
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 was 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 an exhaustive record review, as it involves an
17 examination of a defendant's current cognitive capacity and
18 state. An evaluation of penal responsibility and clinical



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

14 Furthermore, pairing fitness and penal responsibility in
15 one evaluation implicates ethical and legal concerns because
16 defendants who are unfit to proceed, by definition, may not have
17 sufficient capacity to consult with defense counsel to determine
18 the impact of providing incriminating information to the
19 examiner relevant to the defendant's state of mind at the time
20 of the crime. The American Bar Association's Criminal Justice
21 Mental Health Standards, Standard 7-4.4, recommends that an



1 evaluation of the defendant's mental condition at the time of
2 the alleged offense and penal responsibility should not be
3 combined in any evaluation to determine fitness to stand trial
4 unless the defense requests it or unless good cause is shown.

5 The legislature further finds that although section 704-
6 406, Hawaii Revised Statutes, does not provide a process for the
7 reevaluation of a defendant who had been found unfit to proceed
8 but has participated in fitness restoration services either at
9 Hawaii state hospital or in the community, the custom has been
10 for the court to order new three-panel evaluations for
11 defendants charged with felonies. This Act proposes a procedure
12 that would require only one evaluation for defendants who have
13 been charged with crimes other than murder in the first and
14 second degrees, attempted murder in the first and second
15 degrees, and class A felonies, which, along with not requiring a
16 combined evaluation of penal responsibility, is intended to
17 speed up the process of obtaining these evaluations, especially
18 for defendants accused of committing felonies.

19 The purpose of this Act is to shorten the amount of time
20 defendants spend in state custody awaiting forensic mental
21 health examinations and the resultant rulings on fitness to



1 proceed and penal responsibility, by establishing separate
2 evaluations for fitness to proceed and for penal responsibility,
3 with certain exceptions.

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

7 "§704- Examination of defendant with respect to physical
8 or mental disease, disorder, or defect excluding fitness to
9 proceed. (1) Whenever the defendant has filed a notice of
10 intention to rely on the defense of physical or mental disease,
11 disorder, or defect excluding penal responsibility, or there is
12 reason to believe that the physical or mental disease, disorder,
13 or defect of the defendant will or has become an issue in the
14 case, the court may order an examination as to the defendant's
15 physical or mental disease, disorder, or defect at the time of
16 the conduct. All proceedings in the prosecution shall be
17 suspended pending the completion of the examination as to the
18 defendant's physical or mental condition at the time of the
19 conduct.

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 either a psychiatrist or a licensed
10 psychologist. All examiners shall be appointed from a list of
11 certified examiners as determined by the department of health.
12 The court, in appropriate circumstances, may appoint an
13 additional examiner or examiners. The court may direct that one
14 or more qualified physicians or psychologists retained by the
15 defendant be permitted to witness the examination. As used in
16 this section, the term "licensed psychologist" includes
17 psychologists exempted from licensure by section 465-3(a)(3).

18 (3) An examination performed under this section may employ
19 any method that is accepted by the professions of medicine or
20 psychology for the examination of those alleged to be affected
21 by a physical or mental disease, disorder, or defect; provided



1 that each examiner shall form and render diagnoses and opinions
2 upon the physical and mental condition of the defendant
3 independently from the other examiners, and the examiners, upon
4 approval of the court, may secure the services of clinical
5 psychologists and other medical or paramedical specialists to
6 assist in the examination and diagnosis.

7 (4) The examinations for fitness to proceed and penal
8 responsibility shall be conducted separately unless a combined
9 examination has been ordered by the court upon a request by the
10 defendant or upon a showing of good cause to combine the
11 examinations. When the examinations are separate, the court
12 shall order the examination for penal responsibility no later
13 than thirty days of a finding of fitness to proceed. The report
14 of the examination for fitness to proceed shall be separate from
15 the report of the examination for penal responsibility.

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

- 18 (a) A description of the nature of the examination;
19 (b) A diagnosis of the physical or mental condition of the
20 defendant;



1 (c) An opinion as to the extent, if any, to which the
2 capacity of the defendant to appreciate the
3 wrongfulness of the defendant's conduct or to conform
4 the defendant's conduct to the requirements of law was
5 impaired at the time of the conduct alleged;

6 (d) When directed by the court, an opinion as to the
7 capacity of the defendant to have a particular state
8 of mind that is required to establish an element of
9 the offense charged; and

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

19 (6) If the examination cannot be conducted by reason of
20 the unwillingness of the defendant to participate in the
21 examination, the report shall so state and shall include, if



1 possible, an opinion as to whether the unwillingness of the
2 defendant was the result of physical or mental disease,
3 disorder, or defect.

