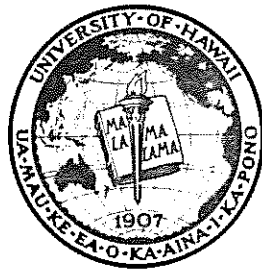


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MENTALLY ILL AND DEFECTIVES



Report No. 1 - 1949

LEGISLATIVE REFERENCE BUREAU
UNIVERSITY OF HAWAII

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MENTALLY ILL AND DEFECTIVES

TERRITORY OF HAWAII

by

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MENTALLY ILL AND DEFECTIVES

Summary

Five bills introduced in the Territorial Senate in 1947 -- S.B. 215, 216, 226, 291, and 351 -- were concerned with a number of problems arising from insanity, feeble-mindedness, and addiction to alcohol and drugs. In several instances the same problem was treated in more than one bill. Some of the bills make terminology changes, substituting language considered to have a therapeutic value on persons affected; others make substantive changes in the law, without incorporating these terminology substitutions; still others do both. The following table shows the relationship between these bills:

SUBJECT MOST DIRECTLY CONCERNED	CHANGES PROPOSED IN:	
	Terminology	Procedure and Substantive Law
Territorial Hospital	S.B. 291	S.B. 291 S.B. 351
Waimano Home	S.B. 351	S.B. 351 S.B. 291
County Detention Wards	S.B. 291	S.B. 291 S.B. 215
Guardians of Insane	S.B. 216 S.B. 291	--
Criminal Insane -- Mental Examination of Defendants	S.B. 226	S.B. 226

It is the purpose of this report to analyse these five bills, and their relation not only to each other, but to other sections of the territorial laws which are not specifically included in their terms. References to mainland practices and experience are incorporated whenever pertinent.

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PROPOSED CHANGES IN TERRITORIAL LAWS DEALING
WITH MENTALLY ILL AND MENTALLY DEFECTIVE PERSONS

This report briefly outlines the changes in terminology and in procedure that would result from the enactment of proposed Senate Bills 215, 216, 226, 291 and 351 of 1947. In general, these bills relate to the Territorial Hospital and the Waimano Home, commitment procedures, treatment, transfer and discharge from those two institutions; to guardians of mentally handicapped persons; and to the subject of examination of defendants in criminal cases.

1. Terminology

The proposed terminology changes apparently are prompted by a desire to do away with terms such as "insane", "insanity", "parole" and words of like import believed by psychiatrists and psychologists to act as an emotional bar to the treatment and ultimate recovery of persons affected. It has been stated that:

While the mere substitution of the words "mental illness" for "insanity" or "lunacy" would seem to be desirable, but relatively unimportant, actually serious injury may be done when the "patient" hears or reads that he has been officially decreed "an insane person" or "a lunatic" according to the statutory language appearing on his commitment papers. Modernization of terminology averts this danger. Words like "commitment" and "parole" are not used in New York because of their criminal connotations. "Charging the accused with insanity" identifies mental illness with crime.¹

Present terminology in use in the Territory and the proposed substitutes are illustrated in the following table:

<u>Under Present Laws</u>		<u>Under Proposed Bills</u>
Insane	Mentally ill or mentally handicapped
Insanity	Mental illness
Commitment	Hospitalization

¹Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill, 56 Yale Law Journal, p. 1173 at p. 1200 (1947).

Under Present Laws
(continued)

Under Proposed Bills

Parole	Conditional Discharge
Release	Discharge
Inmate	Patient
Detained	Hospitalized
Drunkenness	Intoxication or narcosis
Addicted	Habituated

Variations of these words are employed when the context demands it. These terminology changes are effected with respect to the Territorial Hospital by Senate Bill 291, the Waimano Home by Senate Bill 351 and to guardians of the insane by Senate Bill 216.²

Changes in terminology, similar to those proposed by these bills have been made by twelve mainland states, most of them occurring in the last five years.³ While the terms used in these other states are not entirely uniform, nor coincidental with the changes sought to be accomplished by the territorial bills, they all approximate the same result for the same underlying purpose. For example, in California, the following substitutions were made: "Mentally ill" for "insane", "mental illness" for "mental disorder", and "mentally deficient" for "feebleminded". Some words, although proposed to be changed by the territorial bills under discussion, have been retained in these states, but have been re-defined; as an example, in California, "parole" is still used, but defined as a "leave of absence".

