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Fiscal

IN THE \_\_\_\_\_ COURT OF THE THIRD CIRCUIT  
\_\_\_\_\_ DIVISION  
STATE OF HAWAII

STATE OF HAWAII

vs.

\_\_\_\_\_,  
Defendant.

CASE NO. \_\_\_\_\_

**JUDGMENT OF ACQUITTAL, ORDER  
COMMITTING DEFENDANT TO THE  
CUSTODY OF THE DIRECTOR OF  
HEALTH PENDING EXAMINATION OF  
THE ISSUE OF DEFENDANT'S RISK OF  
DANGER, SETTING POST-ACQUITTAL  
HEARING, AND ORDER FOR  
TRANSPORT**

**[§704-411(1), (2), and (3)]**

Hearing Date

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Next Hearing

Date: \_\_\_\_\_

Time: \_\_\_\_\_

JUDGE: \_\_\_\_\_

**JUDGMENT OF ACQUITTAL, ORDER COMMITTING DEFENDANT TO THE  
CUSTODY OF THE DIRECTOR OF HEALTH PENDING EXAMINATION OF THE  
ISSUE OF DEFENDANT'S RISK OF DANGER, SETTING POST-ACQUITTAL  
HEARING, AND ORDER FOR TRANSPORT**

Defendant's Motion for Judgment of Acquittal by reason of physical or mental  
disease, disorder, or defect excluding penal responsibility and for an order setting a

post-acquittal evidentiary hearing on the issue of Defendant's dangerousness, pursuant to Sections 704-401(1), (2), and (3), 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, having reviewed and received the report(s) of the appointed examiner(s), having accepted the parties' stipulation to the facts, and for good cause appearing, finds as follows:

1. Defendant is fit to proceed on the above charge(s);
2. By a preponderance of the evidence, at the time of the offense(s) charged, Defendant was affected by a physical or mental disease, disorder, or defect that substantially impaired Defendant's capacity to conform Defendant's conduct to the requirements of the law, and/or substantially impaired Defendant's capacity to appreciate the wrongfulness of Defendant's conduct, thus excluding penal responsibility;
3. Defendant is still affected by the physical or mental disease, disorder, or defect, and presents a risk of danger to self or others; and
4. Pursuant to HRS Section 704-411(1) and (2), Defendant should be committed forthwith to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment ("DOH Facility") for a period not exceeding thirty (30) days, or for a longer period as the Court determines to be necessary, to facilitate the examination of Defendant on the issue of Defendant's risk of danger to self or others.

IT IS THEREFORE HEREBY ORDERED that:

**A. JUDGMENT OF ACQUITTAL AND ORDER OF COMMITMENT**

1. Defendant is ACQUITTED of the charged offense(s) on the grounds of physical or mental disease, disorder, or defect excluding penal responsibility.
2. Pursuant to HRS Section 704-411(3), Defendant is committed forthwith to the custody of the Director of Health to be placed in an appropriate DOH Facility for detention, care, and treatment, for a period not exceeding thirty (30) days, or for a

longer period as the Court determines to be necessary, to facilitate the examination of Defendant on the issue of Defendant's risk of danger to self or others.

3. **[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.

**B. EXISTING RECORDS, HRS §§704-404(9); 704-411(3)**

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).

**C. APPOINTMENT OF EXAMINER(S), HRS §704-411(3)**

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

**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.

**E. CONTENTS OF REPORT, HRS §§704-411(3); 704-404(3), (5), (6), (8), and (9)**

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 whether Defendant poses a risk of danger to Defendant or others, and if the opinion of the examiner is that Defendant does pose a risk of danger to self or others:
  - a. 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 HRS §704-411(1)(a)

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

b. 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.

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

**F. OTHER**

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**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 date for the Defendant’s post-acquittal hearing on the issue of dangerousness. 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. EVIDENTIARY HEARING DATE; BURDEN OF PROOF**

Defendant is ordered to appear at a post-acquittal hearing to determine whether Defendant presents a danger to self or others on \_\_\_\_\_ at \_\_\_\_\_ .m.

Pursuant to HRS Sections 704-411(4) and (5), at the post-acquittal hearing on Defendant's dangerousness, the Defendant's fitness shall not be an issue, and the burden shall be on the State to prove, by a preponderance of the evidence, that the Defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the Defendant should either be committed or granted conditional release.

### **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 order on \_\_\_\_\_ at \_\_\_\_\_ .m. committing Defendant to the care and custody of the Director of Health pursuant to HRS Section 704-411(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 order on \_\_\_\_\_ at \_\_\_\_\_ .m. committing Defendant to the care and custody of the Director of Health pursuant to HRS Section 704-411(1).

### **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



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](mailto:adarequest@courts.hawaii.gov). The ADA Coordinator will try to provide, but cannot guarantee, the requested auxiliary aid, service, or accommodation.