

JAN 22 2016

A BILL FOR AN ACT

RELATING TO CRIMINAL PROSECUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to address the
2 fitness of defendants to proceed in criminal cases.

3 More specifically, this Act authorizes a court in the State
4 to appoint either one or three qualified examiners to examine
5 and report on the physical and mental condition of a defendant
6 in a felony case. This Act also sets forth general factors to
7 be used by the court to determine the number of qualified
8 examiners to appoint for a particular felony case.

9 Before enactment of this Act, the court had no discretion.
10 The court was required to appoint three qualified examiners for
11 a felony case.

12 This Act also replaces duplicative language regarding the
13 appointment and qualifications of examiners by consolidating
14 these provisions in section 704-404(2), Hawaii Revised Statutes.
15 The legislature finds that these amendments are to provide
16 clarification and brevity, and are not intended to have
17 substantive effect.



1 SECTION 2. Section 704-404, Hawaii Revised Statutes, is
2 amended to read as follows:

3 1. By amending subsections (2) and (3) to read:

4 "(2) Upon suspension of further proceedings in the
5 prosecution, the court shall appoint either one qualified
6 examiner or three qualified examiners in felony cases and one
7 qualified examiner in nonfelony cases to examine and report upon
8 the physical and mental condition of the defendant.

9 In felony cases, the court shall base its decision to
10 appoint one qualified examiner or three qualified examiners on:

11 (a) The court's perception of:

12 (i) The severity or complexity of the physical or
13 mental disease, disorder, or defect of the
14 defendant; and

15 (ii) The need or desirability for more than one
16 examiners' examinations to properly diagnose
17 the effect of the physical or mental disease,
18 disorder, or defect on the defendant; or

19 (b) Any other factor deemed appropriate by the court.
20



1 In felony cases for which the court [~~shall appoint~~]
2 appoints three qualified examiners, at least one shall be a
3 psychiatrist and at least one shall be a licensed psychologist.
4 The third member may be a psychiatrist, licensed psychologist,
5 or qualified physician. One of the three shall be a
6 psychiatrist or licensed psychologist designated by the director
7 of health from within the department of health.

8 In felony or nonfelony cases for which the court appoints
9 one qualified examiner, the court may appoint either a
10 psychiatrist or a licensed psychologist. All examiners for
11 felony and nonfelony cases shall be appointed from a list of
12 certified examiners as determined by the department of health.
13 The court, in appropriate circumstances, may appoint an
14 additional examiner or examiners.

15 The examination may be conducted on an out-patient basis
16 or, in the court's discretion, when necessary the court may
17 order the defendant to be committed to a hospital or other
18 suitable facility for the purpose of the examination for a
19 period not exceeding thirty days, or such longer period as the
20 court determines to be necessary for the purpose. The court may
21 direct that one or more qualified physicians or psychologists



1 retained by the defendant be permitted to witness the
2 examination.

3 As used in this section, the term "licensed psychologist"
4 includes psychologists exempted from licensure by section 465-
5 3(a)(3).

6 (3) An examination performed under this section may employ
7 any method that is accepted by the professions of medicine or
8 psychology for the examination of those alleged to be affected
9 by a physical or mental disease, disorder, or defect; provided
10 that each examiner shall form and render diagnoses and opinions
11 upon the physical and mental condition of the defendant
12 independently from the other examiners, if any, and [~~the~~
13 ~~examiners,~~] each examiner, upon approval of the court, may
14 secure the services of clinical psychologists and other medical
15 or paramedical specialists to assist in the examination and
16 diagnosis."

17 2. By amending subsection (8) to read:

18 "(8) The court shall obtain all existing medical, mental
19 health, social, police, and juvenile records, including those
20 expunged, and other pertinent records in the custody of public
21 agencies, notwithstanding any other statutes, and make [~~such~~]



1 those records available for inspection by [~~the examiners,~~] each
2 examiner. If, pursuant to this section, the court orders the
3 defendant committed to a hospital or other suitable facility
4 under the control of the director of health, then the county
5 police departments shall provide to the director of health and
6 the defendant copies of all police reports from cases filed
7 against the defendant which have been adjudicated by the
8 acceptance of a plea of guilty or no contest, a finding of
9 guilt, acquittal, acquittal pursuant to section 704-400, or by
10 the entry of plea of guilty or no contest made pursuant to
11 chapter 853, so long as the disclosure to the director of health
12 and the defendant does not frustrate a legitimate function of
13 the county police departments, with the exception of expunged
14 records, records of or pertaining to any adjudication or
15 disposition rendered in the case of a juvenile, or records
16 containing data from the United States National Crime
17 Information Center. The county police departments shall
18 segregate or sanitize from the police reports information that
19 would result in the likelihood or actual identification of
20 individuals who furnished information in connection with its
21 investigation, or who were of investigatory interest. Records



1 shall not be re-disclosed except to the extent permitted by
2 law."

