

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 HAWAII

STATE OF HAWAII

vs.

Defendant.

CASE NO. _____

**ORDER FINDING DEFENDANT UNFIT TO
 PROCEED, SUSPENDING
 PROCEEDINGS, AND RELEASING
 DEFENDANT ON CONDITIONS**

[§704-406(1)]

Hearing Date

Date: _____

Time: _____

Next Hearing

Date: _____

Time: _____

JUDGE: _____

**ORDER FINDING DEFENDANT UNFIT TO PROCEED, SUSPENDING
 PROCEEDINGS, AND RELEASING DEFENDANT ON CONDITIONS**

The matter of Defendant’s fitness examination pursuant to Section 704-404,
 Hawaii Revised Statutes (“HRS”), came on for hearing on _____
 at _____ .m. with Defendant physically present present by video.
 Defendant’s counsel, _____, and the State of Hawaii,
 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 and considered the arguments of counsel at the hearing, finds by a preponderance of the evidence as follows:

1. Defendant is unfit to proceed on the above charge(s); and
2. Defendant can be released on conditions without danger to Defendant, or to another, or risk of substantial danger to property of others.

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 released on the terms and conditions contained in the attached RELEASE CONDITIONS.

a. Limited Period of Release on Conditions Pursuant to §704-406(1):

[check box below, if applicable]

As Defendant is charged with a MISDEMEANOR not involving violence or attempted violence, the period of Defendant's release on conditions 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 period of release on conditions as set

forth in paragraph 2a, then the charge(s) for which Defendant has been released on conditions shall be dismissed.

c. Discharge and/or Commitment after Dismissal: Upon dismissal of the charge, the Defendant shall be:

[Check ONE box below, if applicable]

Discharged from the release conditions and further supervision of the Court (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. The Department of Health shall have supervision over Defendant, shall instruct Defendant regarding the terms and conditions of release, and shall furnish to Defendant a copy of this Order finding Defendant Unfit to Proceed, Suspending Proceedings, and Releasing Defendant on Conditions.

4. The Adult Client Services Branch shall provide Defendant's treating physician(s) 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 care and treatment of the Defendant. The records shall be kept confidential pursuant to that physician(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 laws.

5. 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 release on conditions 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.

6. Defendant is ordered to appear at all review hearings set by this Court, the first of which is set for _____ at _____ .m.

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: _____

RELEASE CONDITIONS

TO: _____, Defendant:

Your release shall be on the following terms and conditions:

1. You shall not violate any federal or state laws.
2. You are placed under the supervision of a case manager with the Department of Health, and you must follow all directions given to you by your case manager and treatment team.
3. You must maintain mental health and/or psychiatric treatment, as directed by your case manager, until you are clinically discharged. You must keep all appointments with your case manager and all appointments for treatment. You must take all medication prescribed to you, as directed by your doctor. You must comply with the treatment plan developed by your treatment team.
4. Your case manager or any mental health professional treating you shall promptly notify the Office of the Prosecuting Attorney should they believe that you are either not complying with your treatment plan or there is evidence that hospitalization is appropriate.
5. You must sign Waiver of Confidentiality form(s) to allow your case manager and treatment team to monitor your compliance with drug and alcohol treatment, mental health treatment, and/or any other treatment required by these Release Conditions.
6. You must notify your case manager of any change in your address or phone number, prior to changing your address or phone number.
7. You must not leave the island of Hawai'i (or other location to which you have been authorized to move) without first obtaining permission from the Court.
8. You shall follow all instructions and directions given to you by your treatment team.

9. The Court may order you temporarily hospitalized for seventy-two (72) hours for violating of the terms of these Release Conditions.
10. You may not own or possess any firearms, ammunition, or any dangerous instrument, as defined by law.
11. You must appear at all review hearings set by this Court the first of which is set for _____ at _____ .m.
12. If your whereabouts become unknown to your case manager because of your failure to keep your case manager informed, the Court may order your arrest. Any failure by you to comply with all of the terms of your Release Conditions will mean that the Court can revoke your release and place you into the custody of the Director of Health for detention, care, and treatment.
13. Your further special conditions are as follows:
 - You shall obtain professional mental health and/or case management services from the Department of Health, Adult Mental Health Division services provider, and you shall comply with the treatment plan developed for you.
 - You shall reside in a group home, care home, or other residence as approved by your case manager and/or treatment team, and you shall follow all house rules including curfew and travel restrictions.
 - You shall participate in educational, vocational, and/or employment training and other activities as determined by your case manager and/or treatment team.
 - You shall not possess or consume alcohol, illegal drugs, and unprescribed drugs.
 - You shall submit to drug and alcohol testing as directed by your case manager and/or treatment team. A positive test or a failure to provide a specimen within two (2) hours of instruction may be considered prima facie evidence of a violation of these Release Conditions.

- You shall obtain and maintain outpatient and/or residential drug/alcohol treatment, including taking all prescribed medication and submitting to testing as instructed by your case manager (including blood tests), until you are clinically discharged with the agreement of your treatment team.
- You shall attend sober support meetings as determined by your case manager and/or treatment team and submit verification of your attendance to your case manager and/or treatment team.

Other terms:

The foregoing terms and conditions have been explained to me, and I fully understand them and agree to abide by them in every way. A copy of these Release Conditions has been given to me.

Dated: _____

Signature of Defendant

Signature of Witness

Print Name of Witness



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.