

JAN 15 2020

A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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 misdemeanors and petty misdemeanors not
6 involving violence or attempted violence; criminal justice
7 diversion program. (1) In cases where the defendant is charged
8 with a misdemeanor or petty misdemeanor not involving violence
9 or attempted violence, if, at the hearing held pursuant to
10 section 704-404(2)(a) or at a further hearing held after the
11 appointment of an examiner pursuant to section 704-404(2)(b),
12 the court determines that the defendant lacks fitness to
13 proceed, the charges shall be dismissed with prejudice and the
14 court shall order the defendant to be committed to the custody
15 of the director of health and placed in an appropriate
16 institution for detention, assessment, care, and treatment for
17 up to seven days.



1 (2) If the defendant's clinical team determines that the
2 defendant meets the criteria for involuntary hospitalization set
3 forth in section 334-60.2, the director of health shall file a
4 petition for involuntary hospitalization pursuant to section
5 334-60.3 in family court. If the petition is granted, the
6 defendant shall remain hospitalized for a time period as
7 provided by section 334-60.6.

8 (3) If the defendant's clinical team determines that the
9 defendant does not meet the criteria for involuntary
10 hospitalization, or the family court denies the petition for
11 involuntary hospitalization, or in the anticipation of discharge
12 after involuntary hospitalization pursuant to section 334-60.3,
13 the clinical team shall determine whether an assisted community
14 treatment plan is appropriate pursuant to chapter 334, part
15 VIII. If the clinical team determines that an assisted
16 community treatment plan is appropriate, the psychiatrist or
17 advanced practice registered nurse from the clinical team shall
18 prepare the certificate for assisted community treatment
19 specified by section 334-123. The clinical team shall identify
20 a community mental health outpatient program that agrees to
21 provide mental health services to the defendant as the



1 designated mental health program under the assisted community
2 treatment order. The defendant may be held at the appropriate
3 institution pending the family court hearing on the petition for
4 assisted community treatment. If the petition is granted, the
5 defendant shall be released for treatment with the designated
6 mental health program once the assisted community treatment
7 order is issued and the initial treatment consistent with the
8 assisted community treatment plan is administered to the
9 defendant.

10 (4) If the petition for assisted community treatment is
11 not granted or the clinical team determines that an assisted
12 community treatment order is not appropriate, the defendant
13 shall be:

14 (1) Referred to an appropriate outpatient mental health
15 program for continued support, care, and treatment;

16 and

17 (2) Discharged from the appropriate institution."

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

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



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 certified examiner to examine and provide
16 an expedited report solely upon the issue of the
17 defendant's fitness to proceed. The court-based
18 certified examiner shall file the examiner's report
19 with the court within two days of the appointment of
20 the examiner. A fitness determination hearing shall



1 be held within two days of the filing of the report,
2 or as soon thereafter as is 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 as the examiner either a
9 psychiatrist or a licensed psychologist; 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, licensed psychologist, or
16 qualified physician. One] psychiatrists, licensed
17 psychologists, or qualified physicians; provided that
18 one of the three examiners shall be a psychiatrist or
19 licensed psychologist designated by the director of
20 health from within the department of health.



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

18 2. By amending subsection (5) to read:

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



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- 1 (a) A description of the nature of the examination;
- 2 (b) A diagnosis of the physical or mental condition of the
3 defendant;
- 4 [~~(b)~~] (c) An opinion as to the defendant's capacity to
5 understand the proceedings against the defendant and
6 to assist in the defendant's own defense;
- 7 [~~(c)~~] (d) An assessment of the risk of danger to the
8 defendant or to the person or property of others for
9 consideration and determination of the defendant's
10 release on conditions; and
- 11 [~~(d)~~] (e) Where more than one examiner is appointed, a
12 statement that the opinion rendered was arrived at
13 independently of any other examiner, unless there is a
14 showing to the court of a clear need for communication
15 between or among the examiners for clarification. A
16 description of the communication shall be included in
17 the report. After all reports are submitted to the
18 court, examiners may confer without restriction."
- 19 3. By amending subsection (7) to read:
- 20 "(7) [~~Three copies~~] A copy of the report of the
21 examination, including any supporting documents, shall be filed



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1 with the clerk of the court [~~who shall cause copies to be~~
 2 ~~delivered to the prosecuting attorney and to counsel for the~~
 3 ~~defendant~~]."

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

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

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

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



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1 ~~hundred twenty days from the date the court determines~~
 2 ~~the defendant lacks fitness to proceed.] defendant~~
 3 ~~shall be diverted from the criminal justice system~~
 4 ~~pursuant to section 704- .~~

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



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

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

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



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



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

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

20 "(1) Upon filing of an application pursuant to section
21 704-412 for discharge or conditional release, or upon the filing



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



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

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

7

INTRODUCED BY: *Karl Rhoads*



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Report Title:

Fitness to Proceed; Misdemeanors; Petty Misdemeanors; DOH

Description:

Amends the effect of finding a defendant charged with a misdemeanor or petty misdemeanor not involving violence or attempted violence unfit to proceed. Amends the requirements for fitness determination hearings, court-appointed examiners, and examination reports.

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

