
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 is questioned, criminal proceedings stop, and the court
4 orders a physical or mental examination of the defendant to
5 determine the defendant's fitness to proceed and the defendant's
6 capacity to be subject to penal responsibility for the alleged
7 crime. Section 704-404(4), Hawaii Revised Statutes, requires
8 the court to order a forensic examiner to conduct an evaluation
9 and report on several elements including fitness to stand trial,
10 a clinical diagnosis, and penal responsibility.

11 Penal responsibility is a measure of the capacity of the
12 defendant to appreciate the wrongfulness of the defendant's
13 conduct or to conform the defendant's conduct to the
14 requirements of law at the time of the alleged conduct. An
15 evaluation of fitness includes an examination of the defendant's
16 current cognitive capacity and state of mind, but does not
17 always require a clinical diagnosis or an exhaustive review of



1 the defendant's records. Evaluation of penal responsibility and
2 clinical diagnosis are complex and time-consuming. The
3 evaluations require a thorough record review and a comprehensive
4 examination of the defendant's current cognitive status and the
5 defendant's state of mind at various points in the past.
6 Evaluations of fitness to proceed are used by the courts in each
7 instance they are ordered, but evaluations of penal
8 responsibility are rarely used because they are relevant only if
9 the affirmative defense of lack of penal responsibility is
10 asserted in criminal proceedings. Pairing the evaluations
11 together is burdensome to the process, lengthens the time to
12 complete the evaluation and report to the court, and generates a
13 report that may not be used during adjudication.

14 An evaluation that combines determinations of fitness to
15 proceed and penal responsibility into one evaluation raises
16 ethical and legal concerns. Defendants who are unfit to
17 proceed, by definition, may not have the capacity to consult
18 with defense counsel to determine the impact of providing the
19 examiner with information that could be potentially
20 incriminating. The American Bar Association's Criminal Justice
21 Mental Health Standards, Standard 7-4.4, recommends that an



1 evaluation of a defendant's mental condition at the time of the
2 alleged offense and capacity for penal responsibility should not
3 be combined in an evaluation to determine fitness to stand trial
4 unless requested by the defense or upon a showing of good cause.

5 Section 704-406, Hawaii Revised Statutes, does not provide
6 a process for the reevaluation of a defendant who was found
7 unfit to proceed but has since participated in fitness
8 restoration services provided at either the Hawaii state
9 hospital or in the community. Instead courts have ordered new
10 evaluations by a panel of three examiners for all defendants
11 charged with felonies.

12 This Act establishes a procedure that requires evaluations
13 for regained fitness to proceed by one examiner for all
14 defendants except for defendants charged with murder in the
15 first or second degrees, attempted murder in the first or second
16 degrees, or class A felonies.

17 The purpose of this Act is to decrease the time defendants
18 spend in state custody waiting for forensic mental health
19 examinations and shorten the time to reach rulings on fitness to
20 proceed and penal responsibility. This Act establishes
21 evaluations for determining initial fitness to proceed and



1 capacity for penal responsibility by one examiner for certain
2 defendants, separates evaluation for fitness to proceed and for
3 penal responsibility, and codifies procedures for reevaluation
4 of fitness to proceed.

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

8 "§704- Examination of defendant with respect to physical
9 or mental disease, disorder, or defect excluding penal
10 responsibility. (1) Whenever the defendant has filed a notice
11 of intention to rely on the defense of physical or mental
12 disease, disorder, or defect excluding penal responsibility, or
13 there is reason to believe that the physical or mental disease,
14 disorder, or defect of the defendant will or has become an issue
15 in the case, the court may order an examination as to the
16 defendant's physical or mental disease, disorder, or defect at
17 the time of the conduct alleged. The time during which
18 completion of an examination pursuant to this section is pending
19 shall be excluded in computing the time for trial commencement.
20 (2) The court shall appoint three qualified examiners in
21 felony cases and one qualified examiner in nonfelony cases to



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

20 (3) An examination performed under this section may employ
21 any method that is accepted by the professions of medicine or



1 psychology for the examination of those alleged to be affected
2 by a physical or mental disease, disorder, or defect; provided
3 that each examiner shall form and render diagnoses and opinions
4 upon the physical and mental condition of the defendant
5 independently from the other examiners, and the examiners, upon
6 approval of the court, may secure the services of clinical
7 psychologists and other medical or paramedical specialists to
8 assist in the examination and diagnosis.

