
A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH PROCEDURES.

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

1 SECTION 1. The legislature finds that under section 704-
2 404, Hawaii Revised Statutes, when a defendant's fitness to
3 proceed comes into question, the criminal proceedings are
4 stopped, and the court must order a physical or mental
5 examination of the defendant to determine both the defendant's
6 fitness to proceed and whether the defendant may be held penally
7 responsible for the alleged crime. Section 704-404(4), Hawaii
8 Revised Statutes, requires the court to order a forensic
9 examiner to conduct an evaluation and report on several elements
10 including: fitness to stand trial; a diagnosis; and penal
11 responsibility. Penal responsibility is a measure of the
12 capacity of the defendant to appreciate the wrongfulness of the
13 defendant's conduct or to conform the defendant's conduct to the
14 requirements of law at the time of the conduct alleged. An
15 evaluation of fitness does not necessarily require determining a
16 diagnosis or conducting an exhaustive record review, as it
17 involves an examination of a defendant's current cognitive



1 capacity and state. Evaluation of penal responsibility and
2 clinical diagnosis are more involved and time consuming
3 endeavors, requiring a thorough record review and a more complex
4 examination of both current cognitive status and the defendant's
5 state of mind at various points in the past. While evaluations
6 of fitness to proceed are utilized by the court in each instance
7 that they are ordered, only some of the evaluations of penal
8 responsibility are ever utilized because they only become
9 relevant if the affirmative defense of lack of penal
10 responsibility is asserted in criminal proceedings. Pairing the
11 evaluations together is more burdensome to the process,
12 lengthens the time to complete the evaluation and report to the
13 court, and generates a product that may not be utilized during
14 adjudication.

15 Further, an evaluation that combines the determinations of
16 fitness and penal responsibility in one evaluation raises
17 ethical and legal concerns. Defendants who are unfit to
18 proceed, by definition, may not have sufficient capacity to
19 consult with defense counsel to determine the impact of
20 providing to the examiner potentially incriminating information
21 regarding the defendant's state of mind at the time of the



1 alleged crime. The American Bar Association's Criminal Justice
2 Mental Health Standards, Standard 7-4.4, recommends that an
3 evaluation of a defendant's mental condition at the time of the
4 alleged offense and capacity for penal responsibility should not
5 be combined in any evaluation to determine fitness to stand
6 trial unless the defense requests it or good cause is shown.

7 The legislature further finds that although section 704-
8 406, Hawaii Revised Statutes, does not provide a process for the
9 reevaluation of a defendant who was found unfit to proceed but
10 has since participated in fitness restoration services either at
11 Hawaii state hospital or in the community, the custom has been
12 for the court to order new evaluations by a panel of three
13 examiners for all defendants charged with felonies. This Act
14 establishes a procedure requiring evaluation by one examiner for
15 defendants who have been charged with crimes other than murder
16 in the first and second degrees, attempted murder in the first
17 and second degrees, and class A felonies. Along with the
18 separate evaluations for fitness to proceed and for penal
19 responsibility, this is intended to speed up the process of
20 obtaining these evaluations.

1 The purpose of this Act is to shorten the amount of time
2 defendants spend in state custody awaiting forensic mental
3 health examinations and the resultant rulings on fitness to
4 proceed and penal responsibility by requiring separate
5 evaluations for fitness to proceed and for penal responsibility,
6 with certain exceptions, and codifying procedures for
7 reevaluation of fitness to proceed.

8 SECTION 2. Chapter 704, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§704- Examination of defendant with respect to physical
12 or mental disease, disorder, or defect excluding penal
13 responsibility. (1) Whenever the defendant has filed a notice
14 of intention to rely on the defense of physical or mental
15 disease, disorder, or defect excluding penal responsibility, or
16 there is reason to believe that the physical or mental disease,
17 disorder, or defect of the defendant will or has become an issue
18 in the case, the court may order an examination as to the
19 defendant's physical or mental disease, disorder, or defect at
20 the time of the conduct alleged. The time during which



1 completion of an examination pursuant to this section is pending
2 shall be excluded in computing the time for trial commencement.