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

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

11 (9) The court shall obtain all existing relevant medical,
12 mental health, social, police, and juvenile records, including
13 those expunged, and other pertinent records in the custody of
14 public agencies, notwithstanding any other statute, and make the
15 records available for inspection by the examiners in hard copy
16 or digital format. The court may order that the records so
17 obtained be made available to the prosecuting attorney and
18 counsel for the defendant in either format, subject to
19 conditions the court determines appropriate. No further
20 disclosure of records shall be made except as permitted by law.



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

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

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

14 "**§704-404 Examination of defendant with respect to**
15 **physical or mental disease, disorder, or defect[-] excluding**
16 **penal responsibility.** (1) Whenever [~~the defendant has filed a~~
17 ~~notice of intention to rely on the defense of physical or mental~~
18 ~~disease, disorder, or defect excluding responsibility, or]~~ there
19 is reason to doubt the defendant's fitness to proceed, [~~or~~
20 ~~reason to believe that the physical or mental disease, disorder,~~
21 ~~or defect of the defendant will or has become an issue in the~~



1 ~~ease,~~] the court may immediately suspend all further proceedings
2 in the prosecution. If a trial jury has been empanelled, it
3 shall be discharged or retained at the discretion of the court.
4 The discharge of the trial jury shall not be a bar to further
5 prosecution.

6 (2) Upon suspension of further proceedings in the
7 prosecution, the court shall appoint three qualified examiners
8 in felony cases and one qualified examiner in nonfelony cases to
9 examine and report upon the ~~[physical and mental condition of~~
10 ~~the defendant.]~~ defendant's fitness to proceed. In felony
11 cases, the court shall appoint at least one psychiatrist and at
12 least one licensed psychologist. The third ~~member~~ examiner
13 may be a psychiatrist, licensed psychologist, or qualified
14 physician. One of the three examiners shall be a psychiatrist
15 or licensed psychologist designated by the director of health
16 from within the department of health. In nonfelony cases, the
17 court may appoint either a psychiatrist or a licensed
18 psychologist. All examiners shall be appointed from a list of
19 certified examiners as determined by the department of health.
20 The court, in appropriate circumstances, may appoint an
21 additional examiner or examiners. The examination may be

1 conducted on an out-patient basis or, in the court's discretion,
2 when necessary the court may order the defendant to be committed
3 to a hospital or other suitable facility for the purpose of the
4 examination for a period not exceeding thirty days, or such
5 longer period as the court determines to be necessary for the
6 purpose. The court may direct that one or more qualified
7 physicians or psychologists retained by the defendant be
8 permitted to witness the examination. As used in this section,
9 the term "licensed psychologist" includes psychologists exempted
10 from licensure by section 465-3(a)(3).

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



1 (4) The examinations for fitness to proceed and penal
2 responsibility under section 704- shall be conducted
3 separately unless a combined examination has been ordered by the
4 court upon a request by the defendant or upon a showing of good
5 cause to combine the examinations. The report of the
6 examination for fitness to proceed shall be separate from the
7 report of the examination for penal responsibility.

8 ~~[(4)]~~ (5) The report of the examination for fitness to
9 proceed shall include the following:

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



1 ~~(e) When directed by the court, an opinion as to the~~
2 ~~capacity of the defendant to have a particular state~~
3 ~~of mind that is required to establish an element of~~
4 ~~the offense charged; and~~

5 ~~(f) Where more than one examiner is appointed, a statement~~
6 ~~that the diagnosis and opinion rendered were arrived~~
7 ~~at independently of any other examiner, unless there~~
8 ~~is a showing to the court of a clear need for~~
9 ~~communication between or among the examiners for~~
10 ~~clarification. A description of the communication~~
11 ~~shall be included in the report. After all reports~~
12 ~~are submitted to the court, examiners may confer~~
13 ~~without restriction.]~~

14 (c) An assessment of the risk of danger to the defendant
15 or to the person or property of others for
16 consideration and determination of the defendant's
17 release on conditions; and

18 (d) Where more than one examiner is appointed, a statement
19 that the opinion rendered was arrived at independently
20 of any other examiner, unless there is a showing to
21 the court of a clear need for communication between or



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

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

11 ~~[(6)]~~ (7) Three copies of the report of the examination,
12 including any supporting documents, shall be filed with the
13 clerk of the court, who shall cause copies to be delivered to
14 the prosecuting attorney and to counsel for the defendant.

