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|  | DEPARTMENT OF CORRECTIONS AND REHABILITATION CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES | EFFECTIVE DATE: January 1, 2024 | POLICY NO.: COR.08.08 |
| | | SUPERSEDES (Policy No. & Date): COR.08.08 & JULY 2, 2010 | |
| SUBJECT: TRANSFER OF DEFENDANTS TO THE DIRECTOR OF THE DEPARTMENT OF HEALTH | | Page 1 of 3 | |

1.0 POLICY

To establish procedures for transferring defendants who are ordered committed to the custody of the Director of the Department of Health.

2.0 SCOPE

This policy shall apply to all correctional facilities within the Department responsible for the movement of inmates to the Director of the Department of Health.

3.0 REFERENCES, DEFINITIONS, AND FORMS

- .1 Hawaii Revised Statutes (HRS) §26-14.6 Department of Public Safety (PSD).
- .2 HRS §353-A Director of Department of Corrections and Rehabilitation (DCR) powers and duties.
- .3 HRS §707-404, Examination of defendant with respect to physical or mental disease disorder or defect.
- .4 HRS §704-406, Effect of finding of unfitness to proceed.
- .5 HRS §704-411, Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.
- .6 HRS §704-412, Committed person; application for conditional release or discharge; by the Director of Health; by the person.
- .7 HRS §704-413, Conditional release; application for modification or discharge; termination of conditional release and commitment.
- .8 Rodney Clark, et al, v. State of Hawaii, et al. U.S. District Court CV. No. 99-00885 DAE/BMK.
- .9 Departmental Policies and Procedures COR 08.01, Court Appearance and Transport of Inmates.

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4.0 POLICY

- .1 A defendant who has been acquitted of criminal charges in state court on the grounds of physical or mental disease, disorder, or defect, under HRS §701-411(1)(a), shall be transferred to the physical custody of the Director of the Department of Health within seventy-two (72) hours of such judgment of acquittal and commitment.
- .2 An acquitted person who is conditionally released pursuant to HRS §701-411, §704-412, and §704-413 (CR acquitted person) who is subsequently arrested for violation of the conditions of his/her conditional release, shall not be held for a period of time longer than the time needed to identify the person, determine his/her legal status, and determine whether the person will be charged with a crime. Upon verification that the individual is held only for violation of the conditions of his/her conditional release, the individual shall be immediately transferred to the physical custody of the Director of the Department of Health. All such transfers shall be made within forty-eight (48) hours after admission, except that transfers from neighbor island facilities may exceed the forty-eight (48) hour period so long as transport is made by the first available flight.
- .3 A defendant who is found unfit to proceed pursuant to HRS §704-406 shall be transferred within seventy-two (72) hours to the physical custody of the Director of the Department of Health.
- .4 Individuals who are held in custody prior to transfer to the custody of the Director of the Department of Health shall be segregated from the general prison or jail population and to the extent practical by provided appropriate mental health evaluations.
- .5 Upon receipt of an acquitted person who is committed to the Department of Health or CR acquitted person; notification of the date of incarceration and the date of transfer to the Director of the Department of Health will be given to the Hawaii Disability Rights Center, and the State of Hawaii Attorney General.

5.0 PROCEDURES


- .1 Upon notification of a defendant's acquittal or violation of conditional release, pursuant to HRS §704-411, §704-412, §704-413, or finding of unfit to proceed, pursuant to HRS §704-406, the holding facility will immediately make arrangements with the Department of Health's designee for the defendant's transfer to a facility designated by the Director of the Department of Health.

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- .2 The facility Warden will make transportation arrangements for the transfer to the Director of the Department of Health of the acquitted person, CR acquitted person, and unfit to proceed defendant.
- .3 For neighbor islands, the respective facility Warden will coordinate with the Sheriffs Division to make transportation arrangements to the appropriate hospital designed by the Director of the Department of Health, for the acquitted person, CR acquitted person or unfit to proceed defendant.
- .4 If the designated time frame for transfer will not be met:
 - a. The respective Warden will immediately notify his/her Division Administrator.
 - b. If the Division Administrator is unable to ensure timely transfer, the respective Deputy Director will be immediately notified.
 - c. If the Deputy Director is unable to ensure timely transfer, the Director will be immediately notified.
- .5 Facilities will track defendants who may require transfer to the Director of the Department of Health. This information will be submitted on DCR Form 8292, (see attached), on a weekly basis to the Institutions Division Administrator, the Deputy Director of Corrections, and the Director of the Department of Corrections and Rehabilitation. The form will also be submitted to the Director of the Department of Health or his/her designee on a weekly basis.
- .6 Facilities may develop more detailed procedures as applicable.

APPROVAL RECOMMENDED:



Deputy Director for Corrections JAN 01 2024
Date

APPROVED:



Director JAN 01 2024
Date

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