
A BILL FOR AN ACT

RELATING TO FITNESS TO PROCEED.

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

1 SECTION 1. Chapter 704, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§704- Effect of finding of unfitness to proceed for
5 defendants charged with a non-violent petty misdemeanor;
6 criminal justice diversion program. (1) In cases where the
7 defendant is charged with a petty misdemeanor not involving
8 violence or attempted violence, if, at the appropriate hearing
9 held pursuant to section 704-404(2)(a) or (b), the court
10 determines that the defendant lacks fitness to proceed, the
11 charges shall be dismissed with prejudice and the court shall
12 order the defendant to be committed to the custody of the
13 director of health and placed in an appropriate facility for
14 assessment, care, and treatment for up to seven days.

15 (2) If the defendant's treatment team determines that the
16 defendant meets the criteria in section 334-60.2 for involuntary
17 hospitalization, the director of health shall file a petition



1 for involuntary hospitalization pursuant to section 334-60.3 in
2 the family court. If the petition is granted, the defendant
3 shall remain hospitalized for a time period as provided by
4 section 334-60.6.

5 (3) If the defendant's treatment team determines that:

6 (a) The defendant does not meet involuntary
7 hospitalization criteria;

8 (b) The family court denies the petition for involuntary
9 hospitalization; or

10 (c) In the anticipation of discharge after involuntary
11 hospitalization pursuant to section 334-60.3,

12 then the treatment team shall determine whether an assisted
13 community treatment plan is appropriate pursuant to chapter 334,
14 part VIII. If the treatment team so determines, the
15 psychiatrist or advanced practice registered nurse from the
16 treatment team shall prepare the certificate for assisted
17 community treatment pursuant to section 334-123. The treatment
18 team shall identify a community mental health outpatient program
19 that agrees to provide mental health services to the defendant
20 in the community as the designated mental health program under
21 the assisted community treatment order. The defendant may be



1 held at the hospital or other suitable facility pending the
2 family court hearing on the petition for assisted community
3 treatment.

4 (4) If the petition for assisted community treatment
5 pursuant to subsection (3) is:

6 (a) Granted, then the defendant shall be released for
7 treatment with the designated mental health program
8 once the assisted community treatment order is issued
9 and the initial treatment consistent with the assisted
10 community treatment plan is administered to the
11 defendant; or

12 (b) Not granted, or the treatment team determines that an
13 assistant community treatment order is not
14 appropriate, then the defendant shall be referred to
15 an appropriate outpatient mental health program for
16 continued support, care, and treatment, and be
17 discharged from the hospital or other suitable
18 facility."

19 SECTION 2. Section 704-404, Hawaii Revised Statutes, is
20 amended as follows:

21 1. By amending subsections (1) and (2) to read as follows:



1 "(1) Whenever there is reason to doubt the defendant's
2 fitness to proceed, the court may immediately suspend all
3 further proceedings in the prosecution; provided that for any
4 defendant not subject to an order of commitment to a hospital
5 for the purpose of the examination, neither the right to bail
6 nor proceedings pursuant to chapter 804 shall be suspended. If
7 a trial jury has been [~~empanelled,~~] empaneled, it shall be
8 discharged or retained at the discretion of the court. The
9 discharge of the trial jury shall not be a bar to further
10 prosecution.

11 (2) Upon suspension of further proceedings in the
12 prosecution[~~7~~]:

13 (a) In nonfelony cases, if a court-based certified
14 examiner is available, the court shall appoint the
15 court-based examiner to examine and provide an
16 expedited report solely upon the issue of defendant's
17 fitness to proceed. The court-based certified
18 examiner shall file the examiner's report with the
19 court within two days of the appointment of the
20 examiner. A fitness determination hearing shall be



1 held within two days of the filing of the report, or
2 as soon thereafter as practicable;

3 (b) In nonfelony cases where a court-based certified
4 examiner is not available, the court shall appoint
5 [three qualified examiners in felony cases, and] one
6 qualified examiner [in nonfelony cases,] to examine
7 and report upon the defendant's fitness to proceed.
8 The court may appoint either a psychiatrist or
9 licensed psychologist as the examiner; and

10 (c) In felony cases, the court shall appoint three
11 qualified examiners, to examine and report upon the
12 defendant's fitness to proceed. The court shall
13 appoint as examiners [at least one psychiatrist and at
14 least one licensed psychologist. The third examiner
15 may be a psychiatrist,] psychiatrists, licensed
16 [psychologist,] psychologists, or qualified
17 [physician,] physicians. One of the three examiners
18 shall be a psychiatrist or licensed psychologist
19 designated by the director of health from within the
20 department of health. [In nonfelony cases, the court



1 ~~may appoint as examiners either a psychiatrist or a~~
2 ~~licensed psychologist.]~~

3 All examiners shall be appointed from a list of certified
4 examiners as determined by the department of health. The court,
5 in appropriate circumstances, may appoint an additional examiner
6 or examiners. The examination may be conducted while the
7 defendant is in custody or on release or, in the court's
8 discretion, when necessary the court may order the defendant to
9 be committed to a hospital or other suitable facility for the
10 purpose of the examination for a period not exceeding thirty
11 days, or a longer period as the court determines to be necessary
12 for the purpose. The court may direct that one or more
13 qualified physicians or psychologists retained by the defendant
14 be permitted to witness the examination. As used in this
15 section, the term "licensed psychologist" includes psychologists
16 exempted from licensure by section 465-3(a)(3) and "qualified
17 physician" means a physician qualified by the court for the
18 specific evaluation ordered."

