
A BILL FOR AN ACT

RELATING TO PENAL RESPONSIBILITY.

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

1 SECTION 1. The legislature finds that the recommendations
2 of the Hawaii Summit on Improving the Governmental Response to
3 Community Mental Illness hosted by the State Justice Institute,
4 National Center for State Courts, Conference of Chief Justices,
5 and the Conference of State Court Administrators on November 6,
6 2019, as well as studies such as the 2016-2017 Policy Paper by
7 the Conference of State Court Administrators' "Decriminalization
8 of Mental Illness: Fixing a Broken System", demonstrate that
9 jails nationwide have become the default mental health method of
10 treatment for numerous low-level defendants whose needs could be
11 far more effectively addressed by diversion into behavioral
12 health treatment. Moreover, once the issue of mental health
13 surfaces during a judicial proceeding, the defendant more often
14 than not actually spends far more time being incarcerated
15 without being treated and being denied due process while
16 awaiting mental health evaluations. With the cost of
17 incarceration in Hawaii averaging over \$150 per day and the high



1 rate of recidivism shown by these studies because of the lack of
2 treatment, the legislature finds that allowing the parties to
3 opt out of judicial proceedings by entering into agreements at
4 any stage of the process is more cost-effective with respect to
5 time, money, and community results.

6 The purpose of this Act is to authorize the courts to enter
7 into agreements with the parties where there is reason to
8 believe that the defendant has a physical or mental disease,
9 disorder, or defect that will or has become an issue in the
10 criminal case.

11 SECTION 2. Section 704-407.5, Hawaii Revised Statutes, is
12 amended as follows:

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

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



1 Whenever there is reason to believe that the physical or
2 mental disease, disorder, or defect of the defendant will or has
3 become an issue in the case, the court may enter into an
4 agreement with the parties at any stage of the proceeding to
5 divert the case into an evaluation of the defendant, treatment
6 of the defendant (including residential or rehabilitation
7 treatment), or any other course or procedure, including
8 diversion into specialized courts. Such agreements may include
9 in-court clinical evaluations.

10 (2) ~~[The]~~ For those cases not diverted by an agreement
11 pursuant to subsection (1), the court shall appoint three
12 qualified examiners ~~[in felony cases]~~ for class A and class B
13 felonies, as well as for class C felonies involving violence or
14 attempted violence, and one qualified examiner in nonfelony
15 cases and class C felonies not involving violence or attempted
16 violence, to examine and report upon the physical or mental
17 disease, disorder, or defect of the defendant at the time of the
18 conduct. In ~~[felony]~~ cases~~[,]~~ requiring three examiners, the
19 court shall appoint at least one psychiatrist ~~[and]~~ or at least
20 one licensed psychologist. ~~[The]~~ When applicable, the third
21 examiner may be a psychiatrist, licensed psychologist, or



1 qualified physician. One of the three examiners shall be a
2 psychiatrist or licensed psychologist designated by the director
3 of health from within the department of health. In nonfelony
4 cases[7] and class C felonies not involving violence or
5 attempted violence, the court may appoint as examiners either a
6 psychiatrist or a licensed psychologist. All examiners shall be
7 appointed from a list of certified examiners as determined by
8 the department of health. The court, in appropriate
9 circumstances, may appoint an additional examiner or examiners.
10 The court may direct that one or more qualified physicians or
11 psychologists retained by the defendant be permitted to witness
12 the examination. As used in this section, the term "licensed
13 psychologist" includes psychologists exempted from licensure by
14 section 465-3(a)(3) and "qualified physician" means a physician
15 qualified by the court for the specific evaluation ordered."

16 2. By amending subsection (4) to read:

17 "(4) For defendants charged with felonies, the
18 examinations for fitness to proceed under section 704-404 and
19 penal responsibility under this section shall be conducted
20 separately unless a combined examination has been ordered by the
21 court upon a request by the defendant or upon a showing of good



1 cause to combine the examinations. When the examinations are
2 separate, the examination for penal responsibility under this
3 section shall not be ordered more than [~~thirty~~] fifteen days
4 after a finding of fitness to proceed. 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 SECTION 3. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Penal Responsibility; Mental Health Treatment; Agreements

Description:

Authorizes the courts to enter into agreements to divert into residential, rehabilitative, and other treatment those defendants whose physical or mental disease, disorder, or defect is believed to have become or will become an issue in a judicial case. Requires either one psychiatrist or one psychologist to be appointed in felony cases requiring three examiners. Requires an examination for penal responsibility to be conducted within fifteen days after a finding of fitness to proceed. Effective 7/1/2050. (HD1)

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