9 (4) For defendants charged with felonies, the examinations
10 for fitness to proceed under section 704-404 and penal
11 responsibility under this section shall be conducted separately
12 unless a combined examination has been ordered by the court upon
13 a request by the defendant or upon a showing of good cause to
14 combine the examinations. When the examinations are separate,
15 the examination for penal responsibility under this section
16 shall not be ordered more than thirty days after a finding of
17 fitness to proceed. The report of the examination for fitness
18 to proceed shall be separate from the report of the examination
19 for penal responsibility unless a combined examination has been
20 ordered. For defendants charged with offenses other than



1 felonies, a combined examination is permissible when ordered by
2 the court.

3 (5) The court may order the examination to occur within
4 thirty days of a finding of unfit to proceed under section 704-
5 404 upon a showing of good cause.

6 (6) The report of the examination for penal responsibility
7 shall include the following:

- 8 (a) A description of the nature of the examination;
- 9 (b) A diagnosis of the physical or mental condition of the
10 defendant;
- 11 (c) 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 (d) 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 (e) 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 (7) If the examination cannot be conducted by reason of
9 the unwillingness of the defendant to participate in the
10 examination, the report shall so state and shall include, if
11 possible, an opinion as to whether the unwillingness of the
12 defendant was the result of physical or mental disease,
13 disorder, or defect.

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

18 (9) Any examiner shall be permitted to make a separate
19 explanation reasonably serving to clarify the examiner's
20 diagnosis or opinion.



1 (10) The court shall obtain all existing relevant medical,
2 mental health, social, police, and juvenile records, including
3 those expunged, and other pertinent records in the custody of
4 public agencies, notwithstanding any other statute, and make the
5 records available for inspection by the examiners in hard copy
6 or digital format. The court may order that the records so
7 obtained be made available to the prosecuting attorney and
8 counsel for the defendant in either format, subject to
9 conditions the court determines appropriate; provided that
10 juvenile records shall not be made available unless
11 constitutionally required. No further disclosure of records
12 shall be made except as permitted by law.

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

18 (12) The compensation of persons making or assisting in
19 the examination, other than those retained by a nonindigent
20 defendant, who are not undertaking the examination upon
21 designation by the director of health as part of their normal



1 duties as employees of the State or a county, shall be paid by
2 the State.

3 (13) The time during which completion of an examination
4 pursuant to this section is pending shall be excluded in
5 computing the time for trial commencement."

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

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



1 (2) Upon suspension of further proceedings in the
2 prosecution, the court shall appoint three qualified examiners
3 in felony cases and one qualified examiner in nonfelony cases to
4 examine and report upon the ~~[physical and mental condition of~~
5 ~~the defendant.]~~ defendant's fitness to proceed. In felony
6 cases, the court shall appoint as examiners at least one
7 psychiatrist and at least one licensed psychologist. The third
8 ~~[member]~~ examiner may be a psychiatrist, licensed psychologist,
9 or qualified physician. One of the three examiners shall be a
10 psychiatrist or licensed psychologist designated by the director
11 of health from within the department of health. In nonfelony
12 cases, the court may appoint as examiners either a psychiatrist
13 or a licensed psychologist. All examiners shall be appointed
14 from a list of certified examiners as determined by the
15 department of health. The court, in appropriate circumstances,
16 may appoint an additional examiner or examiners. The
17 examination may be conducted on an out-patient basis or, in the
18 court's discretion, when necessary the court may order the
19 defendant to be committed to a hospital or other suitable
20 facility for the purpose of the examination for a period not
21 exceeding thirty days, or such longer period as the court



1 determines to be necessary for the purpose. The court may
2 direct that one or more qualified physicians or psychologists
3 retained by the defendant be permitted to witness the
4 examination. As used in this section, the term "licensed
5 psychologist" includes psychologists exempted from licensure by
6 section 465-3(a)(3) [-] and "qualified physician" means a
7 physician qualified by the court for the specific evaluation
8 ordered.

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

20 (4) For defendants charged with felonies, the examinations
21 for fitness to proceed under this section and penal



1 responsibility under section 704- shall be conducted
2 separately unless a combined examination has been ordered by the
3 court upon a request by the defendant or upon a showing of good
4 cause to combine the examinations. The report of the
5 examination for fitness to proceed shall be separate from the
6 report of the examination for penal responsibility unless a
7 combined examination has been ordered. For defendants charged
8 with offenses other than felonies, a combined examination is
9 permissible when ordered by the court.