Definitions:

In all the states but Connecticut there has been included in the new

²A grammatical error is noted in Senate Bill 216 where it is proposed to substitute "mentally handicapped", in the 5th line of section 12523 of the Revised Laws of Hawaii 1945, for "insanity". The reference should be to "mental handicap".

³California, Connecticut, Illinois, Louisiana, Minnesota, Nebraska, Nevada, New York, North Carolina, Ohio, Pennsylvania and West Virginia. New York made the changes in 1933 and Pennsylvania in 1932.

acts a definition of "mentally ill" or "mental illness". In four states, the definition provides that the term shall be construed to include "insanity".⁴ Without specifically mentioning "insanity", the definitions of the other seven states are broad enough to express the normal elements of civil insanity, namely, the inability of the individual to care for himself or his property or that he is dangerous to himself or to the person or property of others. There is no definition of these terms contained in any of the proposed territorial bills, a fact which might cause some confusion when other sections of the law, unchanged by these bills, are considered. For example, if a person is "hospitalized" because of "mental illness" what would be the outcome of a divorce proceeding where "insanity" is alleged as a basis for the action? Similar problems might arise under sections dealing with court procedures, where the term "insanity" will still be used, and with respect to physician-patient privileges where an exception exists when the "sanity" of the patient is the matter in dispute. Probably this possibility of confusion explains the presence of definitions in the state acts.

Although there are many sections of the territorial laws containing references to insanity that are left untouched by the terminology changes proposed in these bills⁵ none of the mainland states which have adopted similar substitutions have attempted to make the change complete throughout their law. Just as would be the case in the Territory, these states have incorporated the new terminology only in those sections of law dealing with commitment procedures and the subsequent treatment and discharge of patients.

⁴Louisiana, North Carolina, Ohio and Pennsylvania. See Appendix A for the several definitions.

⁵A complete listing is given in Appendix B.

2. Procedures Prior to Admission into Territorial Institutions

County Detention Wards:

At present, the board of supervisors of each county is directed to make provision for county detention wards where persons believed or adjudged to be mentally ill are temporarily housed. Approval of these wards by the president of the board of health is required, but the law (sec. 4021, Rev. Laws) is silent with regard to the procedure to be followed to obtain such approval. Both Senate Bill 215 and Senate Bill 291 of 1947 would require the president of the board of health to establish standards governing the conditions, management and competency to care for mentally ill persons which must be met before a ward will be certified and be used for their temporary custody. In addition, the president is directed to make annual inspections of the wards, and may revoke his certificate. The terminology changes previously referred to are incorporated into the amendments made by Senate Bill 291, it also changing the name of the wards to "county mental illness wards", but Senate Bill 215 does not make similar substitutions.

The cost of maintenance and care of persons temporarily detained in the wards is now a county obligation. Both Senate Bill 215 and Senate Bill 291 of 1947 propose to shift this expense to the person detained if he is reasonably able to pay it; should he be unable to bear the cost, he will be considered as medically indigent.

Transportation to the Territorial Hospital:

Until 1945, the Outer Islands bore the cost of transporting mentally ill persons to the emergency hospital in Honolulu after they had been ordered committed to the Territorial Hospital. This also included the

expenses of the persons appointed to accompany them. Once there, the department of institutions took custody. In 1945 (Act 222 of 1945) the duty of conveying and the cost of transportation of persons ordered committed was made an obligation of the department, regardless of whether they were from Oahu or one of the Outer Islands. However, the expense of the person appointed to accompany such person from an Outer Island remained a county expense.