3 SECTION 3. Section 704-406, Hawaii Revised Statutes, is
4 amended by amending subsections (4) and (5) to read as follows:

5 "[+] (4)]+] If a defendant committed to the custody of the
6 director of health for a limited period pursuant to subsection
7 (1) is not found fit to proceed prior to the expiration of the
8 commitment, the charge for which the defendant was committed for
9 a limited period shall be dismissed. Upon dismissal of the
10 charge, the defendant shall be released from custody unless the
11 defendant is subject to prosecution for other charges, in which
12 case, unless the defendant is subject to the law governing
13 involuntary civil commitment, the court shall order the
14 defendant's commitment to the custody of the director of health
15 to be placed in an appropriate institution for detention, care,
16 and treatment. Within a reasonable time following any other
17 commitment under subsection (1), the director of health shall
18 report to the court on whether the defendant presents a
19 substantial likelihood of becoming fit to proceed in the future.
20 The court, in addition, may appoint [~~a panel of~~] either one
21 qualified examiner or three qualified examiners in felony cases



1 or one qualified examiner in nonfelony cases to make a report.
2 The court's appointment of an examiner or examiners shall be
3 made pursuant to section 704-404(2). If, following a report,
4 the court determines that the defendant probably will remain
5 unfit to proceed, the court may dismiss the charge and:

6 (a) Release the defendant; or

7 (b) Subject to the law governing involuntary civil
8 commitment, order the defendant to be committed to the
9 custody of the director of health to be placed in an
10 appropriate institution for detention, care, and
11 treatment.

12 [-(5)] If a defendant released on conditions for a
13 limited period pursuant to subsection (1) is not found fit to
14 proceed prior to the expiration of the release on conditions
15 order, the charge for which the defendant was released on
16 conditions for a limited period shall be dismissed. Upon
17 dismissal of the charge, the defendant shall be discharged from
18 the release on conditions unless the defendant is subject to
19 prosecution for other charges or subject to the law governing
20 involuntary civil commitment, in which case the court shall
21 order the defendant's commitment to the custody of the director



1 of health to be placed in an appropriate institution for
2 detention, care, and treatment. Within a reasonable time
3 following any other release on conditions under subsection (1),
4 the court shall appoint [~~a panel of~~] either one qualified
5 examiner or three qualified examiners in felony cases or one
6 qualified examiner in nonfelony cases to report to the court on
7 whether the defendant presents a substantial likelihood of
8 becoming fit to proceed in the future. The court's appointment
9 of an examiner or examiners shall be made pursuant to section
10 704-404(2). If, following the report, the court determines that
11 the defendant probably will remain unfit to proceed, the court
12 may dismiss the charge and:

- 13 (a) Release the defendant; or
14 (b) Subject to the law governing involuntary civil
15 commitment, order the defendant to be committed to the
16 custody of the director of health to be placed in an
17 appropriate institution for detention, care, and
18 treatment."

19 SECTION 4. Section 704-408, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§704-408 Determination of irresponsibility. If the
2 report of the examiner or examiners filed pursuant to section
3 704-404, or the report of the examiner or examiners of the
4 defendant's choice under section 704-409, states that the
5 defendant at the time of the conduct alleged was affected by a
6 physical or mental disease, disorder, or defect that
7 substantially impaired the defendant's capacity to appreciate
8 the wrongfulness of the defendant's conduct or to conform the
9 defendant's conduct to the requirements of law, the court shall
10 submit the defense of physical or mental disease, disorder, or
11 defect to the jury or the trier of fact at the trial of the
12 charge against the defendant."

13 SECTION 5. Section 704-409, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§704-409 Access to defendant by examiners of defendant's
16 choice. When, notwithstanding the report filed pursuant to
17 section 704-404, the defendant wishes to be examined by one or
18 more qualified physicians or other experts of the defendant's
19 own choice, such examiner or examiners shall be permitted to
20 have reasonable access to the defendant for the purposes of such
21 examination.



1 The defendant shall have the discretion to select the
2 examiner or examiners without regard to section 704-404(2)."

3 SECTION 6. Section 704-410, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) At the hearing pursuant to section 704-405 or upon
6 the trial, [~~the examiners~~] any examiner who reported pursuant to
7 section 704-404 may be called as [~~witnesses~~] a witness by the
8 prosecution, the defendant, or the court. If the issue is being
9 tried before a jury, the jury may be informed that [~~the~~] an
10 examiner or examiners [~~or any of them~~] were designated by the
11 court or by the director of health at the request of the court,
12 as the case may be. If called by the court, the witness shall
13 be subject to cross-examination by the prosecution and the
14 defendant. Both the prosecution and the defendant may summon
15 any other qualified physician or licensed psychologist or other
16 expert to testify, but no one who has not examined the defendant
17 shall be competent to testify to an expert opinion with respect
18 to the physical or mental condition of the defendant, as
19 distinguished from the validity of the procedure followed by, or
20 the general scientific propositions stated by, another witness."