19 2. By amending subsection (5) to read as follows:



1 "(5) ~~[The]~~ Except in the case of an examination pursuant
2 to subsection (2)(a), the report of the examination for fitness
3 to proceed shall include the following:

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

5 **(b) A diagnosis of the physical or mental condition of the**
6 **defendant;**

7 ~~[(b)]~~ **(c)** An opinion as to the defendant's capacity to
8 understand the proceedings against the defendant and
9 to assist in the defendant's own defense;

10 ~~[(e)]~~ **(d)** An assessment of the risk of danger to the
11 defendant or to the person or property of others for
12 consideration and determination of the defendant's
13 release on conditions; and

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



1 3. By amending subsection (7) to read as follows:

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

7 SECTION 3. Section 704-406, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) If the court determines that the defendant lacks
10 fitness to proceed, the proceeding against the defendant shall
11 be suspended, except as provided in [~~section~~] sections 704-
12 407[~~7~~] and 704- , and the court shall commit the defendant to
13 the custody of the director of health to be placed in an
14 appropriate institution for detention, assessment, care, and
15 treatment; provided that the commitment shall be limited in
16 certain cases as follows:

17 (a) When the defendant is charged with a petty misdemeanor
18 not involving violence or attempted violence, the
19 [~~commitment shall be limited to no longer than sixty~~
20 ~~days from the date the court determines the defendant~~
21 ~~lacks fitness to proceed;~~] defendant shall be diverted



1 from the criminal justice system pursuant to section
2 704- ; and

3 (b) When the defendant is charged with a misdemeanor not
4 involving violence or attempted violence, the
5 commitment shall be limited to no longer than one
6 hundred twenty days from the date the court determines
7 the defendant lacks fitness to proceed.

8 If the court is satisfied that the defendant may be released on
9 conditions without danger to the defendant or to another or risk
10 of substantial danger to property of others, the court shall
11 order the defendant's release, which shall continue at the
12 discretion of the court, on conditions the court determines
13 necessary; provided that the release on conditions of a
14 defendant charged with [~~a petty misdemeanor not involving~~
15 ~~violence or attempted violence shall continue for no longer than~~
16 ~~sixty days, and the release on conditions of a defendant charged~~
17 ~~with a]~~ misdemeanor not involving violence or attempted violence
18 shall continue for no longer than one hundred twenty days. A
19 copy of all reports filed pursuant to section 704-404 shall be
20 attached to the order of commitment or order of release on
21 conditions that is provided to the department of health. When



1 the defendant is committed to the custody of the director of
2 health for detention, care, and treatment, the county police
3 departments shall provide to the director of health and the
4 defendant copies of all police reports from cases filed against
5 the defendant that have been adjudicated by the acceptance of a
6 plea of guilty or nolo contendere, a finding of guilt,
7 acquittal, acquittal pursuant to section 704-400, or by the
8 entry of a plea of guilty or nolo contendere made pursuant to
9 chapter 853; provided that the disclosure to the director of
10 health and the defendant does not frustrate a legitimate
11 function of the county police departments; provided further that
12 expunged records, records of or pertaining to any adjudication
13 or disposition rendered in the case of a juvenile, or records
14 containing data from the United States National Crime
15 Information Center shall not be provided. The county police
16 departments shall segregate or sanitize from the police reports
17 information that would result in the likely or actual
18 identification of individuals who furnished information in
19 connection with the investigation or who were of investigatory
20 interest. No further disclosure of records shall be made except
21 as provided by law."



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

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

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

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



1 designated by the director of health from within the
2 department of health. The three examiners shall be
3 appointed from a list of certified examiners as
4 determined by the department of health.

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

20 SECTION 5. Section 704-414, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:



1 "(1) Upon filing of an application pursuant to section
2 704-412 for discharge or conditional release, or upon the filing
3 of an application pursuant to section 704-413 for discharge, the
4 court shall appoint three qualified examiners in felony cases,
5 and one qualified examiner in nonfelony cases, to examine and
6 report upon the physical and mental condition of the defendant.
7 In felony cases, the court shall appoint at least one
8 psychiatrist and at least one licensed psychologist. The third
9 member may be a psychiatrist, a licensed psychologist, or a
10 qualified physician. One of the three shall be a psychiatrist
11 or licensed psychologist designated by the director of health
12 from within the department of health. The examiners shall be
13 appointed from a list of certified examiners as determined by
14 the department of health. To facilitate the examination and the
15 proceedings thereon, the court may cause the defendant, if not
16 then confined, to be committed to a hospital or other suitable
17 facility for the purpose of the examination and may direct that
18 qualified physicians or psychologists retained by the defendant
19 be permitted to witness the examination. The examination and
20 report and the compensation of persons making or assisting in
21 the examination shall be in accordance with section 704-404(3),



1 (5) (a) and [~~(b)~~], (c), (7), (8), (9), (10), and (11). As used
 2 in this section, the term "licensed psychologist" includes
 3 psychologists exempted from licensure by section 465-3(a)(3) and
 4 "qualified physician" means a physician qualified by the court
 5 for the specific evaluation ordered."

6 SECTION 6. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun before its effective date.

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

11 SECTION 8. This Act shall take effect upon its approval.
 12

INTRODUCED BY:

[Handwritten signatures and names, including "John M. [unclear]", "James [unclear]", "Clem", "Dad Holt", and "Q. L. [unclear]"]



H.B. NO. 1842

Report Title:

Fitness to Proceed; Mental Health Evaluations; Involuntary Commitment; Assisted Community Treatment Plan; DOH

Description:

Diverts non-violent petty misdemeanants living with mental illness from the criminal justice system to the appropriate community treatment.

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