

Mental Health Examiners Work Group's
Recommended Language for the Authorization of
Release of Confidential Records in the Custody of Public Agencies

HRS section 704-404(8) governs collection by the court of defendants' existing records for the mental health examiners' review. In each court, the Adult Client Services Branch is tasked by the applicable order for examination with collection of the existing records. The following provision concerning collection and production of existing records is offered as an updated alternative for inclusion in orders for examination granted pursuant to:

- HRS section 704-404 (initial examination)
- HRS section 704-406(2) (to determine whether defendant has regained fitness)
- HRS section 704-406(3) (to determine inpatient's substantial likelihood of becoming fit to proceed in the future)
- HRS section 704-406(4) (to determine outpatient's substantial likelihood of becoming fit to proceed in the future)
- HRS section 704-411(3) (to inform post-acquittal hearing on risk of danger)
- HRS section 704-414 (to inform application for discharge, conditional release, or modification of conditions of release).

Note: the terms of this suggested, alternative provision are not sufficiently specific to authorize a custodian of records protected by applicable federal law to produce such records without the defendant's consent or a more specific order by the court.

Pursuant to Hawaii Revised Statutes section 704-404(8), and consistent with the provisions of Title 42 Code of Federal Regulations Part 2 governing confidentiality of substance abuse treatment records, and other relevant federal law, the Adult Client Services Branch of this Court shall obtain, and custodians of the following records shall produce all existing medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies,

including the Hawaii Department of Health and its operated and funded inpatient and outpatient psychiatric facilities, notwithstanding any other statutes and/or Rule 16 of the Hawaii Rules of Penal Procedure. Adult Client Services Branch shall make such records available for timely inspection by the examiner(s).