3 (2) The court shall appoint three qualified examiners in
4 felony cases and one qualified examiner in nonfelony cases to
5 examine and report upon the physical or mental disease,
6 disorder, or defect of the defendant at the time of the conduct.
7 In felony cases, the court shall appoint at least one
8 psychiatrist and at least one licensed psychologist. The third
9 examiner may be a psychiatrist, licensed psychologist, or
10 qualified physician. One of the three examiners shall be a
11 psychiatrist or licensed psychologist designated by the director
12 of health from within the department of health. In nonfelony
13 cases, the court may appoint either a psychiatrist or a licensed
14 psychologist. All examiners shall be appointed from a list of
15 certified examiners as determined by the department of health.
16 The court, in appropriate circumstances, may appoint an
17 additional examiner or examiners. The court may direct that one
18 or more qualified physicians or psychologists retained by the
19 defendant be permitted to witness the examination. As used in
20 this section, the term "licensed psychologist" includes
21 psychologists exempted from licensure by section 465-3(a)(3).

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

11 (4) For defendants charged with felonies, the examinations
12 for fitness to proceed under section 704-404 and penal
13 responsibility under this section shall be conducted separately
14 unless a combined examination has been ordered by the court upon
15 a request by the defendant or upon a showing of good cause to
16 combine the examinations. When the examinations are separate,
17 the court shall order the examination for penal responsibility
18 under this section no later than thirty days after a finding of
19 fitness to proceed. The report of the examination for fitness
20 to proceed shall be separate from the report of the examination
21 for penal responsibility unless a combined examination has been



1 ordered. For defendants charged with offenses other than
2 felonies, a combined examination is permissible when ordered by
3 the court.

4 (5) The report of the examination for penal responsibility
5 shall include the following:

6 (a) A description of the nature of the examination;

7 (b) A diagnosis of the physical or mental condition of the
8 defendant;

9 (c) An opinion as to the extent, if any, to which the
10 capacity of the defendant to appreciate the
11 wrongfulness of the defendant's conduct or to conform
12 the defendant's conduct to the requirements of law was
13 impaired at the time of the conduct alleged;

14 (d) When directed by the court, an opinion as to the
15 capacity of the defendant to have a particular state
16 of mind that is required to establish an element of
17 the offense charged; and

18 (e) Where more than one examiner is appointed, a statement
19 that the diagnosis and opinion rendered were arrived
20 at independently of any other examiner, unless there
21 is a showing to the court of a clear need for



1 communication between or among the examiners for
2 clarification. A description of the communication
3 shall be included in the report. After all reports
4 are submitted to the court, examiners may confer
5 without restriction.

6 (6) If the examination cannot be conducted by reason of
7 the unwillingness of the defendant to participate in the
8 examination, the report shall so state and shall include, if
9 possible, an opinion as to whether the unwillingness of the
10 defendant was the result of physical or mental disease,
11 disorder, or defect.

12 (7) Three copies of the report of the examination,
13 including any supporting documents, shall be filed with the
14 clerk of the court, who shall cause copies to be delivered to
15 the prosecuting attorney and to counsel for the defendant.

16 (8) Any examiner shall be permitted to make a separate
17 explanation reasonably serving to clarify the examiner's
18 diagnosis or opinion.

19 (9) The court shall obtain all existing relevant medical,
20 mental health, social, police, and juvenile records, including
21 those expunged, and other pertinent records in the custody of



1 public agencies, notwithstanding any other statute, and make the
2 records available for inspection by the examiners in hard copy
3 or digital format. The court may order that the records so
4 obtained be made available to the prosecuting attorney and
5 counsel for the defendant in either format, subject to
6 conditions the court determines appropriate; provided that
7 juvenile records shall not be made available unless
8 constitutionally required. No further disclosure of records
9 shall be made except as permitted by law.

10 (10) All public agencies in possession of relevant
11 medical, mental health, social, and juvenile records, and any
12 other pertinent records of a defendant ordered to be examined
13 under this chapter, shall provide those records to the court,
14 notwithstanding any other state statute.

15 (11) The compensation of persons making or assisting in
16 the examination, other than those retained by nonindigent
17 defendant, who are not undertaking the examination upon
18 designation by the director of health as part of their normal
19 duties as employees of the State or a county, shall be paid by
20 the State."



1 SECTION 3. Section 704-404, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§704-404 Examination of defendant with respect to
4 physical or mental disease, disorder, or defect[-] excluding
5 fitness to proceed. (1) Whenever [~~the defendant has filed a~~
6 ~~notice of intention to rely on the defense of physical or mental~~
7 ~~disease, disorder, or defect excluding responsibility, or~~] there
8 is reason to doubt the defendant's fitness to proceed, [~~or~~
9 ~~reason to believe that the physical or mental disease, disorder,~~
10 ~~or defect of the defendant will or has become an issue in the~~
11 ~~ease,~~] the court may immediately suspend all further proceedings
12 in the prosecution. If a trial jury has been empanelled, it
13 shall be discharged or retained at the discretion of the court.
14 The discharge of the trial jury shall not be a bar to further
15 prosecution.