1 SECTION 7. Section 704-411, Hawaii Revised Statutes, is
2 amended by amending subsection (3) to read as follows:

3 "(3) When ordering a hearing pursuant to subsection (2):

4 (a) In nonfelony cases, the court shall appoint [a] one
5 qualified examiner to examine and report upon the
6 physical and mental condition of the defendant. [~~The~~
7 ~~court may appoint either a psychiatrist or a licensed~~
8 ~~psychologist. The examiner may be designated by the~~
9 ~~director of health from within the department of~~
10 ~~health. The examiner shall be appointed from a list~~
11 ~~of certified examiners as determined by the department~~
12 ~~of health.] The court, in appropriate circumstances,
13 may appoint an additional examiner or examiners [+]
14 pursuant to section 704-404(2); and~~

15 (b) In felony cases, the court shall appoint either one
16 qualified examiner or three qualified examiners to
17 examine and report upon the physical and mental
18 condition of the defendant. [~~In each case, the court~~
19 ~~shall appoint at least one psychiatrist and at least~~
20 ~~one licensed psychologist. The third member may be a~~
21 ~~psychiatrist, a licensed psychologist, or a qualified~~



1 ~~physician. One of the three shall be a psychiatrist~~
2 ~~or licensed psychologist designated by the director of~~
3 ~~health from within the department of health. The~~
4 ~~three examiners shall be appointed from a list of~~
5 ~~certified examiners as determined by the department of~~
6 ~~health.] The court's appointment of an examiner or~~
7 ~~examiners shall be made pursuant to section 704-~~
8 ~~404(2).~~

9 To facilitate the examination and the proceedings thereon, the
10 court may cause the defendant, if not then confined, to be
11 committed to a hospital or other suitable facility for the
12 purpose of examination for a period not exceeding thirty days or
13 such longer period as the court determines to be necessary for
14 the purpose upon written findings for good cause shown. The
15 court may direct that qualified physicians or psychologists
16 retained by the defendant be permitted to witness the
17 examination. The examination and report and the compensation of
18 persons making or assisting in the examination shall be in
19 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),
20 and (9). ~~[As used in this section, the term "licensed~~



1 ~~psychologist" includes psychologists exempted from licensure by~~
2 ~~section 465-3(a)(3).]~~ "

3 SECTION 8. Section 704-414, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§704-414 Procedure upon application for discharge,
6 conditional release, or modification of conditions of release.
7 Upon filing of an application pursuant to section 704-412 for
8 discharge or conditional release, or upon the filing of an
9 application pursuant to section 704-413 for discharge or for
10 modification of conditions of release, the court shall appoint
11 either one qualified examiner or three qualified examiners in
12 felony cases and one qualified examiner in nonfelony cases to
13 examine and report upon the physical and mental condition of the
14 defendant. [In felony cases the court shall appoint at least
15 one psychiatrist and at least one licensed psychologist. The
16 third member may be a psychiatrist, a licensed psychologist, or
17 a qualified physician. One of the three shall be a psychiatrist
18 or licensed psychologist designated by the director of health
19 from within the department of health. The examiners shall be
20 appointed from a list of certified examiners as determined by
21 the department of health.] The court's appointment of an



1 examiner or examiners shall be made pursuant to section 704-
 2 404(2). To facilitate the examination and the proceedings
 3 thereon, the court may cause the defendant, if not then
 4 confined, to be committed to a hospital or other suitable
 5 facility for the purpose of the examination and may direct that
 6 qualified physicians or psychologists retained by the defendant
 7 be permitted to witness the examination. The examination and
 8 report and the compensation of persons making or assisting in
 9 the examination shall be in accord with section 704-404(3),
 10 (4)(a) and (b), (6), (7), (8), and (9). [~~As used in this~~
 11 ~~section, the term "licensed psychologist" includes psychologists~~
 12 ~~exempted from licensure by section 465-3(a)(3).~~]"

13 SECTION 9. This Act does not affect rights and duties that
 14 matured, penalties that were incurred, and proceedings that were
 15 begun before its effective date.

16 SECTION 10. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect on January 1, 2017.

19

INTRODUCED BY:

Jim
Marie & Anne *Randy de Baker*
John Galt
Danzon



S.B. NO. 2538

Report Title:

Criminal Defendants; Fitness to Proceed; Number of Examiners

Description:

Provides that the court may appoint one or three qualified examiners to review the fitness of a criminal defendant to proceed in a felony case. Establishes criteria for determining the number of examiners to appoint. Amends statute formatting.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