Senate Bill 291 of 1947 proposes to change this by making the county responsible for the cost of conveying a person ordered committed—and presumably, the expenses of any person appointed to accompany him—to the bureau of mental hygiene⁶ of the board of health for subsequent conveyance to the Territorial Hospital by the department of institutions. At the time this bill was drafted the bureau of mental hygiene was using the facilities of the psychopathic division of Queen's Hospital for treatment and custody of patients. Since 1948, however, the bureau has functioned primarily as an out-patient clinic, and has ceased to use the Queen's Hospital facilities. Patients committed to the Territorial Hospital from the Outer Islands are now taken directly to the Territorial Hospital on their arrival in Honolulu. The outlying counties have only a resident psychiatric worker under the bureau of mental hygiene, and have no means for temporary custody of persons committed. To carry out the mandate of the proposed bill would require the bureau to provide such facilities on the Outer Islands, or compel the counties to bear the expense of conveying mentally ill persons to the bureau

⁶The bill carries an incorrect reference to the "division" of mental hygiene.

in Honolulu, which would then have to provide such quarters.

3. Territorial Hospital and Waimano Home

As now constituted, Waimano Home is designated the territorial institution for the feeble-minded and provides only custodial care and training for them and for epileptics. The Territorial Hospital, being established for the treatment and detention of the insane, is equipped for making diagnoses and therapeutic treatment. As the names indicate, Waimano Home is a nursing home, the Territorial Hospital fundamentally a hospital.

Transfers from the Territorial Hospital to Waimano Home:

At present, transfers of patients from the Territorial Hospital to Waimano Home are possible only on order of the Governor upon application of the hospital's medical director supported by psychological examination that the patients are feeble-minded or epileptic and not insane (sec. 4040, Rev. Laws). Senate Bills 291 and 351 of 1947, in identical language, propose to substitute a different procedure. Transfers of committed patients will be on order of the director of institutions. Under the new procedure, not alone the feeble-minded and epileptics, but senile and mentally ill persons, who have no marked serious mental derangement (psychosis), cannot benefit from treatment, and require only custodial care may be transferred to Waimano Home after "reasonable examination, testing, observation and investigation".

The Hospital Service Study Commission in 1946 estimated from 150 to 200 patients in the Territorial Hospital

are 65 years of age or older and...are senile and deteriorated. In the main these patients show defects of orientation and memory and a general decline of their intellectual faculties. They are

purely custodial cases requiring nursing care and supervision and could very well be taken care of in a non-psychiatric institution equipped and staffed to handle such cases.

The proposed transfer procedure makes it possible to move a number of these persons to Waimano Home and fill their beds at the Territorial Hospital with persons needing hospital care and treatment.

Transfers from Waimano Home to Territorial Hospital:

No provision is now made for the transfer of committed patients from Waimano Home to the Territorial Hospital. Senate Bill 351 of 1947 proposes to permit the director of institutions to order a transfer "for such hospitalization at the Territorial Hospital as may be necessary for such patient."

A number of patients are admitted to Waimano Home each year whom the director has reason to conclude might not be properly classed as feeble-minded. With no facilities for either diagnosis or treatment at the Home, and without authorization for transferring the patient to the Territorial Hospital, it is believed by the department of institutions that a substantial number of these patients continue to remain in the Home when they might be capable of treatment and release. Under authorization such as that contained in Senate Bill 351 of 1947, the department would transfer such patients to the Hospital for diagnosis and treatment, possibly return them to the Home for training, and if indicated, ultimately release them to assume a place in society.