16 (2) Upon suspension of further proceedings in the
17 prosecution, the court shall appoint three qualified examiners
18 in felony cases and one qualified examiner in nonfelony cases to
19 examine and report upon the [~~physical and mental condition of~~
20 ~~the defendant-~~] defendant's fitness to proceed. In felony
21 cases, the court shall appoint at least one psychiatrist and at



1 least one licensed psychologist. The third [~~member~~] examiner
2 may be a psychiatrist, licensed psychologist, or qualified
3 physician. One of the three examiners shall be a psychiatrist
4 or licensed psychologist designated by the director of health
5 from within the department of health. In nonfelony cases, the
6 court may appoint either a psychiatrist or a licensed
7 psychologist. All examiners shall be appointed from a list of
8 certified examiners as determined by the department of health.
9 The court, in appropriate circumstances, may appoint an
10 additional examiner or examiners. The examination may be
11 conducted on an out-patient basis or, in the court's discretion,
12 when necessary the court may order the defendant to be committed
13 to a hospital or other suitable facility for the purpose of the
14 examination for a period not exceeding thirty days, or such
15 longer period as the court determines to be necessary for the
16 purpose. The court may direct that one or more qualified
17 physicians or psychologists retained by the defendant be
18 permitted to witness the examination. As used in this section,
19 the term "licensed psychologist" includes psychologists exempted
20 from licensure by section 465-3(a)(3).



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

12 (4) For defendants charged with felonies, the examinations
13 for fitness to proceed under this section and penal
14 responsibility under section 704- shall be conducted
15 separately unless a combined examination has been ordered by the
16 court upon a request by the defendant or upon a showing of good
17 cause to combine the examinations. The report of the
18 examination for fitness to proceed shall be separate from the
19 report of the examination for penal responsibility unless a
20 combined examination has been ordered. For defendants charged

1 with offenses other than felonies, a combined examination is
2 permissible when ordered by the court.

3 ~~[(4)]~~ (5) The report of the examination for fitness to
4 proceed shall include the following:

5 (a) A description of the nature of the examination;
6 ~~[(b) A diagnosis of the physical or mental condition of the~~
7 ~~defendant;~~

8 ~~-(e)]~~ (b) An opinion as to the defendant's capacity to
9 understand the proceedings against the defendant and
10 to assist in the defendant's own defense;

11 ~~[(d) An opinion as to the extent, if any, to which the~~
12 ~~capacity of the defendant to appreciate the~~
13 ~~wrongfulness of the defendant's conduct or to conform~~
14 ~~the defendant's conduct to the requirements of law was~~
15 ~~impaired at the time of the conduct alleged;~~

16 ~~-(e) When directed by the court, an opinion as to the~~
17 ~~capacity of the defendant to have a particular state~~
18 ~~of mind that is required to establish an element of~~
19 ~~the offense charged; and~~

20 ~~-(f) Where more than one examiner is appointed, a statement~~
21 ~~that the diagnosis and opinion rendered were arrived~~

1 ~~at independently of any other examiner, unless there~~
2 ~~is a showing to the court of a clear need for~~
3 ~~communication between or among the examiners for~~
4 ~~clarification. A description of the communication~~
5 ~~shall be included in the report. After all reports~~
6 ~~are submitted to the court, examiners may confer~~
7 ~~without restriction.]~~

8 (c) An assessment of the risk of danger to the defendant
9 or to the person or property of others for
10 consideration and determination of the defendant's
11 release on conditions; and

12 (d) Where more than one examiner is appointed, a statement
13 that the opinion rendered was arrived at independently
14 of any other examiner, unless there is a showing to
15 the court of a clear need for communication between or
16 among the examiners for clarification. A description
17 of the communication shall be included in the report.
18 After all reports are submitted to the court,
19 examiners may confer without restriction.

20 [~~5~~] (6) If the examination cannot be conducted by reason
21 of the unwillingness of the defendant to participate [~~therein,~~]



1 in the examination, the report shall so state and shall include,
2 if possible, an opinion as to whether [~~such~~] the unwillingness
3 of the defendant was the result of physical or mental disease,
4 disorder, or defect.

5 [~~(6)~~] (7) Three copies of the report of the examination,
6 including any supporting documents, shall be filed with the
7 clerk of the court, who shall cause copies to be delivered to
8 the prosecuting attorney and to counsel for the defendant.

