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## A BILL FOR AN ACT

RELATING TO MENTAL HEALTH EXAMINATIONS.

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

1           SECTION 1. The legislature finds that there are a number  
2 of unmedicated mentally ill persons in the State who need to  
3 become stabilized before they are allowed into a shelter or a  
4 home. However, there is currently a shortage of beds in the  
5 community available to help these persons.

6           The state hospital in Kaneohe is currently used primarily  
7 to house persons who have been acquitted of criminal charges on  
8 the grounds of physical or mental disease, disorder, or defect  
9 pursuant to section 704-411, Hawaii Revised Statutes, or those  
10 who are awaiting a determination of whether they are fit to  
11 proceed with trial under section 704-404, Hawaii Revised  
12 Statutes.

13           The legislature finds that although there is a legitimate  
14 need to house acquitted persons within the state hospital, the  
15 State must determine a defendant's fitness to proceed in an  
16 expeditious manner. The adoption of such a policy will benefit  
17 all parties by preventing undue delay in the adjudication of the



1 defendant's charges while also making efficient use of the  
2 department of health's limited facilities, potentially opening  
3 more beds that could be used to stabilize persons suffering from  
4 acute episodic psychosis, especially those among the State's  
5 homeless population.

6 The purpose of this Act is to:

7 (1) Prohibit a court from committing a person to a  
8 suitable facility for a mental health examination for  
9 more than thirty days;

10 (2) Provide that if the required examinations cannot be  
11 conducted within thirty days, the court shall  
12 determine whether the defendant is eligible for  
13 supervised pretrial release or should be remanded to  
14 the custody of the department of public safety; and

15 (3) Provide that the court has discretion to approve any  
16 agreement or stipulation of the parties to determine  
17 the fitness of a defendant to proceed with less than  
18 the number of required examinations.

19 SECTION 2. Section 704-404, Hawaii Revised Statutes, is  
20 amended by amending subsection (2) to read as follows:



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,  
4 to examine and report upon the defendant's fitness to proceed.  
5 In felony cases, the court shall appoint as examiners at least  
6 one psychiatrist and at least one licensed psychologist. The  
7 third examiner may be a psychiatrist, licensed psychologist, or  
8 qualified physician. One of the three examiners shall be a  
9 psychiatrist or licensed psychologist designated by the director  
10 of health from within the department of health. In nonfelony  
11 cases, the court may appoint as examiners either a psychiatrist  
12 or a licensed psychologist. All examiners shall be appointed  
13 from a list of certified examiners as determined by the  
14 department of health. The court, in appropriate circumstances,  
15 may appoint an additional examiner or examiners. The  
16 examination may be conducted while the defendant is in custody  
17 or on release or, in the court's discretion, when necessary the  
18 court may order the defendant to be committed to a hospital or  
19 other suitable facility for the purpose of the examination for a  
20 period not exceeding thirty days[~~, or a longer period as the~~  
21 ~~court determines to be necessary for the purpose~~]. If all



1 required examinations cannot be conducted within thirty days,  
2 the court shall determine whether the defendant is eligible for  
3 supervised pretrial release or remand the defendant to the  
4 custody of the department of public safety pending final  
5 adjudication of all charges. Notwithstanding any other  
6 provision of this section to the contrary, the court shall have  
7 continuing discretion to approve any agreement or stipulation of  
8 the parties to determine the fitness of a defendant to proceed  
9 with less than the number of required examinations under this  
10 section. The court may direct that one or more qualified  
11 physicians or psychologists retained by the defendant be  
12 permitted to witness the examination. As used in this section,  
13 the term "licensed psychologist" includes psychologists exempted  
14 from licensure by section 465-3(a)(3) and "qualified physician"  
15 means a physician qualified by the court for the specific  
16 evaluation ordered."

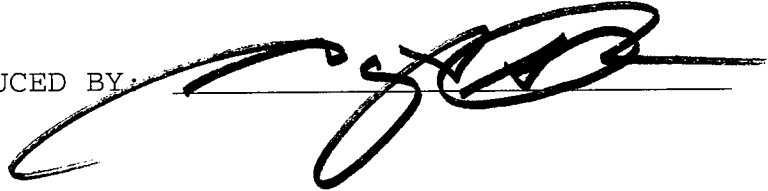
17 SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 22 2019



**Report Title:**

Mental Health Evaluations; Fitness to Proceed; Involuntary Commitment

**Description:**

Prohibits a court from committing a defendant to a suitable facility for a mental health examination for more than 30 days. Provides that if the required examinations cannot be conducted within 30 days, the court shall determine whether the defendant is eligible for supervised pretrial release or should be remanded to the custody of the Department of Public Safety. Provides that the court has continuing discretion to approve any agreement or stipulation of the parties to determine the fitness of a defendant to proceed with less than the number of required examinations.

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