Enlargement of Functions of Waimano Home:

Feeble-minded and epileptic residents of the Territory are entitled, as a matter of right, to admission to Waimano Home, subject only to the rules

⁷Report-Survey of Hospitals and Nursing Homes, Territory of Hawaii, 1946; Hospital Service Study Commission; Honolulu, T. H., March 1947; p. 17.

governing the Home and the condition that their expenses must be paid by the person responsible for their support as ordered by the court. Senate Bill 351 of 1947 proposes to enlarge this declaration of right to include senile or mentally ill persons who do not have marked serious mental derangement (psychosis), cannot benefit from treatment, and require only custodial care and suitable training. However, the bill makes no provision for court commitment of these persons, but permits them to be admitted voluntarily under agreement with the director, their guardians or parents to pay the rates fixed by the director for their care and training.⁸ This is the same procedure that is now followed for the voluntary admission of the feeble-minded.

Inquiry directed to the director of institutions has furnished the information that this enlargement of the scope of Waimano Home's services will not unduly tax its facilities if adopted along with the transfer procedures previously discussed.

Appeals from Detention at Waimano Home:

Senate Bill 351 of 1947 also proposes to amend the procedure for appealing from detention in Waimano Home. In addition to modernizing the terminology referring to who can institute the appeal, the right of appeal is extended directly to persons detained and is withdrawn from the superintendent of the Home, sheriffs, deputy sheriffs, and police officers

⁸In view of no judicial commitment to Waimano Home being provided for the senile and the above designated class of mentally ill, continuing the cross reference in section 4065 of the Revised Laws of Hawaii 1945, as proposed to be amended by Senate Bill 351, to section 4068, alone, would seem misleading. It would appear that the cross reference should be to both sections 4068 and to 4069, as proposed to be amended.

(unless they appear as a guardian, friend, or relative, all of whom have the right of making an appeal). Instead of precluding appeals to the psychiatric commission more frequently than once a year, the language is recast so as inferentially to grant it the power to act more frequently if it so desires.

At present, the psychiatric commission is required to depend upon psychological examination for determining whether feeble-mindedness exists. The proposed change directs the commission to make the examination, and although not ruling out standard psychological tests, eliminates the necessity of reliance upon psychological examination.

In line with the enlargement of the scope of Waimano Home's services and the inter-institutional transfer procedures previously outlined, appeals to the psychiatric commission would also determine whether the person detained was epileptic, or senile, or mentally ill.⁹

4. Criminal Defendants--Pre-trial Insanity Examinations

The present territorial law dealing with pre-trial mental examinations of criminal defendants was probably modeled after the so-called "Briggs Law" adopted in Massachusetts in 1921. The territorial counterpart was passed in 1925.¹⁰ There is no other state in which similar provisions may be found,

⁹This portion of the bill may need rephrasing for, as literally read, if the commission finds "in the negative" to the question as stated on competency, it may signify that a person is not mentally ill but does have a serious mental derangement (psychosis), which is a conflict in terms.

Also, a negative answer would not preclude the possibility of the person having a marked psychosis requiring hospitalization, and the bill directs forthright discharge in the event of such a "negative" reply.

¹⁰It is now section 10826, Revised Laws of Hawaii 1945.

hence only the experience of Massachusetts under the operation of its statute is pertinent to the changes proposed by Senate Bill 226 of 1947.

Basically, the territorial law permits a circuit court judge to order a mental examination before trial of (i) any person who has been indicted for a capital crime, or (ii) any indicted person or defendant waiting trial before the circuit court who is known to have been convicted of a felony or more than once previously indicted for any other offense. The examination is designed to determine the existence of any mental disease or defect which would affect criminal responsibility. There is no requirement that the examination must be made, and there is no provision for advising the court of the previous record of the defendant so that the court might know such an examination is authorized.

The report of the examiners is confined to the mental condition of the defendant and the existence of a mental disease or defect which would affect his criminal responsibility; it is not a report on the purely legal question of criminal responsibility. If the report shows the existence of such defect or disease, and the court determines the report of the examiners to be conclusive of the then present insanity or mental irresponsibility of the defendant, the court may allow the charge to be dismissed. In such case the court immediately orders the defendant confined in the Territorial Hospital until discharged. If not considered conclusive, the court may order the trial to proceed, in which case the jury is free to determine any issue concerning the then existing insanity or alleged previous mental irresponsibility of the defendant.