10 [~~4~~] (5) The report of the examination for fitness to
11 proceed shall include the following:

- 12 (a) A description of the nature of the examination;
- 13 [~~(b)~~] ~~A diagnosis of the physical or mental condition of the~~
14 ~~defendant;~~
- 15 ~~(e)~~ (b) An opinion as to the defendant's capacity to
16 understand the proceedings against the defendant and
17 to assist in the defendant's own defense;
- 18 [~~(d)~~] ~~An opinion as to the extent, if any, to which the~~
19 ~~capacity of the defendant to appreciate the~~
20 ~~wrongfulness of the defendant's conduct or to conform~~



- 1 ~~the defendant's conduct to the requirements of law was~~
2 ~~impaired at the time of the conduct alleged;~~
- 3 ~~(e) When directed by the court, an opinion as to the~~
4 ~~capacity of the defendant to have a particular state~~
5 ~~of mind that is required to establish an element of~~
6 ~~the offense charged; and~~
- 7 ~~(f) Where more than one examiner is appointed, a statement~~
8 ~~that the diagnosis and opinion rendered were arrived~~
9 ~~at independently of any other examiner, unless there~~
10 ~~is a showing to the court of a clear need for~~
11 ~~communication between or among the examiners for~~
12 ~~clarification. A description of the communication~~
13 ~~shall be included in the report. After all reports~~
14 ~~are submitted to the court, examiners may confer~~
15 ~~without restriction.]~~
- 16 (c) An assessment of the risk of danger to the defendant
17 or to the person or property of others for
18 consideration and determination of the defendant's
19 release on conditions; and
- 20 (d) Where more than one examiner is appointed, a statement
21 that the opinion rendered was arrived at independently



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

7 ~~[(5)]~~ (6) If the examination cannot be conducted by reason
8 of the unwillingness of the defendant to participate ~~[therein,~~
9 in the examination, the report shall so state and shall include,
10 if possible, an opinion as to whether ~~[such]~~ the unwillingness
11 of the defendant was the result of physical or mental disease,
12 disorder, or defect.

13 ~~[(6)]~~ (7) Three copies of the report of the examination,
14 including any supporting documents, shall be filed with the
15 clerk of the court, who shall cause copies to be delivered to
16 the prosecuting attorney and to counsel for the defendant.

17 ~~[(7)]~~ (8) Any examiner shall be permitted to make a
18 separate explanation reasonably serving to clarify the
19 examiner's ~~[diagnosis or]~~ opinion.

20 ~~[(8)]~~ (9) The court shall obtain all existing relevant
21 medical, mental health, social, police, and juvenile records,



1 including those expunged, and other pertinent records in the
2 custody of public agencies, notwithstanding any other
3 [~~statutes,~~] statute, and make [~~such~~] the records available for
4 inspection by the examiners[-] in hard copy or digital format.
5 The court may order that the records so obtained be made
6 available to the prosecuting attorney and counsel for the
7 defendant in either format, subject to conditions the court
8 determines appropriate; provided that juvenile records shall not
9 be made available unless constitutionally required. No further
10 disclosure of records shall be made except as permitted by law.
11 If, pursuant to this section, the court orders the defendant
12 committed to a hospital or other suitable facility under the
13 control of the director of health, then the county police
14 departments shall provide to the director of health and the
15 defendant copies of all police reports from cases filed against
16 the defendant [~~which~~] that have been adjudicated by the
17 acceptance of a plea of guilty or no contest, a finding of
18 guilt, acquittal, acquittal pursuant to section 704-400, or by
19 the entry of plea of guilty or no contest made pursuant to
20 chapter 853, so long as the disclosure to the director of health
21 and the defendant does not frustrate a legitimate function of



1 the county police departments, with the exception of expunged
2 records, records of or pertaining to any adjudication or
3 disposition rendered in the case of a juvenile, or records
4 containing data from the United States National Crime
5 Information Center. The county police departments shall
6 segregate or sanitize from the police reports information that
7 would result in the [~~likelihood~~] likely or actual identification
8 of individuals who furnished information in connection with its
9 investigation, or who were of investigatory interest. [~~Records~~
10 ~~shall not be re-disclosed except to the extent permitted by~~
11 ~~law.~~] No further disclosure of records shall be made except as
12 provided by law.