9 [~~(7)~~] (8) Any examiner shall be permitted to make a
10 separate explanation reasonably serving to clarify the
11 examiner's [~~diagnosis or~~] opinion.

12 [~~(8)~~] (9) The court shall obtain all existing relevant
13 medical, mental health, social, police, and juvenile records,
14 including those expunged, and other pertinent records in the
15 custody of public agencies, notwithstanding any other
16 [~~statutes,~~] statute, and make [~~such~~] the records available for
17 inspection by the examiners [~~-~~] in hard copy or digital format.

18 The court may order that the records so obtained be made
19 available to the prosecuting attorney and counsel for the
20 defendant in either format, subject to conditions the court
21 determines appropriate; provided that juvenile records shall not



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



1 investigation, or who were of investigatory interest. [~~Records~~
2 ~~shall not be re-disclosed except to the extent permitted by~~
3 ~~law.~~] No further disclosure of records shall be made except as
4 provided by law.

5 [~~9~~] (10) All public agencies in possession of relevant
6 medical, mental health, social, and juvenile records, and any
7 other pertinent records of a defendant ordered to be examined
8 under this chapter, shall provide those records to the court,
9 notwithstanding any other state statute.

10 [~~10~~] (11) The compensation of persons making or
11 assisting in the examination, other than those retained by [~~the~~]
12 a nonindigent defendant, who are not undertaking the examination
13 upon designation by the director of health as part of their
14 normal duties as employees of the State or a county, shall be
15 paid by the State."

16 SECTION 4. Section 704-406, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§704-406 Effect of finding of unfitness to proceed[-] and
19 regained fitness to proceed. (1) If the court determines that
20 the defendant lacks fitness to proceed, the proceeding against
21 the defendant shall be suspended, except as provided in section



1 704-407, and the court shall commit the defendant to the custody
2 of the director of health to be placed in an appropriate
3 institution for detention, care, and treatment; provided that
4 the commitment shall be limited in certain cases as follows:

5 (a) When the defendant is charged with a petty misdemeanor
6 not involving violence or attempted violence, the
7 commitment shall be limited to no longer than sixty
8 days from the date the court determines the defendant
9 lacks fitness to proceed; and

10 (b) When the defendant is charged with a misdemeanor not
11 involving violence or attempted violence, the
12 commitment shall be limited to no longer than one
13 hundred twenty days from the date the court determines
14 the defendant lacks fitness to proceed.

15 If the court is satisfied that the defendant may be released on
16 conditions without danger to the defendant or to ~~[the person]~~
17 another or risk of substantial danger to property of others, the
18 court shall order the defendant's release, which shall continue
19 at the discretion of the court, on conditions the court
20 determines necessary; provided that the release on conditions of
21 a defendant charged with a petty misdemeanor not involving

1 violence or attempted violence shall continue for no longer than
2 sixty days, and the release on conditions of a defendant charged
3 with a misdemeanor not involving violence or attempted violence
4 shall continue for no longer than one hundred twenty days. A
5 copy of the report filed pursuant to section 704-404 shall be
6 attached to the order of commitment or order of release on
7 conditions. When the defendant is committed to the custody of
8 the director of health for detention, care, and treatment, the
9 county police departments shall provide to the director of
10 health and the defendant copies of all police reports from cases
11 filed against the defendant that have been adjudicated by the
12 acceptance of a plea of guilty or nolo contendere, a finding of
13 guilt, acquittal, acquittal pursuant to section 704-400, or by
14 the entry of a plea of guilty or nolo contendere made pursuant
15 to chapter 853, so long as the disclosure to the director of
16 health and the defendant does not frustrate a legitimate
17 function of the county police departments; provided that
18 expunged records, records of or pertaining to any adjudication
19 or disposition rendered in the case of a juvenile, or records
20 containing data from the United States National Crime
21 Information Center shall not be provided. The county police



1 departments shall segregate or sanitize from the police reports
 2 information that would result in the ~~[+]likely[+]~~ or actual
 3 identification of individuals who furnished information in
 4 connection with the investigation or who were of investigatory
 5 interest. ~~[Records shall not be re disclosed except to the~~
 6 ~~extent permitted by law.] No further disclosure of records~~
 7 shall be made except as provided by law.

8 (2) When the defendant is released on conditions after a
 9 finding of unfitness to proceed, the department of health shall
 10 establish and monitor a fitness restoration program consistent
 11 with conditions set by the court order of release, and shall
 12 inform the prosecuting attorney of the county that charged the
 13 defendant of the program and report the defendant's compliance
 14 therewith.