The basic purpose and importance of this type of statute is well stated by Dr. Overholser in commenting on the "Briggs Law":¹¹

¹¹Overholser, Winfred, "The Briggs Law of Massachusetts: A Review and Appraisal", 25 Journal of Criminal Law and Criminology 859 at p. 861 (1935).

The significant and unusual features of the law are three in number: (1) The examination is conducted by neutral, impartial experts; (2) these experts are selected by a professional Department of Mental Diseases of the Commonwealth; (3) the examination is applicable to all defendants falling within certain clearly-defined legal categories, and is not dependent upon the supposed "recognition" of mental disease by the judge, defense attorney, or some other non-psychiatric participant in the proceedings.... The desirability of securing examination by non-partisan experts has been widely, though not universally, recognized.... One weakness /of examination only when insanity is pleaded/ is clear, namely that no assurance can be given that insanity will be alleged as to the right defendant. In certain cases there will be features suggestive of mental disease or mental defects which are obvious to the attorney, jail official, or judge, to be sure. The defendant, however, may not, though definitely psychotic, conform to the lay idea of a "drivelling idiot" or a "raving maniac" with the result that he may have to undergo trial and punishment in spite of his mental disability, an event that the criminal law certainly does not contemplate.

Although the territorial law has been on the books since 1925, it has always been discretionary with the judge whether to order an examination or not, and apparently has seldom been utilized. Such pre-trial examinations of criminal defendants as have been conducted for the most part appear to have been prompted by a motion of one of the parties or by the fact that insanity has become an issue in the case.¹² On the other hand, several thousand such examinations have been made under the Massachusetts law since its enactment, where examination is compulsory.

It readily became apparent in Massachusetts that the law as originally enacted was not effective to achieve the desired result and amendments were adopted to cure these defects. One of the first weaknesses was found to be that there was no means by which might be known the previous criminal record

¹²Sec. 1961 of the Revised Laws of Hawaii 1945 provides that the psychological clinic shall receive for observation and examination any person referred to it by a "judge of the juvenile court, or of any other district, territorial or federal court within the Territory". The first

of the defendant. An early amendment provided a penalty for failure of the clerk to report the cases which would call for an examination, and a later amendment made it the function of the probation officer to report to the clerk the record of prior convictions and indictments where such record rendered the defendant examinable.

Senate Bill 226 of 1947 proposed to make the examination mandatory in all cases which fall within the categories established under the present

¹²(cont.) circuit court of the Territory has made substantial use of these facilities in cases where the person has entered a plea of guilty to, or has been convicted of, a felony. In these instances, the individual is referred to the adult probation officer before sentence for a "pre-sentence report", which consists of an investigation into his general background. When the investigation discloses information from which the adult probation officer suspects the presence of some mental illness or defect, the individual is referred to the psychological clinic of the University of Hawaii for examination. Usually this examination is a psychological one only, that is, it refers to mental development, rather than to mental illness, and the report of the examiners is generally confined to an I. Q. evaluation. If the examiners feel that there is likelihood of mental disorder that fact is noted, and, if concurred in by the probation officer, a second examination, this time into the question of mental illness, is requested of the bureau of mental hygiene. When all reports and examinations have been completed, the pre-sentence report is given to the judge of the criminal court and, with the report as a guide, sentence is passed. Frequently, commitment to the Territorial Hospital or the Waimano Home is ordered rather than sentence to the Oahu Prison. Many of these examinations are, however, utilized only to ascertain whether a particular defendant would be a good risk for probation or parole.