15 ~~[(7)]~~ (8) Any examiner shall be permitted to make a
16 separate explanation reasonably serving to clarify the
17 examiner's ~~[diagnosis or]~~ opinion.

18 ~~[(8)]~~ (9) The court shall obtain all existing relevant
19 medical, mental health, social, police, and juvenile records,
20 including those expunged, and other pertinent records in the
21 custody of public agencies, notwithstanding any other



1 ~~[statutes,]~~ statute, and make ~~[such]~~ the records available for
2 inspection by the examiners~~[-]~~ in hard copy or digital format.
3 The court may order that the records so obtained be made
4 available to the prosecuting attorney and counsel for the
5 defendant in either format, subject to conditions the court
6 determines appropriate. If, pursuant to this section, the court
7 orders the defendant committed to a hospital or other suitable
8 facility under the control of the director of health, then 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 ~~[which]~~ that have been adjudicated
12 by the acceptance of a plea of guilty or no contest, a finding
13 of guilt, acquittal, acquittal pursuant to section 704-400, or
14 by the entry of plea of guilty or no contest made pursuant to
15 chapter 853, so long as the disclosure to the director of health
16 and the defendant does not frustrate a legitimate function of
17 the county police departments, with the exception of expunged
18 records, records of or pertaining to any adjudication or
19 disposition rendered in the case of a juvenile, or records
20 containing data from the United States National Crime
21 Information Center. The county police departments shall



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

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

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

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



1 "§704-406 Effect of finding of unfitness to proceed[-] and
2 regained fitness to proceed. (1) If the court determines that
3 the defendant lacks fitness to proceed, the proceeding against
4 the defendant shall be suspended, except as provided in section
5 704-407, and the court shall commit the defendant to the custody
6 of the director of health to be placed in an appropriate
7 institution for detention, care, and treatment; provided that
8 the commitment shall be limited in certain cases as follows:

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

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

19 If the court is satisfied that the defendant may be released on
20 conditions without danger to the defendant or to [~~the person~~]
21 another or risk of substantial danger to property of others, the



1 court shall order the defendant's release, which shall continue
2 at the discretion of the court, on conditions the court
3 determines necessary; provided that the release on conditions of
4 a defendant charged with a petty misdemeanor not involving
5 violence or attempted violence shall continue for no longer than
6 sixty days, and the release on conditions of a defendant charged
7 with a misdemeanor not involving violence or attempted violence
8 shall continue for no longer than one hundred twenty days. A
9 copy of the report filed pursuant to section 704-404 shall be
10 attached to the order of commitment or order of release on
11 conditions. When the defendant is committed to the custody of
12 the director of health for detention, care, and treatment, the
13 county police departments shall provide to the director of
14 health and the defendant copies of all police reports from cases
15 filed against the defendant that have been adjudicated by the
16 acceptance of a plea of guilty or nolo contendere, a finding of
17 guilt, acquittal, acquittal pursuant to section 704-400, or by
18 the entry of a plea of guilty or nolo contendere made pursuant
19 to chapter 853, so long as the disclosure to the director of
20 health and the defendant does not frustrate a legitimate
21 function of the county police departments; provided that



1 expunged records, records of or pertaining to any adjudication
2 or disposition rendered in the case of a juvenile, or records
3 containing data from the United States National Crime
4 Information Center shall not be provided. The county police
5 departments shall segregate or sanitize from the police reports
6 information that would result in the [+]likely[+] or actual
7 identification of individuals who furnished information in
8 connection with the investigation or who were of investigatory
9 interest. Records shall not be re-disclosed except to the
10 extent permitted by law.

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

18 [+] (3) [+] When the court, on its own motion or upon the
19 application of the director of health, the prosecuting attorney,
20 or the defendant, [~~determines, after a hearing if a hearing is~~
21 ~~requested,~~] has reason to believe that the defendant has



1 ~~regained fitness to proceed, [the penal proceeding shall be~~
2 ~~resumed.]~~ for a defendant charged with the offense of murder in
3 the first or second degree, attempted murder in the first or
4 second degree, a class A felony, or a felony for which charging
5 by written information is not permitted by section 806-83, the
6 court shall appoint three qualified examiners and may appoint in
7 all other cases one qualified examiner, to examine and report
8 upon the physical and mental condition of the defendant. In
9 such cases, the court shall appoint at least one psychiatrist
10 and at least one licensed psychologist. The third examiner may
11 be a psychiatrist, licensed psychologist, or qualified
12 physician. One of the three examiners shall be a psychiatrist
13 or licensed psychologist designated by the director of health
14 from within the department of health. In all other cases, the
15 one qualified examiner shall be a psychiatrist or licensed
16 psychologist designated by the director of health from within
17 the department of health. All examiners shall be appointed from
18 a list of certified examiners as determined by the department of
19 health. After a hearing, if a hearing is requested, if the
20 court determines that the defendant has regained fitness to
21 proceed, the penal proceeding shall be resumed and the defendant