13 [~~9~~] (10) All public agencies in possession of relevant
14 medical, mental health, social, police, and juvenile records,
15 and any other pertinent records of a defendant ordered to be
16 examined under this chapter, shall provide those records to the
17 court, notwithstanding any other state statute.

18 [~~10~~] (11) The compensation of persons making or
19 assisting in the examination, other than those retained by [~~the~~]
20 a nonindigent defendant, who are not undertaking the examination
21 upon designation by the director of health as part of their



1 normal duties as employees of the State or a county, shall be
2 paid by the State."

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

5 "§704-406 Effect of finding of unfitness to proceed[-] and
6 regained fitness to proceed. (1) If the court determines that

7 the defendant lacks fitness to proceed, the proceeding against
8 the defendant shall be suspended, except as provided in section
9 704-407, and the court shall commit the defendant to the custody
10 of the director of health to be placed in an appropriate
11 institution for detention, care, and treatment; provided that
12 the commitment shall be limited in certain cases as follows:

13 (a) When the defendant is charged with a petty misdemeanor
14 not involving violence or attempted violence, the
15 commitment shall be limited to no longer than sixty
16 days from the date the court determines the defendant
17 lacks fitness to proceed; and

18 (b) When the defendant is charged with a misdemeanor not
19 involving violence or attempted violence, the
20 commitment shall be limited to no longer than one



1 hundred twenty days from the date the court determines
2 the defendant lacks fitness to proceed.
3 If the court is satisfied that the defendant may be released on
4 conditions without danger to the defendant or to [~~the person~~]
5 another or risk of substantial danger to property of others, the
6 court shall order the defendant's release, which shall continue
7 at the discretion of the court, on conditions the court
8 determines necessary; provided that the release on conditions of
9 a defendant charged with a petty misdemeanor not involving
10 violence or attempted violence shall continue for no longer than
11 sixty days, and the release on conditions of a defendant charged
12 with a misdemeanor not involving violence or attempted violence
13 shall continue for no longer than one hundred twenty days. A
14 copy of the report filed pursuant to section 704-404 shall be
15 attached to the order of commitment or order of release on
16 conditions. When the defendant is committed to the custody of
17 the director of health for detention, care, and treatment, the
18 county police departments shall provide to the director of
19 health and the defendant copies of all police reports from cases
20 filed against the defendant that have been adjudicated by the
21 acceptance of a plea of guilty or nolo contendere, a finding of



1 guilt, acquittal, acquittal pursuant to section 704-400, or by
2 the entry of a plea of guilty or nolo contendere made pursuant
3 to chapter 853, so long as the disclosure to the director of
4 health and the defendant does not frustrate a legitimate
5 function of the county police departments; provided that
6 expunged records, records of or pertaining to any adjudication
7 or disposition rendered in the case of a juvenile, or records
8 containing data from the United States National Crime
9 Information Center shall not be provided. The county police
10 departments shall segregate or sanitize from the police reports
11 information that would result in the [+]likely[+] or actual
12 identification of individuals who furnished information in
13 connection with the investigation or who were of investigatory
14 interest. ~~[Records shall not be re-disclosed except to the~~
15 ~~extent permitted by law.] No further disclosure of records~~
16 shall be made except as provided by law.

17 (2) When the defendant is released on conditions after a
18 finding of unfitness to proceed, the department of health shall
19 establish and monitor a fitness restoration program consistent
20 with conditions set by the court order of release, and shall
21 inform the prosecuting attorney of the county that charged the



1 defendant of the program and report the defendant's compliance
2 therewith.

3 [+] (3) [+] When the court, on its own motion or upon the
4 application of the director of health, the prosecuting attorney,
5 or the defendant, [~~determines, after a hearing if a hearing is~~
6 ~~requested,~~] has reason to believe that the defendant has
7 regained fitness to proceed, [~~the penal proceeding shall be~~
8 ~~resumed.~~] for a defendant charged with the offense of murder in
9 the first or second degree, attempted murder in the first or
10 second degree, or a class A felony, the court shall appoint
11 three qualified examiners and may appoint in all other cases one
12 qualified examiner, to examine and report upon the physical and
13 mental condition of the defendant. In cases in which the
14 defendant has been charged with murder in the first or second
15 degree, attempted murder in the first or second degree, or a
16 class A felony, the court shall appoint as examiners at least
17 one psychiatrist and at least one licensed psychologist. The
18 third examiner may be a psychiatrist, licensed psychologist, or
19 qualified physician. One of the three examiners shall be a
20 psychiatrist or licensed psychologist designated by the director
21 of health from within the department of health. In all other