There is no board of examiners such as the board required when the court orders a pre-trial examination. As the accused has already either pleaded guilty or has been found guilty by a jury, this procedure does not accomplish one of the purposes of the proposed act which is to guarantee against persons of unsound mind being subjected to trial when they may not be able to effectively prosecute their defense. Neither does this "pre-sentence" examination necessarily extend to those persons who have more than once been indicted for any offense, when the current charge is not a felony.

law,¹³ and to provide for examinations in the discretion of the court in any case involving indictment for a felony. The bill states that the examination is to determine the existence of any "mental disease"; it omits the phrase "or defect" which is incorporated in the present law. In view of the requirement that the physicians on the examining board be qualified to examine for mental illness or defect, the omission is probably inadvertent. The amendment does not incorporate any procedure for apprising the court of the previous record of the defendant. The Massachusetts experience might be helpful in this regard.

Pre-trial Examining Board:

The proposed bill would add the medical director of a licensed private mental hospital as a possible member of an examining board. The number of examiners appointed to a board would remain at three, being composed of a psychiatrist of the Territorial Hospital, or the chief of the bureau of

¹³It is almost impossible to estimate the number of defendants for which a pre-trial examination would be mandatory under the proposed bill. Data from the criminal division of the first circuit court shows only the number of defendants involved in each of the cases coming before it. Except for capital crimes, where previous record is immaterial under the bill, there is no accurate way short of checking the previous record of all other defendants to ascertain whether a particular defendant is examinable. The Massachusetts experience has shown that approximately 17.5 % of those indicted have been examinable under the law. Assuming this percentage for the Territory and applying it to the 909 defendants appearing before the criminal division of the circuit court for the year ending January 12, 1948, roughly 160 examinations would have been required for that year.

The Massachusetts experience also shows that, of the total defendants examined, approximately 17.0% were mentally irresponsible. Again, using this as percentage for a territorial estimate, approximately 27 would have been committed to a mental institution. The very limited facilities now available at the Territorial Hospital for the treatment and custody of the criminal insane become extremely pertinent in the light of this approximation.

mental hygiene,¹⁴ or the medical director of a licensed private mental hospital and two additional, unbiased physicians qualified to examine for mental illness or defect.¹⁵

Confusion Caused by Definitions:

As the procedure for pre-trial examination now reads, it is possible for a charge to be dismissed and a defendant committed if he is presently insane or mentally irresponsible. This is broad enough to include the defendant's mental inability to carry on his defense and is not necessarily a part of the question of criminal responsibility for the alleged crime. Senate Bill 226 of 1947 proposes to eliminate the reference to "present insanity" and by adding a restricting definition of "mental irresponsibility"¹⁶ may result in precluding such dismissal and commitment in any case except where criminal irresponsibility is determined.

Similarly, if the case goes to trial and the jury is asked to decide any issue of "the then existing mental irresponsibility", the confusion caused by the definition is again apparent. This is considered more fully under the next major heading, Insanity Examinations During Trial.

Place of Commitment:

At present, when a charge is dismissed before trial and a defendant committed, he is sent to the Territorial Hospital. Senate Bill 226 of 1947

¹⁴The bill carries an incorrect reference to the "division" of mental hygiene.

¹⁵If, as suggested above, it was not intended to change the scope of the examination, and the examination is to include mental defects as well as disease, the question has arisen as to whether it would be advisable to provide also for a psychologist on the board, or that provision be made for obtaining the services of a psychologist.

¹⁶Section 10829 of the Revised Laws of Hawaii 1945, as proposed to be amended, defines "mental irresponsibility" as "lack of criminal responsibility for one's acts because of feeble-mindedness, mental illness, or both".

will enlarge this to permit commitment also being made "elsewhere as the court may direct". In view of context, this apparently may include licensed private mental institutions. The term "hospitalization" is substituted for "commitment" in line with terminology changes discussed in the first major part of this report.

5. Criminal Defendants--Insanity Examinations During Trial

Senate Bill 226 of 1947 proposes a complete procedure for the examination of defendants when insanity becomes an issue during any criminal trial. The court is authorized to place the defendant in either the Territorial Hospital or in a licensed private mental hospital for 48 hours and have him examined in the same manner as if it were a pre-trial examination.¹⁷ Upon completion of the examination, the persons making it file a written report with the court and their opinion thereon; two of the three examiners must concur, and a dissenting examiner will report his views separately.