15 ~~[+] (3) [+]~~ When the court, on its own motion or upon the
 16 application of the director of health, the prosecuting attorney,
 17 or the defendant, ~~[determines, after a hearing if a hearing is~~
 18 ~~requested,] has reason to believe that the defendant has
 19 regained fitness to proceed, ~~[the penal proceeding shall be~~
 20 ~~resumed.] for a defendant charged with the offense of murder in~~
 21 the first or second degree, attempted murder in the first or~~

1 second degree, or a class A felony, the court shall appoint
2 three qualified examiners and may appoint in all other cases one
3 qualified examiner, to examine and report upon the physical and
4 mental condition of the defendant. In such cases, the court
5 shall appoint at least one psychiatrist and at least one
6 licensed psychologist. The third examiner may be a
7 psychiatrist, licensed psychologist, or qualified physician.
8 One of the three examiners shall be a psychiatrist or licensed
9 psychologist designated by the director of health from within
10 the department of health. In all other cases, the one qualified
11 examiner who shall be a psychiatrist or licensed psychologist
12 designated by the director of health from within the department
13 of health. All examiners shall be appointed from a list of
14 certified examiners as determined by the department of health.
15 After a hearing, if a hearing is requested, if the court
16 determines that the defendant has regained fitness to proceed,
17 the penal proceeding shall be resumed and the defendant shall no
18 longer be committed to the custody of the director of health.
19 In cases where a defendant is charged with the offense of murder
20 in the first or second degree, attempted murder in the first or
21 second degree, or a class A felony, upon the request of the



1 prosecuting attorney or the defendant, and in consideration of
2 information provided by the defendant's clinical team, the court
3 may order that the defendant remain in the custody of the
4 director of health, for good cause shown, subject to bail or
5 until a judgment on the verdict or a finding of guilt after a
6 plea of guilty or nolo contendere. Thereafter, the court may
7 consider a request from the director of health to rescind its
8 order maintaining the defendant in the director's custody, for
9 good cause shown. If, however, the court is of the view that so
10 much time has elapsed since the commitment or release on
11 conditions of the defendant that it would be unjust to resume
12 the proceeding, the court may dismiss the charge and:

- 13 (a) Order the defendant to be discharged;
- 14 (b) Subject to the law governing the involuntary civil
15 commitment of persons affected by physical or mental
16 disease, disorder, or defect, order the defendant to
17 be committed to the custody of the director of health
18 to be placed in an appropriate institution for
19 detention, care, and treatment; or



1 (c) Subject to the law governing involuntary outpatient
2 treatment, order the defendant to be released on
3 conditions the court determines necessary.

4 (4) An examination for regained fitness to proceed
5 performed under this section may employ any method that is
6 accepted by the professions of medicine or psychology for the
7 examination of those alleged to be affected by a physical or
8 mental disease, disorder, or defect, and shall include a review
9 of records where the defendant, while under the custody of the
10 director of health, was placed; provided that each examiner
11 shall form and render an opinion on the defendant's regained
12 fitness to proceed independently from the other examiners and
13 the examiners, upon approval of the court, may secure the
14 services of clinical psychologists and other medical or
15 paramedical specialists to assist in the examination.

16 (5) The report of the examination for regained fitness to
17 proceed shall include the following:

- 18 (a) A description of the nature of the examination;
19 (b) An opinion as to the defendant's capacity to
20 understand the proceedings against the defendant and
21 to assist in the defendant's own defense; and



1 (c) Where more than one examiner is appointed, a statement
2 that the opinion rendered was arrived at independently
3 of any other examiner, unless there is a showing to
4 the court of a clear need for communication between or
5 among the examiners for clarification. A description
6 of the communication shall be included in the report.
7 After all reports are submitted to the court,
8 examiners may confer without restriction.

9 (6) All other procedures as set out in section 704-404(6)
10 through (11) shall be followed for the completion of the report
11 of the examination for regained fitness to proceed performed
12 under this section.