1 shall no longer be committed to the custody of the director of
2 health. In cases where a defendant is charged with the offense
3 of murder in the first or second degree, attempted murder in the
4 first or second degree, a class A felony, or a felony for which
5 charging by written information is not permitted by section 806-
6 83, upon the request of the prosecuting attorney or the
7 defendant, and in consideration of information provided by the
8 defendant's clinical team, the court may order that the
9 defendant remain in the custody of the director of health, for
10 good cause shown, subject to bail or until a judgment on the
11 verdict or a finding of guilt after a plea of guilty or nolo
12 contendere. Thereafter, the court may consider a request from
13 the director of health to rescind its order maintaining the
14 defendant in the director's custody, for good cause shown. If,
15 however, the court is of the view that so much time has elapsed
16 since the commitment or release on conditions of the defendant
17 that it would be unjust to resume the proceeding, the court may
18 dismiss the charge and:

- 19 (a) Order the defendant to be discharged;
- 20 (b) Subject to the law governing the involuntary civil
- 21 commitment of persons affected by physical or mental



1 disease, disorder, or defect, order the defendant to
2 be committed to the custody of the director of health
3 to be placed in an appropriate institution for
4 detention, care, and treatment; or

5 (c) Subject to the law governing involuntary outpatient
6 treatment, order the defendant to be released on
7 conditions the court determines necessary.

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

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

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



- 1 (b) An opinion as to the defendant's capacity to
2 understand the proceedings against the defendant and
3 to assist in the defendant's own defense; and
- 4 (c) Where more than one examiner is appointed, a statement
5 that the opinion rendered was arrived at independently
6 of any other examiner, unless there is a showing to
7 the court of a clear need for communication between or
8 among the examiners for clarification. A description
9 of the communication shall be included in the report.
10 After all reports are submitted to the court,
11 examiners may confer without restriction.
- 12 (6) All other procedures as set out in section 704-404(6)
13 through (11) shall be followed for the completion of the report
14 of the examination for regained fitness to proceed performed
15 under this section.
- 16 [~~4~~] (7) If a defendant committed to the custody of the
17 director of health for a limited period pursuant to subsection
18 (1) is not found fit to proceed prior to the expiration of the
19 commitment, the charge for which the defendant was committed for
20 a limited period shall be dismissed. Upon dismissal of the
21 charge, the defendant shall be released from custody unless the



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

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



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

21 (a) Release the defendant; or



1 (b) Subject to the law governing involuntary civil
2 commitment, order the defendant to be committed to the
3 custody of the director of health to be placed in an
4 appropriate institution for detention, care, and
5 treatment."

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

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

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

19 (b) In felony cases, the court shall appoint three
20 qualified examiners to examine and report upon the
21 physical and mental condition of the defendant. In



1 each case, the court shall appoint at least one
2 psychiatrist and at least one licensed psychologist.
3 The third member may be a psychiatrist, a licensed
4 psychologist, or a qualified physician. One of the
5 three shall be a psychiatrist or licensed psychologist
6 designated by the director of health from within the
7 department of health. The three examiners shall be
8 appointed from a list of certified examiners as
9 determined by the department of health.

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



1 in this section, the term "licensed psychologist" includes
2 psychologists exempted from licensure by section 465-3(a)(3)."

3 SECTION 6. 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 three qualified examiners in felony cases and one qualified
12 examiner in nonfelony cases to examine and report upon the
13 physical and mental condition of the defendant. In felony cases
14 the court shall appoint at least one psychiatrist and at least
15 one licensed psychologist. The third member may be a
16 psychiatrist, a licensed psychologist, or a qualified physician.
17 One of the three shall be a psychiatrist or licensed
18 psychologist designated by the director of health from within
19 the department of health. The examiners shall be appointed from
20 a list of certified examiners as determined by the department of
21 health. To facilitate the examination and the proceedings



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

12 SECTION 7. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 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. Takes effect on 1/7/2059. (SD2)

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