If the examiners report that in their opinion the defendant was not criminally responsible at the time of the commission of the alleged crime because of feeble-mindedness, mental illness, or both, this goes to the court, or to the jury should one have been impanelled. Upon a finding by the court or jury to similar effect, the person is acquitted and ordered committed.

Should the examiners report the defendant was criminally responsible at the time of the crime but is presently too ill or defective mentally to carry on his defense effectively, this goes to the court or jury, likewise. Upon such a finding by the court or jury, the person is committed until he is able to proceed with his defense.

¹⁷A 48-hour limit may be insufficient for adequate observation and examination of mental patients preliminary to a psychiatric appraisal and report to the court.

However, if the examiners report that in their opinion the defendant was both mentally responsible at the time of the alleged crime and is not mentally disabled from carrying on his defense, the court may proceed with the trial. The report of the examiners' opinion does not bind the court nor the jury.

All or any of the examiners may be summoned as expert witnesses and examined by the court or either party. The right of the Territory or the defendant to call other expert witnesses to testify at the trial is specifically granted.

Confusion Caused by Definitions:

As previously related in discussing pre-trial procedure (see page 14), the inclusion of the definition of "mental irresponsibility" causes confusion due to its relating solely to criminal responsibility and apparently disregarding lack of mental ability to defend one's self. Just as in the case of pre-trial examination, reference is made in the procedure for examination during trial to "mental irresponsibility. . . at the time . . . of the trial". Here, however, due to context, the courts will probably construe it to mean "present mental disability" despite the definition.

Similarly uncertain is whether a second examination will be held upon insanity becoming an issue at the trial even though a pre-trial examination was made. In logic, the pre-trial examination should suffice unless a mental disability developed since then. However, in the portion of Senate Bill 226 of 1947 relating to pre-trial examinations it is provided that if the report of a pre-trial examination is not deemed conclusive by the court, the defendant is to be put on trial. In such case the jury is directed to determine

the "then existing or alleged previous mental irresponsibility" of the defendant. Unless the courts construe "existing . . . mental irresponsibility" to mean "mental disability", and disregard the narrow definition proposed by the Bill, only the procedure for examination during trial may be applicable to such persons. Thus, another examination may have to be ordered.

Content of Examiners' Report:

Attention is called to the fact that the examiners will be directed by the act to report in their opinion whether the defendant was criminally responsible. This is broader than merely reporting on the existence of any mental disease or defect which would affect his criminal responsibility. The former may permit the examiners to indulge "in speculation on the exceedingly tenuous and metaphysical topic of 'responsibility'" while the latter confines them "to statements of psychiatric opinion".¹⁸ Although the court and jury make the ultimate decision concerning a defendant's criminal responsibility, it is uncertain whether the examiners' power to express an opinion on criminal responsibility will result in trenching upon the prerogatives of the court or jury, even assuming that such opinions are included in reports rendered in present court proceedings.

Place of Commitment:

Upon acquittal because of mental irresponsibility, upon a determination of mental disability to defend one's self, or upon acquittal for any reason after evidence having been submitted of mental irresponsibility, the defendant will be hospitalized in the Territorial Hospital or "elsewhere as the court may direct". In view of context, this apparently may include licensed

¹⁸ Overholser, op. cit., p. 873.

private mental institutions. The term "hospitalization" is substituted for "commitment" in line with terminology changes discussed in the first major part of this report.