13 ~~[(4)]~~ (7) If a defendant committed to the custody of the
14 director of health for a limited period pursuant to subsection
15 (1) is not found fit to proceed prior to the expiration of the
16 commitment, the charge for which the defendant was committed for
17 a limited period shall be dismissed. Upon dismissal of the
18 charge, the defendant shall be released from custody unless the
19 defendant is subject to prosecution for other charges, in which
20 case, unless the defendant is subject to the law governing
21 involuntary civil commitment, the court shall order the



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

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

18 ~~[(5)]~~ (8) If a defendant released on conditions for a
19 limited period pursuant to subsection (1) is not found fit to
20 proceed prior to the expiration of the release on conditions
21 order, the charge for which the defendant was released on



1 conditions for a limited period shall be dismissed. Upon
2 dismissal of the charge, the defendant shall be discharged from
3 the release on conditions unless the defendant is subject to
4 prosecution for other charges or subject to the law governing
5 involuntary civil commitment, in which case the court shall
6 order the defendant's commitment to the custody of the director
7 of health to be placed in an appropriate institution for
8 detention, care, and treatment. Within a reasonable time
9 following any other release on conditions under subsection (1),
10 the court shall appoint a panel of three qualified examiners in
11 felony cases or one qualified examiner in nonfelony cases to
12 report to the court on whether the defendant presents a
13 substantial likelihood of becoming fit to proceed in the future.
14 If, following the report, the court determines that the
15 defendant probably will remain unfit to proceed, the court may
16 dismiss the charge and:

- 17 (a) Release the defendant; or
18 (b) Subject to the law governing involuntary civil
19 commitment, order the defendant to be committed to the
20 custody of the director of health to be placed in an



1 appropriate institution for detention, care, and
2 treatment."

3 SECTION 5. Section 704-411, Hawaii Revised Statutes, is
4 amended by amending subsection (3) to read as follows:

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

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

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

1 psychologist, or a qualified physician. One of the
2 three shall be a psychiatrist or licensed psychologist
3 designated by the director of health from within the
4 department of health. The three examiners shall be
5 appointed from a list of certified examiners as
6 determined by the department of health.

7 To facilitate the examination and the proceedings thereon, the
8 court may cause the defendant, if not then confined, to be
9 committed to a hospital or other suitable facility for the
10 purpose of examination for a period not exceeding thirty days or
11 [~~such~~] a longer period as the court determines to be necessary
12 for the purpose upon written findings for good cause shown. The
13 court may direct that qualified physicians or psychologists
14 retained by the defendant be permitted to witness the
15 examination. The examination and report and the compensation of
16 persons making or assisting in the examination shall be in
17 [~~accord~~] accordance with section 704-404(3), [~~(4)-(a)~~] (5)(a) and
18 (b), [~~(6), (7), (8), and (9)~~] (7), (8), (9) and (10). As used
19 in this section, the term "licensed psychologist" includes
20 psychologists exempted from licensure by section 465-3(a)(3)."



1 SECTION 6. Section 704-414, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§704-414 Procedure upon application for discharge,
4 conditional release, or modification of conditions of release.
5 Upon filing of an application pursuant to section 704-412 for
6 discharge or conditional release, or upon the filing of an
7 application pursuant to section 704-413 for discharge or for
8 modification of conditions of release, the court shall appoint
9 three qualified examiners in felony cases and one qualified
10 examiner in nonfelony cases to examine and report upon the
11 physical and mental condition of the defendant. In felony cases
12 the court shall appoint at least one psychiatrist and at least
13 one licensed psychologist. The third member may be a
14 psychiatrist, a licensed psychologist, or a qualified physician.
15 One of the three shall be a psychiatrist or licensed
16 psychologist designated by the director of health from within
17 the department of health. The examiners shall be appointed from
18 a list of certified examiners as determined by the department of
19 health. To facilitate the examination and the proceedings
20 thereon, the court may cause the defendant, if not then
21 confined, to be committed to a hospital or other suitable



1 facility for the purpose of the examination and may direct that
 2 qualified physicians or psychologists retained by the defendant
 3 be permitted to witness the examination. The examination and
 4 report and the compensation of persons making or assisting in
 5 the examination shall be in ~~[accord]~~ accordance with section
 6 704-404(3), [~~(4)(a)~~] (5)(a) and (b), [~~(6), (7), (8), and (9).~~]
 7 (7), (8), (9), and (10). As used in this section, the term
 8 "licensed psychologist" includes psychologists exempted from
 9 licensure by section 465-3(a)(3)."

10 SECTION 7. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect on January 7, 2059.



Report Title:

Forensic Mental Health Procedures; Examinations; Fitness to Proceed; Penal Responsibility

Description:

Ensures the timely administration of mental health examinations; supports the process of expedient administration of justice; and clarifies the procedure for reevaluation of fitness to proceed after a finding of unfitness and attempts at restoration.

(SB2888 HD1)

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

