderance of the evidence as follows:

OR

- [ ] The Court, having reviewed the report(s) of Defendant's appointed examiner(s), and having held a hearing pursuant to HRS Section 704-405, considered the evidence presented, adjudged the credibility of the witness(es) testifying at the hearing, and having considered the arguments of counsel, finds by a preponderance of the evidence as follows:

1. **Defendant is unfit to proceed** on the above charge(s);
2. Defendant presents a risk of danger to Defendant, or to another, of risk of substantial danger to property of others; and
3. Defendant cannot be released on conditions without danger to defendant, or to another, or risk of substantial danger to property of others and should be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care and treatment.

**Therefore, IT IS HEREBY ORDERED that:**

1. The proceedings against Defendant are hereby suspended, except as to those matters authorized under Section 704-407, Hawaii Revised Statutes.
2. Pursuant to Section 704-406(1), Hawaii Revised Statutes, Defendant is committed forthwith to the custody and care of the Director of Health to be placed in an appropriate institution for detention, care and treatment ("DOH Facility"), subject only to discharge or release in accordance with the procedures set forth in Section 704-406, Hawaii Revised Statutes.

- a. Limited Period of Commitment Pursuant to HRS Section 704-406(1)(b):

**[check box below, if applicable]**

☐ As Defendant is charged with a MISDEMEANOR not involving violence or attempted violence, the commitment shall be limited to no longer than ONE HUNDRED TWENTY (120) DAYS from the date of this hearing (\_\_\_\_\_, 20\_\_\_\_), and the provisions of paragraph 2.b. and 2.c. hereinafter, shall apply.

b. Dismissal of Charges(s): If the Defendant has not been found fit to proceed upon the expiration of the relevant commitment period as set forth in paragraph 2a, then the charge(s) for which Defendant has been committed shall be dismissed.

c. Release and/or Commitment after Dismissal: Upon dismissal of the charge(s), the Defendant shall be:

**[Check ONE box below, if applicable]**

☐ Released from custody (not subject to prosecution for other charges and/or involuntary civil commitment)

OR

☐ Committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment (subject to prosecution for other charges and not subject to involuntary civil commitment)

**3. Custody and Placement for Detention:**

**[Check ONE box below]**

☐ From the date and time of the issuance of this Court's oral order of commitment on \_\_\_\_\_ at \_\_\_\_\_ .m., until defendant's transfer to a DOH Facility, Defendant shall remain in the custody of the Department of Corrections and Rehabilitation at the Kauai Community Correctional Center for **no more than 72 (seventy-two) hours, after the Court's oral order committing Defendant**, pending admission and placement in an appropriate DOH Facility for detention, care, and treatment.

OR

☐ Defendant shall remain in the custody of the Director of Health and shall be placed in an appropriate institution for detention, care, and treatment.

4. When Defendant is admitted to an appropriate DOH Facility, representatives of the Department of Law Enforcement, Sheriff's Division shall effect the immediate transfer and transport of Defendant from the Kauai Community Correctional Center to the DOH Facility.
5. The Adult Client Services Branch ("ACSB") office shall provide the DOH Facility with all of Defendant's medical and mental health records in the possession of the ACSB. To be used only for the purposes of detention, care, and treatment of the Defendant. If Defendant is admitted to the Hawaii State Hospital, the records shall be kept confidential pursuant to Hawaii State Hospital Policy and Procedure no. 04.0556 concerning the maintenance, transmission and interchange of written, verbal and/or electronically recorded protected health information and pursuant to applicable state and federal laws. If Defendant is admitted to another institution, the report(s) shall be kept confidential pursuant to that institution's policy and procedure concerning the maintenance, transmission and interchange of written, verbal and/or electronically recorded protected health information and pursuant to applicable state and federal law.
6. The treating physician for Defendant at the DOH Facility, or the treating physician's authorized designates, may administer medication prescribed for Defendant; provided, however, that no medication shall be administered to Defendant involuntarily, without further order of this Court.
7. The Clerk of the Court shall provide a copy of the report(s) prepared by the examiner(s) appointed pursuant to HRS Section 704-404 to the Department of Health, along with a copy of this Order of commitment pursuant to HRS Section 704-406(1). The report(s) shall be kept confidential pursuant to Rule 9 of the Hawaii Court Records Rules and applicable state and federal law, and shall not be disclosed to any other person or agency.
8. The Defendant's treating physician shall provide a release placement plan to the Court prior to discharging Defendant from the custody of the Director of Health, or, if Defendant's condition has not stabilized, a report describing the same and the Defendant's prognosis. Prior to the next scheduled review hearing, the placement plan or report required by this paragraph shall be filed with the Clerk of the Court for distribution to the prosecuting attorney, Defendant's counsel, and the Adult Client Service Branch via the Judiciary Electronic Filing System.
9. **Defendant is ordered to appear at all review hearings set by this Court, the first of which is set for \_\_\_\_\_ at \_\_\_\_\_ .m.**

**ORDER FOR TRANSPORT TO DEPARTMENT OF HEALTH FACILITY**

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from this Court to \_\_\_\_\_ (name of DOH Facility). The transportation of the Defendant shall occur within the following time period:

☐ (In-custody): Within seventy-two (72) hours following the Court's oral order on \_\_\_\_\_ at \_\_\_\_\_ .m. committing Defendant to the care and custody of the Director of Health pursuant to HRS Section 704-406(1).

☐ (Out-of-Custody): Defendant shall be taken into custody forthwith by representatives of the Department of Law Enforcement, Sheriff's Division and transport of Defendant shall occur within seventy-two (72) hours following the Court's oral order on \_\_\_\_\_ at \_\_\_\_\_ .m. committing defendant to the care and custody of the Director of Health pursuant to HRS Section 704-406(1)

☐ (Out-of-Custody): OTHER \_\_\_\_\_  
\_\_\_\_\_

**ORDER FOR TRANSPORT TO COURT**

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from \_\_\_\_\_ to the above-entitled Court for a further hearing on \_\_\_\_\_ at \_\_\_\_\_ .m., and shall remain with Defendant until the conclusion of the hearing, at which time Defendant may or may not be transported back to the facility deemed appropriate by the Director of Health ("DOH Facility").

In the event that Defendant's treating physician determines that transport to the next hearing would present a risk of danger to Defendant or to others, or if Defendant chooses to waive their physical presence at the hearing, Defendant's presence may be by way of video-conferencing.

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from the DOH Facility, and back to said facility, for any further hearings as ordered by this Court.

DATED: \_\_\_\_\_, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Judge

APPROVED AS TO FORM on \_\_\_\_\_:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Defense Counsel