APPENDIX A

Definitions of Mental Illness in Mainland State Statutes

- Louisiana
North Carolina
Pennsylvania
- "Mental illness", "mental disease", "mental disorder" shall mean an illness which so lessens the capacity of the person to use his customary self control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control. The terms shall be construed to include "lunacy", "unsoundness of mind" and "insanity". (Louisiana Acts, 1946, Act 303, sec. 2; Session Laws of North Carolina, 1945, Ch. 952, sec. 2; Purdon's Pennsylvania Statutes, 1936, Tit. 50, sec. 3)
- Minnesota
- "Mentally ill person" means any person of unsound mind and in need of treatment, control or care. (Laws of Minnesota, 1947, Ch. 662, sec. 525.79 (3))
- Nebraska
- The term "mentally ill" as used in this act shall include persons suffering from any type of mental illness whatsoever, whether caused by internal or external conditions, diseases, narcotics, alcoholic beverages, accident or any other condition or happening. (Laws of Nebraska, 1947, Ch. 335, sec. 1)
- Nevada
- "Mentally ill persons" mean persons who are of such mental condition that without supervision, treatment, care or restraint they would be or might be dangerous to themselves or the person or property of others. (Statutes of Nevada, 1947, Ch. 257, sec. 1)
- New York
- A "mentally ill person" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment. (Laws of New York, 1946, Ch. 751, sec. 2 (3))

APPENDIX B

Sections Unchanged by Proposed Bills

As indicated in the body of this report, many sections remain unchanged by the proposed bills, and the words "insane" or "insanity", "lunatic", "unsound mind" and "mental derangement" would still appear throughout the Revised Laws. The following list indicates sections in which these words are found and the subjects with which the various sections deal.

<u>SECTION NO.</u>	<u>SUBJECT CONCERNED</u>	<u>TERMINOLOGY</u>
(Revised Laws 1945)		
183	Elections, registers	insane, insanity
2552 (as amended, 1947)	Mental Hygiene Bureau	insane
3822, 3824	Deportation from Territorial Hospital	insane
3831, 3832	Extradition	insane, unsound mind
3929	Prison Camps, transfers	insane
9840	Physician-patient, privileged communications	sanity
10430	Court procedure, disabilities limitations of actions	insane, insanity
10442	Civil procedure, disabilities	insane
10623	Criminal law, capacity and responsibility	insane, mental derangement
10841	Criminal procedure, verdicts	insanity, insane
10853, 10854, 10856, 10857	Capital punishment, determina- tion of insanity of convict; stay of execution; restora- tion of sanity	insane, insanity
12201, 12206, 12207	Domestic relations, annulment; legitimacy	lunatic, insanity
12210, 12218	Divorce, grounds for	insanity, hopelessly insane
12217	Divorce, guardian ad litem	insane, incurable insanity
12222	Divorce, costs	insanity, incurable insanity
12223	Divorce, support	insanity, incurable insanity
(Session Laws 1947)		
Act 131		
sections 6529.01, 6564.01, 6569.01..	Honolulu, persons elected to office	insanity

Still other sections of the Revised Laws employ terms perhaps less offensive to psychiatrists, but which have nevertheless been replaced by substitutes in the proposed bills under discussion. "Paroled",¹ "committed",² "released",³ "mental disorders" and "mental defectives",⁴ "inmates",⁵ "detention",⁶ "commitment",⁷ "incompetent",⁸ "unsound mind",⁹ "addict",¹⁰ and "confined"¹¹ remain unchanged in the sections shown in the footnotes.

¹ Revised Laws of Hawaii 1945, sections 2552, 2582, 2583, 3823.

² Ibid., sections 2582, 2583, 3821, 3822, 3929, 3930.

³ Ibid., section 2552.

⁴ Ibid., sections 2581, 2582, 2585.

⁵ Ibid., sections 2581, 2583, 2584, 3823.

⁶ Ibid., sections 2581, 2582, 2583, 3831, 3832, 3929 (detained), 10854, 10856.

⁷ Ibid., sections 2581, 3833.

⁸ Ibid., section 2585.

⁹ Ibid., sections 3831, 3832.

¹⁰ Ibid., section 3830.

¹¹ Ibid., sections 3822, 3825.