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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
PURSUANT TO HRS CHAPTER 704 AND
ORDER FOR TRANSPORT (ACT 26)**

[§§704-404(2)(a); 704-406(1)(a); 704-421]

**[Non-Violent Petty Misdemeanor]
[Attach Copy of Complaint]**

Hearing Date

Date: _____

Time: _____

Next Hearing

Date: _____

Time: _____

JUDGE: _____

**ORDER SUSPENDING PROCEEDINGS FOR EXAMINATION OF DEFENDANT
PURSUANT TO HRS CHAPTER 704 AND ORDER FOR TRANSPORT (ACT 26)**

_____’s Motion for Examination of Defendant
Pursuant to Section 704-404(2)(a), 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 for the petty misdemeanor charge(s) not involving violence or attempted violence, and for good cause appearing,

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, HRS §704-404(2)(a)

A qualified examiner shall be appointed to report on Defendant's physical and mental condition as set forth herein.

C. PLACE OF EXAMINATION

Pursuant to HRS Section 704-404(2), the Court deems it necessary that the Defendant is committed forthwith to the custody of the Director of Health for placement in a suitable facility for the purpose of the examination.

When the Defendant is admitted to a facility deemed appropriate by the Director of Health ("DOH Facility"), representatives of the Sheriff's Division or Department of Public Safety shall immediately transport the Defendant in accordance with the Order for Transport to Department of Health Facility included herein.

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 seven (7) days).
- Other (please specify) _____

D. CONTENTS OF REPORT, HRS §§704-404(2)(a)

The examiner's report 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.
4. 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.
5. 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.
6. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

E. OTHER

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F. DUE DATE OF EXAMINER’S REPORT

The examiner shall file a written report with the Court no later than _____ (a period not to exceed two (2) days). The report of the examination, 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.

G. DUE DATE OF UPDATED REPORT TO COURT

Within seven (7) days from the commitment of the Defendant to the custody of the Director of Health, or as soon thereafter as is practicable, the Director of Health shall report to the Court on the Defendant's current capacity to understand the proceedings against the Defendant and the Defendant's current ability to assist in the Defendant's own defense.

H. NEXT COURT DATE

Defendant is ordered to appear before this Court on _____ at _____ .m. (a period not to exceed seven (7) days), or sooner if the examiner’s report has 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 DEPARTMENT OF HEALTH FACILITY

IT IS FURTHER ORDERED that:

Representatives of the Sheriff’s Division or the Department of Public Safety shall transport the Defendant from the _____ Court of the Third Circuit, State of Hawai’i, to _____ (name of DOH Facility). The transportation of 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 704-404(2).

(Out-of-Custody): Defendant shall be taken into custody forthwith by representatives of the Sheriff's Division or Department of Public Safety, 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 704-404(2).

(Out-of-Custody): Other _____

J. 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.