1 cases, the one qualified examiner shall be a psychiatrist or
2 licensed psychologist designated by the director of health from
3 within the department of health. The court, in appropriate
4 circumstances, may appoint an additional examiner or examiners.
5 All examiners shall be appointed from a list of certified
6 examiners as determined by the department of health. After a
7 hearing, if a hearing is requested, if the court determines that
8 the defendant has regained fitness to proceed, the penal
9 proceeding shall be resumed and the defendant shall no longer be
10 committed to the custody of the director of health. In cases
11 where a defendant is charged with the offense of murder in the
12 first or second degree, attempted murder in the first or second
13 degree, or a class A felony, upon the request of the prosecuting
14 attorney or the defendant, and in consideration of information
15 provided by the defendant's clinical team, the court may order
16 that the defendant remain in the custody of the director of
17 health, for good cause shown, subject to bail or until a
18 judgment on the verdict or a finding of guilt after a plea of
19 guilty or nolo contendere. Thereafter, the court may consider a
20 request from the director of health to rescind its order
21 maintaining the defendant in the director's custody, for good



1 cause shown. As used in this section, the term "qualified
2 physician" means a physician qualified by the court for the
3 specific evaluation ordered. If, however, the court is of the
4 view that so much time has elapsed since the commitment or
5 release on conditions of the defendant that it would be unjust
6 to resume the proceeding, the court may dismiss the charge and:
7 (a) Order the defendant to be discharged;
8 (b) Subject to the law governing the involuntary civil
9 commitment of persons affected by physical or mental
10 disease, disorder, or defect, order the defendant to
11 be committed to the custody of the director of health
12 to be placed in an appropriate institution for
13 detention, care, and treatment; or
14 (c) Subject to the law governing involuntary outpatient
15 treatment, order the defendant to be released on
16 conditions the court determines necessary.
17 (4) An examination for regained fitness to proceed
18 performed under this section may employ any method that is
19 accepted by the professions of medicine or psychology for the
20 examination of those alleged to be affected by a physical or
21 mental disease, disorder, or defect, and shall include a review



1 of records where the defendant, while under the custody of the
2 director of health, was placed; provided that each examiner
3 shall form and render an opinion on the defendant's regained
4 fitness to proceed independently from the other examiners and
5 the examiners, upon approval of the court, may secure the
6 services of clinical psychologists and other medical or
7 paramedical specialists to assist in the examination.

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

- 10 (a) A description of the nature of the examination;
11 (b) An opinion as to the defendant's capacity to
12 understand the proceedings against the defendant and
13 to assist in the defendant's own defense; and
14 (c) Where more than one examiner is appointed, a statement
15 that the opinion rendered was arrived at independently
16 of any other examiner, unless there is a showing to
17 the court of a clear need for communication between or
18 among the examiners for clarification. A description
19 of the communication shall be included in the report.
20 After all reports are submitted to the court,
21 examiners may confer without restriction.



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

5 [~~4~~] (7) 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 three qualified
21 examiners in felony cases or one qualified examiner in nonfelony



1 cases to make a report. If, following a report, the court
2 determines that the defendant probably will remain unfit to
3 proceed, the court may dismiss the charge and:

- 4 (a) Release the defendant; or
5 (b) Subject to the law governing involuntary civil
6 commitment, order the defendant to be committed to the
7 custody of the director of health to be placed in an
8 appropriate institution for detention, care, and
9 treatment.

