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

[§704-406(1)]

Hearing Date

Date: _____

Time: _____

Next Hearing

Date: _____

Time: _____

JUDGE: _____

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

The matter of Defendant’s fitness examination pursuant to Section 704-404, 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.

[Check ONE box 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, or 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.

IT IS THEREFORE HEREBY ORDERED that:

1. The proceedings against Defendant are hereby suspended, except as to those matters authorized under HRS Section 704-407.

2. Pursuant to HRS Section 704-406(1), Defendant is committed forthwith to the custody and care of the Director of Health for placement 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 HRS Section 704-406.

a. Limited Period of Commitment Pursuant to §704-406(1)(b):
[Check box below, if applicable]

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

b. Dismissal of Charge(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, 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/or 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 Public Safety at the Hawai’i Community Correctional Center for no more than seventy-two (72) hours 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 institution deemed appropriate by the Director of Health, representatives of the Sheriff's Division or Department of Public Safety designate shall effect the immediate transfer and transport of Defendant from the Hawai'i Community Correctional Center to the DOH Facility.

5. The Adult Client Services Branch shall provide the DOH Facility with copies of all of Defendant's medical and mental health records in the possession of the probation office, to be used only for the purposes of detention, care, and treatment of the Defendant. If Defendant is admitted to Hawai'i State Hospital, the records shall be kept confidential pursuant to Hawai'i 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 records shall be kept confidential pursuant to that institution's policy and procedure concerning 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 the 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 Hawai'i 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 the discharge of 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 probation office 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

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 704-406(1).

(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 704-406(1).

(Out-of-Custody): Other _____

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



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.