

Prosecutor
Defense Counsel
AMHD/Courts & Corrections [fax: (808) 832-1855]
Sheriff Div. [Hilo fax: (808) 933-8836; Kona fax: (808) 322-8788]
Probation [Hilo fax: (808) 961-7676; Kona fax: (808) 443-2188]
HISC [Hilo fax: (808) 933-8826; Kona fax: (808) 323-4571]
HCCC [fax: (808) 933-0447]
AMHD, UM [fax: (808) 453-6995]
Fiscal

IN THE _____ COURT OF THE THIRD CIRCUIT
_____ DIVISION
STATE OF HAWAI'I

STATE OF HAWAI'I

vs.

_____,
Defendant.

CASE NO. _____

**ORDER SUSPENDING PROCEEDINGS
FOR EXAMINATION OF DEFENDANT AS
TO FITNESS AND PENAL
RESPONSIBILITY PURSUANT TO HRS
CHAPTER 704 AND ORDER FOR
TRANSPORT**

[[§§704-404; 704-407.5]

**[Fitness & Capacity]
[Attach Copy of Complaint]**

Hearing Date

Date: _____

Time: _____

Next Hearing

Date: _____

Time: _____

JUDGE: _____

**ORDER SUSPENDING PROCEEDINGS FOR EXAMINATION OF DEFENDANT AS
TO FITNESS AND PENAL RESPONSIBILITY PURSUANT TO HRS CHAPTER 704
AND ORDER FOR TRANSPORT**

_____’s Motion for Examination of Defendant
Pursuant to Sections 704-404 and 704-407.5, Hawai'i Revised Statutes (“HRS”), came

on for hearing on _____ at _____ .m. with Defendant physically present present by video. Defendant's counsel, _____, and the State of Hawai'i, represented by Deputy Prosecuting Attorney, _____, were also present.

The Court, finding that there is reason to doubt Defendant's fitness to proceed, and that good cause appears for combining Defendant's examination as to fitness and penal responsibility,

IT IS HEREBY ORDERED as follows:

A. SUSPENSION OF PROCEEDINGS, HRS §704-404(1)

Further proceedings shall be suspended except for matters pertaining to bail.

B. APPOINTMENT OF EXAMINER(S), HRS §§704-404(2); 704-407.5(2)

Defendant shall be examined by:

State Designate
Adult Mental Health Division
Courts and Corrections Branch
1700 Lanakila St.
Honolulu, Hawai'i 96817

Psychiatrist's or Psychologist's Name

Selected by: Prosecutor Defense Counsel

Psychiatrist's or Psychologist's Name

Selected by: Prosecutor Defense Counsel

C. EXISTING RECORDS, HRS §§704-404(9); 704-407.5(10)

The Adult Client Services Branch 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 Hawai'i 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).

D. PLACE OF EXAMINATION

Defendant shall be examined at:

- The Hawai'i Community Correctional Center, or other correctional facility as deemed appropriate by the Director of Public Safety.

- A hospital or other suitable facility designated by the Director of Health ("DOH Facility") to which the Defendant is ordered committed until _____ (a period not to exceed thirty (30) days, unless the Court determines a longer period is necessary).

- If the Defendant is out of custody, a 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:
 - Phone: Hilo (808) 974-4571; Kona (808) 327-4650

 - Private Attorney: _____

E. CONTENTS OF REPORT, HRS §§704-404(3), (4), (5), (6), (8); 704-406; 704-407.5(3), (4), (6), (7), (9); and 704-411(1)

The examiner(s)' report(s) shall include the following:

1. A description of the nature of the examination.

2. A diagnosis of the physical or mental condition of Defendant at the present time.
3. An opinion as to Defendant's fitness to proceed, i.e., Defendant's capacity to understand the proceedings against Defendant and to assist in Defendant's own defense. If the opinion of the examiner is that Defendant's capacity to understand the proceedings against Defendant and/or assist in Defendant's own defense is impaired:
 - a. An opinion as to whether Defendant should be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment because the Defendant, as a result of Defendant's present mental condition, is a danger to Defendant or the person or property of others. HRS §704-406(1);
 - b. An opinion as to whether Defendant may be released on conditions without danger to Defendant or to the person or property of others, and if so, what those conditions should be. HRS §704-406(1); and
 - c. An opinion as to whether there is a substantial likelihood that Defendant will acquire the capacity to understand the proceedings against Defendant and/or to assist in Defendant's own defense within a reasonable period of time. If so, provide an estimate of the reasonable period of time. HRS §704-406(3).
4. An opinion as to the extent, if any, to which the cognitive and/or volitional capacity of Defendant, i.e., the Defendant's capacity to appreciate the wrongfulness of Defendant's conduct and/or to conform Defendant's conduct to the requirements of the law, was impaired at the time of the conduct alleged. HRS §704-407.5(1). If the opinion of the examiner is that Defendant was substantially lacking in cognitive capacity and/or volitional capacity at the time of the alleged offense, the examiner shall advise the Court on the following matters, as applicable:
 - a. An opinion as to whether Defendant poses a risk of danger to self or others;
 - b. If the opinion of the examiner is that Defendant does pose a risk of danger to self or others:
 - i. Whether the Defendant should be committed to the custody of the Director of Health to be placed in an appropriate institution for

detention, care, and treatment pursuant to HRS §704-411(1)(a), because Defendant is not a proper subject for conditional release pursuant to HRS §704-411(1)(b); or

- ii. Whether the Defendant can be controlled adequately and provided with proper care, supervision, and treatment if granted conditional release pursuant to HRS §704-411(1)(b), and if so, what those conditions should be.
5. An opinion as to the capacity of Defendant to have a particular state of mind which is required to establish an element of the offense charged.
 6. 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.
 7. If the examination cannot be conducted by reason of the unwillingness of Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether Defendant's unwillingness was the result of physical or mental disease, disorder, or defect. If it is not possible to make such a determination, the report shall expressly state that it is not possible to determine whether the Defendant's unwillingness is the result of physical or mental disease, disorder, or defect.
 8. If the Defendant persists in refusing to participate in an examination, and the examiner cannot determine whether the Defendant's unwillingness to participate is the result of physical or mental disease, disorder, or defect, the examiner shall render an opinion as to the Defendant's fitness to proceed based on the medical, mental health, social, police, juvenile, and other pertinent records available to the examiner.
 9. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

F. OTHER

G. DUE DATE OF EXAMINER REPORT(S)

The examiner(s) shall file a written report with the Court no later than seven (7) days prior to the hearing for the return on the report(s) set in Section “H” below. The report(s) of the examination(s), including any supporting documents, shall be filed with the Clerk of the Court via the Judiciary Electronic Filing System for distribution to the prosecuting attorney, Defendant’s counsel, and the probation office.

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.

H. NEXT COURT DATE

Defendant is ordered to appear before this Court on _____ at _____ .m., or sooner if all necessary examiner reports have been filed and Defendant’s counsel can set an earlier court hearing. In the event that Defendant’s treating physician determines that transport to the hearing would present a risk of danger to Defendant or others, or if the Defendant chooses to waive their physical presence at the hearing, Defendant’s presence at the hearing may be by way of video-conferencing.

I. ORDER FOR TRANSPORT TO COURT

IT IS FURTHER ORDERED that:

Representatives of the Sheriff’s Division or the Department of Public Safety shall transport the Defendant from _____ to the _____ Court of the Third Circuit, State of Hawai’i, for a further hearing on _____ at _____ .m., and shall remain with the 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 the Defendant chooses to waive their physical presence at the hearing, Defendant’s presence at the hearing may be by way of video-conferencing.

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

DATED: _____, Hawai'i, _____.

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel

Print Name

Print Name

Hilo Office
(808) 961-0466

Public Defender Hilo Office
(808) 974-4571

Kona Office
(808) 322-2552

Public Defender Kona Office
(808) 327-4650

Private Attorney Tel. No.:

Defendant's Tel. No: _____

Defendant's Email Address: _____



If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as far in advance as possible to allow time to provide an accommodation. Call the ADA Coordinator at 808-961-7629, Fax 808-961-7577 or send an e-mail to adarequest@courts.hawaii.gov. The ADA Coordinator will try to provide, but cannot guarantee, the requested auxiliary aid, service, or accommodation.