10 ~~[(5)]~~ (8) If a defendant released on conditions for a
11 limited period pursuant to subsection (1) is not found fit to
12 proceed prior to the expiration of the release on conditions
13 order, the charge for which the defendant was released on
14 conditions for a limited period shall be dismissed. Upon
15 dismissal of the charge, the defendant shall be discharged from
16 the release on conditions unless the defendant is subject to
17 prosecution for other charges or subject to the law governing
18 involuntary civil commitment, in which case the court shall
19 order the defendant's commitment to the custody of the director
20 of health to be placed in an appropriate institution for
21 detention, care, and treatment. Within a reasonable time



1 following any other release on conditions under subsection (1),
 2 the court shall appoint a panel of three qualified examiners in
 3 felony cases or one qualified examiner in nonfelony cases to
 4 report to the court on whether the defendant presents a
 5 substantial likelihood of becoming fit to proceed in the future.
 6 If, following the report, the court determines that the
 7 defendant probably will remain unfit to proceed, the court may
 8 dismiss the charge and:

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

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

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

- 18 (a) In nonfelony cases, the court shall appoint a
 19 qualified examiner to examine and report upon the
 20 physical and mental condition of the defendant. The
 21 court may appoint either a psychiatrist or a licensed



1 psychologist. The examiner may be designated by the
2 director of health from within the department of
3 health. The examiner shall be appointed from a list
4 of certified examiners as determined by the department
5 of health. The court, in appropriate circumstances,
6 may appoint an additional examiner or examiners; and
7 (b) In felony cases, the court shall appoint three
8 qualified examiners to examine and report upon the
9 physical and mental condition of the defendant. In
10 each case, the court shall appoint at least one
11 psychiatrist and at least one licensed psychologist.
12 The third member may be a psychiatrist, a licensed
13 psychologist, or a qualified physician. One of the
14 three shall be a psychiatrist or licensed psychologist
15 designated by the director of health from within the
16 department of health. The three examiners shall be
17 appointed from a list of certified examiners as
18 determined by the department of health.

19 To facilitate the examination and the proceedings thereon, the
20 court may cause the defendant, if not then confined, to be
21 committed to a hospital or other suitable facility for the



1 purpose of examination for a period not exceeding thirty days or
2 [~~sueh~~] a longer period as the court determines to be necessary
3 for the purpose upon written findings for good cause shown. The
4 court may direct that qualified physicians or psychologists
5 retained by the defendant be permitted to witness the
6 examination. The examination and report and the compensation of
7 persons making or assisting in the examination shall be in
8 [~~accord~~] accordance with section 704-404(3), [~~(4)(a)~~] (5)(a) and
9 (b), [~~(6), (7), (8), and (9)~~] (7), (8), (9), (10), and (11).

10 As used in this section, the term "licensed psychologist"
11 includes psychologists exempted from licensure by section 465-
12 3(a)(3) [~~-~~] and "qualified physician" means a physician qualified
13 by the court for the specific evaluation ordered."

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

16 "§704-414 Procedure upon application for discharge,
17 conditional release, or modification of conditions of release.
18 Upon filing of an application pursuant to section 704-412 for
19 discharge or conditional release, or upon the filing of an
20 application pursuant to section 704-413 for discharge or for
21 modification of conditions of release, the court shall appoint



1 three qualified examiners in felony cases and one qualified
2 examiner in nonfelony cases to examine and report upon the
3 physical and mental condition of the defendant. In felony cases
4 the court shall appoint at least one psychiatrist and at least
5 one licensed psychologist. The third member may be a
6 psychiatrist, a licensed psychologist, or a qualified physician.
7 One of the three shall be a psychiatrist or licensed
8 psychologist designated by the director of health from within
9 the department of health. The examiners shall be appointed from
10 a list of certified examiners as determined by the department of
11 health. To facilitate the examination and the proceedings
12 thereon, the court may cause the defendant, if not then
13 confined, to be committed to a hospital or other suitable
14 facility for the purpose of the examination and may direct that
15 qualified physicians or psychologists retained by the defendant
16 be permitted to witness the examination. The examination and
17 report and the compensation of persons making or assisting in
18 the examination shall be in [~~accord~~] accordance with section
19 704-404(3), [~~(4)(a)~~] (5)(a) and (b), [~~(6), (7), (8), and (9).~~]
20 (7), (8), (9), (10), and (11). As used in this section, the
21 term "licensed psychologist" includes psychologists exempted



1 from licensure by section 465-3(a)(3) [-] and "qualified
2 physician" means a physician qualified by the court for the
3 specific evaluation ordered."

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



Report Title:

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

Description:

Ensures the timely administration of mental health examinations. Separates examination for fitness to proceed from examinations to determine capacity for penal responsibility. Clarifies the procedure after a finding of unfit to proceed to reevaluate and restore fitness to proceed. (SB2888 HD2)

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

